

The complaint

Mr T is unhappy with an offer made in relation to a complaint about the quality of a car supplied under a hire purchase agreement. This was provided by Black Horse Limited trading as Land Rover Financial Services ('Black Horse').

What happened

In October 2018, Mr T acquired a new car funded in part with a hire purchase agreement taken with Black Horse. The cash price of the car was £72,441. Mr T paid a cash deposit of £28,000 and part exchanged a car for £28,000. A manufacturer's deposit contribution was added for £1,000. This meant the amount of credit was £15,341, taken over 48 months with repayments of £358.50 per month.

Shortly after getting the car Mr T says he noticed issues with it. Further issues appeared over the coming months. Black Horse explained there were faults with the following areas:

- Dog guard
- Media centre
- Spare wheel
- Automatic stopping
- Tailgate
- Sat nav
- Reversing aids
- Radio
- Side step
- Cruise control
- Speed limit recognition system
- Lane assist
- Memory seats
- Touch screen
- Adaptive headlights

Various repairs were attempted on the car but several issues persisted. Mr T says he was without the car in total for around three months, and was provided smaller courtesy cars than the one he was paying for.

Mr T complained to Black Horse and it issued its final response in December 2021. In summary, it accepted the car had various problems and wasn't of satisfactory quality when it was supplied. As repairs had been attempted, it agreed to allow Mr T to reject the car. It offered to take the car back and to pay Mr T £69,412.47. This was made up of:

- £28,000 cash deposit
- £28,000 part exchange deposit
- £6,423 of monthly payments made*
- £300 to reflect the distress and inconvenience caused
- £8,361.84 made up of 8% simple interest on the cash deposit and monthly payments
- A reduction of £1,672.37 tax on the interest payment

*Black Horse explained it was retaining £7,200 from the total of £13,623 paid towards the agreement for the usage of the car. It said this was calculated by charging £0.45 a mile for 16,000 miles.

Mr T was unhappy with this offer and contacted Black Horse about it. He said 8% simple interest should also be added to the amount from the part exchange deposit. Black Horse responded and said it would only pay this on the cash amount.

The car was collected and Mr T confirmed Black Horse transferred him £71,439.97 in February 2022. Presumably, this higher amount was paid due to an additional payment being made and/or an interest recalculation. Mr T remained unhappy with this and brought the complaint to our service.

Black Horse explained to our service that it didn't pay out the 8% interest on the part exchange deposit as it said Mr T had no financial benefit of his previous car being in his possession. So it said he was not 'out of pocket' by part exchanging it.

Mr T said, in summary, that effectively the part exchange was a cash deposit. He said he could've sold the car to a third party, then used these funds towards the agreement.

Our investigator issued an opinion and said she didn't think the complaint should be upheld. She said, in summary, that she thought Mr T's point that the 8% should've been added if he sold the car to a third party and then used these funds was right, but this isn't what happened. So, she didn't think Black Horse had done anything wrong.

Mr T remained unhappy. He said, in summary, that he sold the car to the dealer, not to Black Horse. He said had there been a delay in the delivery of the new car, he could've got a cash refund from the dealer. And he said as Black Horse had refunded him the part exchange value, it must view it as a cash deposit.

I sent Mr T and Black Horse a provisional decision on 12 January 2023. My findings from this decision were as follows:

Mr T complains about a car, and the subsequent offer made in relation to it, supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr T's complaint about Black Horse.

All parties are agreed in this case that the car supplied to Mr T wasn't of satisfactory quality. And the car has now been rejected. As Black Horse and Mr T accept what happened, I don't need to make any findings about the quality of the car here.

What I need to decide in this case is whether the offer Black Horse has made and paid out to put things right is fair and reasonable under the circumstances of the complaint.

I've firstly considered the issue around the 8% interest being applied to the cash deposit, but not to the part exchange value.

When considering what's fair and reasonable to put things right, broadly, it would seem fair for Mr T to be put back in the position he would've been in had nothing gone wrong. Here, this would mean being put back in the position he would've been in had he not acquired this car.

I think it would be helpful to explain briefly when I'd expect to see 8% simple interest being applied. In general terms, I'd expect to see this being paid to Mr T for any time he was deprived of money and didn't have use of it because of what went wrong. In relation to the cash deposit, Mr T was deprived of the use of these funds when he paid this towards the agreement for a car which was of unsatisfactory quality. So, it seems reasonable 8% interest had been added here.

