

## **The complaint**

Mr W complains about the quality of a motorhome he acquired under a hire purchase agreement with Black Horse Limited (Black Horse).

## **What happened**

In July 2020, Mr W entered into a Hire Purchase Agreement with Black Horse to acquire a used motorhome which was first registered in July 2018, and at the time of purchase had travelled around 4,100 miles. The cash price of the motorhome was around £43,995. Mr W provided an initial payment of around £2,000, and monthly repayments on the agreement were around £662 over an 84-month period.

On 29 January 2021, Mr W raised a complaint with Black Horse as he didn't think the motorhome was of a satisfactory quality and he wanted to reject it. In February 2021, he had the motorhome inspected, which cost £40. The inspection found the following faults:

- damage around the skylight cracks in gel/fiberglass
- damage found on the roof, o/s gutter area hole in fiberglass/gel coat
- rear bumper cracked in certain places
- crack to the shower wall
- bathroom sink coming away from the wall
- lock on the habitation door faulty, so not secure
- reverse camera providing no picture
- no TV signal from the aerial
- section of lounge/bedding missing
- water heater cowl damaged, not allowing winter cover to secure in place

The inspection report noted that the damage to the roof can cause, and may have already caused, damp damage to the motorhome. Mr W said that he was unable to fully inspect the motorhome prior to entering into the agreement, due to the Covid-19 restrictions in place at the time so that is why he didn't notice any of these faults previously.

In April 2021, Black Horse wrote to Mr W. In this correspondence they said that the inspection Mr W provided didn't give any root causes or further information, so it was insufficient and that is why a further independent inspection was arranged. This second inspection was completed in March 2021. Based on this report Black Horse agreed that they were responsible for some of the faults. In this correspondence they said that, in line with The Consumer Rights Act 2015 (CRA), they should have an opportunity to repair some of the faults and that they don't agree to a termination of the hire agreement at this time.

They said that the damage around the skylight, and the cracks to the shower wall have been attributed to a manufacturing defect. So, they are in agreement that these were faults they're responsible for. They also said that, due to the limited use of the goods, they felt that it was not fair or reasonable to expect for the bathroom sink to come away from the wall, and for there to be a fault with the TV signal from the aerial. So, they agreed for these repairs to be completed by the dealership with their assistance, if needed. But they didn't think they should be responsible for the following faults:

- Damage found on the roof, o/s gutter area hole in fiberglass/gel coat – Black Horse said that this damage was attributed to wear and tear or possibly due to user error. They said that it was indeterminable when this issue occurred and there was no definitive evidence to state that this fault was present when Mr W took possession of the motorhome;
- Water heater cowl damaged, not allowing winter cover to secure in place – Black Horse said that this doesn't affect the functional operation of the water heater, and that these concerns were first evidenced seven months after the point of delivery, so they didn't think there was anything to show this issue was present when Mr W took delivery of the motorhome.

In the April 2021 correspondence, Black Horse also felt that, as no fault was found by the second inspection report, they were not responsible for the following faults:

- section of lounge/bedding missing;
- reverse camera providing no picture;
- lock surround on the habitation door faulty, so not secure.

Regarding the rear bumpers cracked on both rear corners, Black Horse didn't think they were responsible for these either, as they quoted the second parts of the inspection report which said that, most likely, there has been at some point a very low speed collision, for example with a motorhome park tap, that has resulted in the cracks. And the report said that it's not possible to say whether this issue was present at the point of sale.

In addition, in that correspondence, Black Horse wrote that they would make a £400 payment to Mr W. £200 in recognition of any trouble and upset the upheld issues have caused, and £200 in recognition of any loss of enjoyment experienced due to the upheld concerns.

Mr W was not happy with the above, so he referred his complaint to our service.

Our investigator thought that Black Horse should arrange and pay for some of the repairs to the motorhome within a reasonable amount of time. Plus, refund Mr W the cost of the inspection report, any payments he made since February 2021 and add 8% simple interest to the refund amount. She also asked them to remove any adverse information that may have been reported to Mr W's credit file from February 2021 onwards.

Black Horse agreed with the investigator, but Mr W didn't. In summary, he said that he still wanted to reject the motorhome because he feels that the moisture in the sandwich construction of the roof and walls can never be removed. So, he feels that there will always be mould and associated spores within the construction of the walls. Mr W also said that he only raised the issues seven months after taking possession of the motorhome because it's a leisure vehicle, so he only had it out on two outings before spotting the damage. And he said the periodic national lockdowns closed the dealership, which prevented him from raising these issues earlier.

