

The complaint

Mr P complains that a used vehicle supplied by Black Horse Limited under a hire purchase agreement (HPA) was of unsatisfactory quality and he should have been allowed to reject it. He's also unhappy about the way the agreement ended and the impact of this on his credit record.

What happened

On 12 September 2022 Mr P acquired a motorhome with from Black Horse. After he had the vehicle for a short time he reported a tracking issue to the supplying dealer and complained that tyres were worn unevenly, there was cosmetic damage to the rear bumper and rear door and some paperwork included in the service history has a different vehicle registration. Not long after this, he reported issues with the vehicle's suspension and a pull-out bed to Black Horse - in addition to the other issues.

Mr P paid a third party garage to fix the tracking and the supplying dealer covered this cost but the dealer refused to accept liability for the tyres or damage to the rear bumper and door. The dealer said there was cctv footage that shows the damage was not present when the vehicle was collected and, whilst there was an advisory on one tyre in the MOT carried out before supply, this was replaced - and all tyres were roadworthy when Mr P acquired the vehicle.

Black Horse upheld Mr P's complaint in part. It said (in summary):-

- tyres and tracking could be said to fall into fair wear and tear on a used vehicle like this one, the motorhome needed tracking but the dealer paid for this to be resolved and Mr P accepted that, so it was no longer an issue;
- the vehicle passed an MOT before supply so the tyres must have been roadworthy at that point and, in any event, the dealer later replaced the tyres at no cost to Mr P;
- the reference to a different registration in the paperwork was likely a typographical error as a third party confirmed that the work in question was carried out to this vehicle and there's no adverse impact on the motorhome or its service history;
- photographs provided showing rear damage are dated before supply which shows Mr P was aware of, and accepted, the damage present at the time.

As a goodwill gesture, Black Horse offered to cover the cost of repairs to the rear door and the bumper and pay Mr P £75 compensation for any upset caused. Mr P supplied a quote for repairs (of about £300) initially, then he decided not to accept the offer - as he wanted our service to investigate. He cancelled the direct debit for the monthly finance payments and told Black Horse he was struggling to afford the repayments, his health had deteriorated and he was no longer able to drive the vehicle. Black Horse offered to consider a repayment plan but Mr P decided to ended the HPA by a process called voluntary termination (VT) in November 2022. He's unhappy that there's an outstanding amount of nearly £30,000 left to pay and he's concerned about the impact of this on his credit file.

Our investigator didn't recommend the complaint should be upheld. He's satisfied the tracking issue was fixed at no cost to Mr P, which wasn't unreasonable. He acknowledged a consumer has the right to reject a faulty vehicle within 30 days of supply - under the

Consumer Rights Act 2015 (CRA) - but he couldn't see the damage complained of in photographs provided. He was satisfied that Mr P had the chance to inspect before purchase so any damage present should have been raised then and handover paperwork suggests the exterior was checked at the point of supply with no significant issues. He wasn't persuaded that Black Horse has acted unfairly or unreasonably overall - he thought the offer to pay for repairs on a goodwill basis seemed fair and Black Horse was supportive when Mr P reported money problems. He's satisfied that Black Horse explained the implications of VT and Mr P chose to go ahead. He didn't think Black Horse should have to do anything further in the circumstances.

Mr P remained unhappy and he asked for an ombudsman to review the matter. In summary, he considers his photographs show the rear damage was present before he got the vehicle. He says the salesperson was aware of this - as it was pointed out along with the faulty bed at the time of viewing - and the dealer agreed these issues would be fixed before collection. Mr P acknowledges some things were resolved - such as tracking - but feels he should have been allowed to reject the vehicle. He says he didn't accept the goodwill offer as he wasn't to blame. And he thinks it is unfair that he still owes Black Horse nearly £30,000 after the VT even though the vehicle has been sold. He's also concerned about the impact of all this on his credit record.

Having considered the available evidence, I wasn't minded to uphold Mr P's complaint but my reasons weren't quite the same as the investigator's and I'd considered some additional issues and new evidence. I thought it was fair to give the parties the chance to see my provisional findings and respond (if they wanted to) before I made my final decision so I issued a provisional decision on 7 July 2023. I've set out what I decided provisionally (and why) below and this forms part of my final decision.

My provisional decision

I considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And, where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

As both parties provided a good deal of evidence I had to summarise things. I explained that the rules of our service allow me to do this. And I assured the parties, if I didn't mention every single point that's been raised, it's not because I hadn't thought about it. I had considered everything that's been said and sent to us but I was going to concentrate on what I consider is key to reaching a fair and reasonable outcome overall.