Black Horse have made the argument that Mr T wasn't deprived of funds when he part exchanged his car as he had no financial benefit from it. But, I don't agree here. I need to consider what actually happened when Mr T part exchanged his car.

I agree with the point Mr T made about the fact that the car was sold to the dealer, not to Black Horse. When Mr T part exchanged his car, he essentially sold the car to the dealer for cash. Rather than paying these funds to Mr T, the dealer paid the funds to Black Horse. So, this means I don't agree with Black Horse's argument that this should be treated differently to the cash deposit in terms of paying interest on it.

It follows all of this that, in principle, I agree with Mr T that it initially seems reasonable that Black Horse should pay 8% interest on a part exchange value. But, this doesn't tell the whole story here. I need to consider the overall offer it made and if Black Horse needs to take any further action.

As I explained above, I need to consider putting Mr T back in the position he would've been in had he not entered into the contract. In real terms, this isn't possible here, as this would involve him getting back the original car he part exchanged, which I can presume has since been sold. So, I need to think about whether he's received redress to put him as close to this position as possible.

While I would've used a different method to calculate the amount, I do agree with Black Horse that it's fair and reasonable for Mr T to pay towards the use of the car. I say this as Mr T drove a brand new car worth over £70,000 – albeit one with faults - or a courtesy car, over a period of three years and around 16,000 miles.

I've thought about what Mr T received back from Black Horse and what he paid towards the agreement. In total, Mr T received £71,439.97 from Black Horse.

Over the course of the agreement, Mr T paid a total of £56,000 as a deposit and I believe he would've paid 39 repayments of £358.50, totalling £13,981.50. This means Mr T paid Black Horse a total of £69,981.50. So, while part of the amount Black Horse paid Mr T was to compensate him for the loss of use of his cash deposit, this still means he is just under £1,460 better off than if he didn't enter into the agreement. And, this means he's had free use of the car for over three years.

I've also considered that the cash price of the car, taking off the manufacturer's deposit contribution, was £71,441. Mr T received just over £1 less than this back from Black Horse after over three years using the car.

I do need to consider that, as I previously explained, Black Horse hasn't compensated Mr T to reflect the fact he was deprived of £28,000 from the part exchange value. But I also need to consider that, while Black Horse retained some payments for usage, in cash terms, he's better off than he would've been had he not acquired the car.

Thinking about what's fair and reasonable here, I'm satisfied Mr T has been put back into a fair position thinking about all of the circumstances of the complaint. While in principle I agree it initially seems reasonable that he should be compensated for being deprived of the use of the part exchange funds, in real terms I'm satisfied this is made up for by the usage of the car he had.

It follows that I don't think Black Horse needs to take any further action.

I gave both parties four weeks to provide anything further for me to consider.

Black Horse didn't come back with any further comments or evidence.

Mr T responded and made various points for me to consider. He said, in summary, that he didn't believe the missing interest payment was made up for by the use of the car. He said he didn't have use of the car for the full three years, as he didn't use it when the country was locked down due to COVID-19 and it was in for repair for around three months. He also said the round trip to the dealer was around 30 miles and he had to drive the car to obtain evidence to provide to the dealer. Mr T said he estimated he used the car for 3,000 miles for this.

Mr T also said he paid Black Horse an additional £358.50, had paid £1,017 for an extended warranty and because of his financial situation had also been charged a further £1,672.37. So, he said it wasn't fair to conclude he was better off than if he had not acquired the car.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've carefully considered what Mr T said in response to my provisional decision. There is something of a lack of evidence to back up some of what he's said – such as using the car for 3,000 miles for trips to the dealer and for gathering evidence. I do think this mileage seems somewhat high. I say this as this would be the equivalent of 100 round trips to the dealer. It's also worth pointing out I think the usage of the car during lockdown would likely have remained the same had it been of satisfactory quality or not.

That being said, even if I take everything Mr T has said at face value, I still don't think the complaint should be upheld. I say this as, even taking the additional costs Mr T mentioned into account, in real terms he still would've paid a very minimal amount for the usage of the car over three years considering its value – even if this was for 13,000 miles rather than 16,000.

Having reconsidered everything again, including all of the further comments from Mr T, I still don't think this complaint should be upheld.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or

reject my decision before 30 March 2023.

John Bower
Ombudsman