While the complaint was at our service, Black Horse also looked into the issue Mr W initially raised about the fault he was experiencing with the fuel tank. In October 2022, Black Horse wrote to Mr W and said that, as the fault occurred outside the first 30 days of the supply date, they felt that they should be allowed the opportunity to repair. So, they said that they will support the repairs at no cost to Mr W and make a payment of £300 for the distress and inconvenience caused because of this particular fault and taking into consideration that this aspect was not addressed by them previously, and for the delay this has caused. They said

this offer is in addition to the previous offer made and in addition to the costs of the repairs that they have agreed to cover.

Mr W was still not happy with this, so the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 28 February 2023. In the provisional decision I said:

***“What I’ve provisionally 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.*

*In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.*

*Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.*

*Mr W acquired the motorhome under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Black Horse is the supplier of the goods under this type of agreement, and is responsible for dealing with complaints about their quality. The CRA covers agreements such as the one Mr W entered into. Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered to be of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the motorhome and the cash price. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*In Mr W’s case the motorhome was used, with a cash price of around £43,995. It had covered around 4,100 miles and was approximately two years old when he acquired it. I would have different expectations of it compared to a brand-new motorhome, but given the age, mileage and price paid, I think it’s fair to say that a reasonable person would have high expectations of it and would expect the quality of the motorhome to be of a higher standard than a motorhome which is more road worn or has a lower price. Also, I think a reasonable person would expect it to be free from defects for a considerable period of time.*

*Mr W said that he wants to reject the motorhome, while Black Horse believes that they should be allowed the opportunity to repair some of the issues with the motorhome.*

*The CRA sets out that Mr W has a short term right to reject the motorhome within the first 30 days if the motorhome is of unsatisfactory quality, however, he would need to ask for the rejection within that time. Mr W wouldn’t be able to retrospectively exercise his short term right of rejection at a later date. Mr W purchased the motorhome on 6 July 2020. On 29 of January 2021, more than 30 days after the supply date, and more than six months after acquisition, is when Mr W raised the issues with Black Horse. So, Mr W didn’t raise these issues within the first 30 days. Even if I accept there were faults which made the motorhome of unsatisfactory quality, Mr W could only reject the motorhome within the first 30 days, and only if he expressed his wish to do so at that time. As he was unaware of the issues within*

*the first 30 days, he couldn't possibly express his wish to reject the motorhome within that time.*

*The CRA says that, if the motorhome acquired wasn't of satisfactory quality, or not as described, then Mr W would be entitled to still return it after 30 days, but Mr W doesn't have the right to reject the motorhome until he has exercised his right to repair. So, Mr W doesn't have an automatic right to return the motorhome. For me to conclude that Mr W can exercise his right to reject the motorhome, I would need to see that the motorhome wasn't of satisfactory quality, because the faults he complains about were likely to have been present or developing at the point of sale, and that Black Horse's one attempt at a repair has failed. Considering the age and the mileage of the motorhome, and the faults Mr W experienced with the motorhome, I think most likely it was not of satisfactory quality. I will now explain why.*

*Before I go into the details of the different faults, I've taken note that Black Horse said it was happy to cover some of the damage. So I don't need to address in detail these faults, but I will just list them for completeness and for ease of reference. Black Horse said they will cover the damage around the skylight and the cracks to the shower wall, as both of these faults have been attributed to a manufacturing defect, which I think is fair and reasonable. They also said that due to the limited use of the goods they felt that it was not fair or reasonable to expect the bathroom sink to come away from the wall, and for there to be a fault with the TV signal from aerial. While the complaint was at our service, they also agreed to support the repairs needed to the fuel tank at no cost to Mr W. Overall, I think it's fair and reasonable that they would be responsible for these issues, as I don't think a reasonable person would expect some of these faults to occur on a two-year-old motorhome that has only covered around 4,100 miles, or a fault that would be expected to arise in the time frame Mr W has had the motorhome. But as these are not in question, in turn, I will focus on the other faults of the motorhome.*

#### *Cracks on the rear bumpers*

*I think Black Horse should be held responsible for the cracks on the rear bumpers. The report arranged by Black Horse indicated that the rear bumper was most likely at some point involved in a very low speed collision, for example including a motorhome park tap that has resulted in these cracks. So, it concluded that the most plausible reason is accidental damage. But I've also noted that the report said that the rear bumper is made of a thermoplastic formed material and that, because of the manufacturing process, there are areas that are weaker than others, particularly at a radius where the plastic is thinned by the forming process. The report also states that these areas are more prone to cracking than other areas and it's these areas that are cracked on this motorhome. From the pictures available I've considered that there are no scratches, aberrations, or any other evidence of a collision. And, considering the delicate nature of this material combined with the fact that Mr W's report said that the plastic splitting on the rear bumper is a common fault not caused by damage, I think it's most likely the damage didn't happen because of a collision.*