I was satisfied that Black Horse supplied this vehicle to Mr P under a HPA and it was obliged (under the CRA) to ensure that the motorhome was of satisfactory quality at the point of supply. I said what amounts to "satisfactory" quality will vary depending on individual circumstances. The quality of goods includes their general state and condition as well as fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. And goods need to meet the standard that a reasonable person would consider "satisfactory".

In the case of a used vehicle, I thought it reasonable to take the age, cost and mileage at the point of supply into account. This vehicle was around four years old with about 20,000 miles on the clock when Mr P got it. It cost nearly £40,000 and Mr P agreed (under the terms of the HPA) to repay nearly £60,000, including interest, over 120 months at about £500 a month.

What went wrong?

I noted Mr P says this vehicle was of unsatisfactory quality/mis-sold because he found wheels were misaligned, tyres were worn, there was damage to the rear door and bumper, there was also something wrong with the suspension and an internal bed and the service history contained information about another vehicle.

I thought it looked as if Mr P accepted the dealer's offer to pay for tracking and that resolved any misalignment so I didn't think I need to address this further. I also considered the service history issue was resolved fairly quickly - a third party who did the work in question appears to have simply put the wrong vehicle registration on the paperwork. That party confirmed the relevant work was done to this particular motorhome so there seemed to be no significant impact on its service history as a result.

I wasn't persuaded it's likely there was a significant problem with the tyres as the motorhome passed an MOT on 6 September 2022. I saw one damaged tyre was listed as an advisory but the dealer said this was replaced before supply and I had no reason to doubt that. I was satisfied that all of the tyres were considered roadworthy on the date of the MOT - which was six days before supply. And I couldn't fairly find the vehicle was faulty on those grounds.

I was unable to see the rear damage that Mr P reported on photographs supplied but I thought all parties seem to acknowledge that there is some cosmetic damage present. The dealer initially stated that this wasn't there when the vehicle was supplied and it had cctv footage to prove this but couldn't provide the relevant recording. Black Horse appears to accept the relevant damage was probably there at the point of supply - based on photographs Mr P took when he viewed the vehicle - which Black Horse said shows that he was aware of the damage and accepted it. I spoke to Mr P and he told me that's not right - he says he pointed out the damage to a salesman and the dealer agreed to fix this before collection. Mr P had nothing in writing to confirm this unfortunately - such as a text message or email.

I couldn't be certain what happened when Mr P acquired this vehicle and I thought it was reasonable to look at the paperwork completed at the relevant time. I'd seen a checklist that suggested there were no outstanding exterior issues. And I was satisfied that Mr P signed a separate (one page) form on the 12 September 2022 to confirm that he had *"received a full demonstration and explanation of the motorhome and everything appears to be in full working order"*. I recognised Mr P said he wasn't shown round the vehicle on collection and he doesn't recall signing this form but I found it difficult to reconcile that with the documents.

I was satisfied that Mr P was taking on a relatively significant financial commitment here and I thought it reasonable to expect a consumer to look through what they're being asked to sign fairly carefully in this situation. I was satisfied that Mr P had the opportunity to inspect this motorhome some days before and on collection. On balance, I thought it was more likely than not he had noticed there was some damage present - including cosmetic damage to the rear. And, if he agreed with the dealer that this would be fixed, I'd expect him to check the work had been done when he went to collect the vehicle. When I asked Mr P why he accepted the motorhome with the damage still present, he told me he trusted the dealer had repaired it and didn't check until later. I thought that seemed at odds with the form he signed confirming the vehicle was in good working order.

For me to find Mr P should have been allowed to reject this vehicle, I'd have to be satisfied that he's shown it was faulty when it was supplied and it would have been reasonable for Black Horse to take the motorhome back. Based on the information I'd seen, I couldn't reasonably conclude that's the case. I didn't have enough evidence to find there was a fault with the suspension. I thought the tracking and service history issues were resolved within a reasonable time and Mr P accepted that. I didn't think it likely the tyres were faulty. And I

was minded to find it more likely than not Mr P was aware that a bed wasn't perfect and there was cosmetic damage to the rear of the vehicle - but I thought he was probably prepared to accept that at the time.

I appreciated Mr P may have changed his mind later and wanted to reject the vehicle. But I wasn't persuaded, on the evidence I'd seen, that there are enough fair and reasonable grounds to find he was entitled to do so. I thought Black Horse took reasonable steps to investigate the complaint and the various goodwill offers seemed fair. I couldn't fairly find Black Horse should have taken the motorhome back and provided a refund in the circumstances.

Ending the finance agreement

I realised Mr P is unhappy with the way the HPA ended – or, more specifically, with the impact this had on his credit file. He told me Black Horse said it won't pursue him for the VT balance of nearly £30,000 but a default has been applied to his credit file and this is impacting his ability to get credit.