*In addition, I've considered that if this damage already did start to form at the point of sale, most likely Mr W wouldn't have noticed this because Black Horse's report states that, if they were present at the point of sale, they were simply not obvious enough to be noticed easily. Hence, I think it's most likely he wouldn't have been able to bring it to the attention of the supplying dealership at the point of supply. And I think this matches up with Mr W's testimony, when he said that he only spotted them later as with time the cracks got bigger due to the material's exposure to the outside conditions. Also, Black Horse's report is inconclusive about when this fault occurred but, taking everything into consideration, I think it's most likely these cracks were due to a common fault just like Mr W's report indicates. I don't think a reasonable person would expect such a fault to occur on a two-year-old*

motorhome that has only covered around 4,100 miles, or a fault that would be expected to arise in the time frame Mr W has had the motorhome. So, I'm not persuaded the motorhome was sufficiently durable. For this reason, I do not think the motorhome was of satisfactory quality.

#### Damage found on the roof, o/s gutter area hole in fiberglass/gel coat

The report commissioned by Black Horse said that there is a hole/crack in roof just inboard of the offside awning area, forward of the midpoint of the motorhome but rearward of the skylight area. It goes on to say that water has 'ingressed' the hole and that damp is present at 40%. The damp report provided defines readings over 30% as 'Structural damage may be occurring and deterioration is inevitable'. The report concluded that the hole is not a failure of any manufactured components, joints, or seals and is more representative of impact damage or some other third-party object accidentally striking the roof area. But it also said that they are unable to tell how and when this has occurred, so the report was inconclusive in stating whether this was present at the point of sale or not. It also said that the damp readings are relatively low, suggesting that the damaged is relatively recent and certainly not years old. I've considered this but I think 40% dampness most likely wouldn't be considered relatively low, so I think, most likely, the damage has been happening for some time.

Mr W has also told us that the Black Horse inspector only looked out of the roof of the skylight when assessing this damage. Whereas the inspector for his report went on the roof of the motorhome, so he questioned whether Black Horse's report was as accurate as his. I've considered this, and I've also considered that Mr W's report was a bit more conclusive on this aspect. It said that it's a defect in the moulding, as it's not an area that could've been damaged by anything overhead such as a tree or branches. Also, the report said that there was no further damage such as scratches on the roof.

I've taken that into consideration, and I've looked at all the pictures that were provided by both sides and I think it's, most likely, a defect in the moulding, as I too can't see any other significant damage or scratches to the roof, which I think most likely would've been present had there been some sort of impact causing this damage. So, I think it's most likely the damage has been caused by a defect and I don't think a reasonable person would expect such a fault to be present on a two-year-old motorhome that has only covered around 4,100 miles, or a fault that would be expected to arise in the time frame Mr W has had the motorhome. But even if I'm wrong about the damage being a defect - which I'm not saying that I am - I still think this would've been present or developing at the point of sale. I say this because if it was damage caused by impact then this must have happened a long time ago as the area in question is so tiny and the dampness readings are so high (40%) that I think, most likely, this was happening for a significant period of time and before Mr W took possession of the motorhome.

#### Water heater cowl damaged, not allowing winter cover to secure in place

Black Horse said they shouldn't be responsible for the water heater cowl damage. They said that the second inspection report indicated that the heater cowl damage would be considered wear and tear with a user error. So I've taken this into consideration, and I've considered that Mr W hasn't proven that this fault was present or developing at the point of sale. The report Mr W provided only mentions that it's damaged and doesn't indicate if the fault was present or developing at the point of sale. So overall, I don't think Black Horse should be responsible for this fault.

#### Overall

*Taking all of that above into consideration, I think it's most likely there's a lot wrong with the motorhome and I think, most likely, the issues mentioned above were already present, or developing, at the point of supply. From all the evidence available I've also seen how significant all these issues are and taking everything into account – including the price paid, the age and usage of the motorhome, and the fault in question – I'm not persuaded the motorhome was of satisfactory quality when Mr W took delivery. Given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect such faults to be present so soon after acquiring it.*

*For me to conclude that Mr W can exercise his right to reject the car, as mentioned above, I would need to see that the motorhome wasn't of satisfactory quality, because the faults he complains about were likely to have been present, or developing, at the point of sale, and that Black Horse's one attempt at a repair has failed. Unless giving Black Horse that time to repair would cause significant inconvenience to Mr W.*

*Mr W has told us that he has taken two trips in the motorhome with the last one being in January 2021, and after this trip his two children developed chest infections. He said the doctor told him it was likely caused by damp conditions they'd been in. Mr W has also told us that he is concerned about the water in the sandwich construction of the roof and the walls of the motorhome, as he believes that this can never be entirely removed. He believes that there will always be mould and associated spores within the construction of the walls, which, he said, is obviously a massive health risk to his family. I've also considered that Black Horse's report said that the inside of the motorhome, particularly the affected area, needs to be dried out and dehumidified to avoid structural damage from occurring, which will happen if the moisture becomes sealed in. I also considered the fact that, at that time, the moisture reading was already at 40%. So, I think the repairs around the water ingress issues are of a significant undertaking and, if done properly, most likely will take a long time to complete, which would be a significant inconvenience to Mr W. And even then, there is a question of whether all the mould and associated spores within the construction of the walls can be removed. Also, there is a lot of other repairs, mentioned above, that would need to be done, which would add even further to the amount of time needed to put things right. So, I think on a fair and reasonable basis, Mr W should be allowed to reject the motorhome now because giving Black Horse that time to repair would cause significant inconvenience to him.*

*Mr W has also mentioned other faults with the motorhome, besides the ones I went into detail about, as reasons why he thinks the motorhome was not of satisfactory quality at the point of sale. Some of these were: lock surround on habitation door being faulty, reverse camera not providing a picture, and a section of lounge/bedding missing. Black Horse didn't think there was any problems with these three issues. But considering that I think he should be able to reject the motorhome, I don't need to consider these in further detail in this decision.*

*As such, Black Horse should refund Mr W's deposit of around £2,000.*

*Any adverse information, if it has been recorded on Mr W's credit file from January 2021 onwards, should be removed. Also, the credit agreement should be marked as settled in full on his credit file, or something to that effect, and should not show as a voluntary termination.*

*Mr W has still been able to use the motorhome with the fault in question. During this time the motorhome has travelled around 4,000 miles. So, I think it's fair that Black Horse can keep the monthly payments he has made towards the finance agreement up to 29 January 2021, when he raised his complaint with them.*

*I also think that this matter has caused Mr W a lot of distress and inconvenience when trying to resolve it. He had to correspond extensively with the dealership and Black Horse, as well*

*as to make time for the two inspections that were carried out on the motorhome, which, I think, he would not have had to do had Black Horse supplied him with a motorhome that was of satisfactory quality. I've also considered the distress and inconvenience that has had a direct impact on him when his two children developed chest infections. I know Black Horse on one occasion, to reflect the distress and inconvenience caused, already offered to pay Mr W £200 and then £300 on another occasion. So, I think that a total of £500 is a fair and reasonable amount of compensation to reflect the distress and inconvenience caused. I would consider awarding more compensation to Mr W, but I have taken into consideration that the water heater cowl damage was most likely caused by wear and tear or user error, so I've taken that into consideration when deciding this award.*

*Finally, Black Horse should also refund Mr W the cost of the inspection report he had carried out, on production of a valid receipt or invoice.*

### **My provisional decision**

*For the reasons given above, I intend to uphold this complaint and I direct Black Horse Limited to:*

- 1. Cancel the hire purchase agreement with nothing further to pay;*
- 2. Collect the motorhome at no cost to Mr W;*
- 3. Refund the deposit of around £2,000;*
- 4. Refund the cost of the inspection report Mr W had carried out, on production of a valid receipt or invoice;*
- 5. Refund all payments Mr W made after 29 January 2021;*
- 6. Add 8% simple interest per year to all of the above points above from the date of each payment to the date of settlement;*
- 7. Pay Mr W £500 for the distress and inconvenience caused, if this has not yet been paid;*
- 8. Remove any adverse information, if any has been recorded from 29 January 2021 onwards. Also mark the credit agreement as settled in full on his credit file, or something to that effect, and it should not show as voluntary termination.*

*If Black Horse Limited considers tax should be deducted from the interest element of my award, they should provide Mr W with a certificate showing how much they have taken off, so he can reclaim that amount, if he is eligible to do so."*

I asked both parties to provide me with any additional comments or information they would like me to consider by 14 March 2023 and our service explained that if both parties reply before then, I may be able to give my final decision sooner.

Mr W said he accepts my provisional decision.

Black Horse responded and said they had no further points to add.

### **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.

Having done so and considering neither Mr W nor Black Horse had any further comments to make, I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

## **My final decision**

For the reasons given above, and in my provisional decision, I direct Black Horse Limited to:

1. Cancel the hire purchase agreement with nothing further to pay;
2. Collect the motorhome at no cost to Mr W;
3. Refund the deposit of around £2,000;
4. Refund the cost of the inspection report Mr W had carried out, on production of a valid receipt or invoice;
5. Refund all payments Mr W made after 29 January 2021;
6. Add 8% simple interest per year to all of the above points above from the date of each payment to the date of settlement;
7. Pay Mr W £500 for the distress and inconvenience caused, if this has not yet been paid;
8. Remove any adverse information, if any has been recorded from 29 January 2021 onwards. Also mark the credit agreement as settled in full on his credit file, or something to that effect, and it should not show as voluntary termination.

If Black Horse Limited considers tax should be deducted from the interest element of my award, they should provide Mr W with a certificate showing how much they have taken off, so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 April 2023.

Mike Kozbial  
**Ombudsman**