I thought it looked as if Mr P told Black Horse that he couldn't afford the finance repayments around the time Black Horse said he couldn't reject the vehicle. When a borrower like Mr P tells a lender he's having financial problems, we expect the financial business to provide a positive and sympathetic response. I'd seen contact notes supplied by Black Horse, which seem to be reasonably detailed and in keeping with events. It looks as if Black Horse asked Mr P for more information at the time and said it was open to agreeing a repayment plan. I didn't think that was unreasonable.

I couldn't see that Mr P provided any additional information about his finances. It appears he decided to VT the agreement instead. I asked Mr P about this and he told me there was no affordability issue when he took out the HPA and he didn't have a reduction in income after that. He was affected by cost of living increases and it was this, combined with a deterioration in his health (that made it more difficult to drive the vehicle) plus the responses from Black Horse and the dealer when he raised quality issues, which all contributed to his decision to VT.

Based on what I'd seen, I didn't have enough evidence to reasonably find Mr P was struggling to meet his repayments sustainably here at the relevant time. I explained it was open to Mr P to provide more evidence about that in any response to my provisional decision if he wanted to. However, on the current evidence, I thought it was more likely than not Mr P had simply changed his mind and no longer wanted the vehicle. So, I went on to consider whether Black Horse gave him enough information about his options at that time.

The right to VT this sort of finance is provided under section 99 of the Consumer Credit Act 1974 (CCA). This says a borrower can end the agreement at any time by giving notice. Section 100 of the CCA sets out the financial consequences of terminating under section 99 – in summary, the borrower remains liable for half of the total amount payable along with any outstanding liability under the finance at the point of termination. I was satisfied this is reflected in the terms of the HPA that Mr P signed which says (insofar as it's relevant) *“you have the right to end this agreement. To do so you should write to the person you make your payments to. They will then be entitled to the return of the goods and to half the total amount payable under the agreement, that is [the “VT amount” of approximately £30,000] “*.

I'd also seen the VT form that Mr P signed. I thought this made it fairly clear how much would remain owing (the VT amount above) and he'd need to repay this within 30 days (or make reasonable arrangements to do so after that time). And, if he didn't, Black Horse may pass the debt on to a third-party and inform credit reference agencies, which could make it difficult to arrange credit in the future. I was satisfied that Black Horse had made Mr P

reasonably aware of the VT implications and I thought he had enough information to decide if he wanted to take this option.

I also gave some thought as to whether Black Horse should have offered Mr P another termination option - commonly referred to as “voluntary surrender” (VS). This process is not set out under the CCA in the same way as VT, but lenders can allow a borrower to end a finance agreement in this way and we sometimes consider it appropriate to do so.

Under VS the customer returns the vehicle which is sold by the lender and the sale proceeds are applied to reduce the amount owed. The sale proceeds here were less than the VT amount so I couldn't see that applying this to the sum owed under the finance would have put Mr P in a better position than ending the HPA by way of VT. I realised Mr P considers Black Horse should apply the sale proceeds to reduce the VT amount now but I explained that lenders aren't obliged to that - and I couldn't reasonably require Black Horse to do so here.

Reporting the HPA on Mr P's credit file

I was satisfied that Black Horse offered to consider a repayment plan but Mr P chose not to take this further. As far as I could see, he hasn't made any payments towards the HPA or the VT amount outstanding and Black Horse took steps to default the account. I didn't think a default is inappropriate in these circumstances. Black Horse told Mr P the default will stay on his credit record for six years but it won't actively pursue the debt which I thought didn't seem unreasonable. I could see why Mr P is concerned about the impact of this adverse information on his credit record. But lenders, like Black Horse, have a responsibility to report information accurately to the credit reference agencies and I couldn't fairly find it was wrong of Black Horse to report a default here.

Responses to my provisional decision

I asked the parties to let me have any further submissions by 28 July 2023 and I'd take that into account when I made my final decision. Both parties have now responded. Black Horse has accepted my provisional conclusions with nothing further to add and Mr P remains unhappy.

In summary, Mr P says he didn't change his mind and seek to reject the vehicle. He points out the damage may be seen on the photos supplied originally by the dealer which should be taken into account. He said he regrets not checking if the dealer had carried out the repairs on collection but he doesn't think it's unreasonable to expect the dealer to sort out these issues out in the first place. He feels the dealer has not told the truth - if it had video footage showing the motorhome wasn't damaged they would have kept it. And, as for the tracking, it was noticeable that the steering wheel was out of alignment albeit the cost of fixing this was refunded – and it was only after he decided to return the vehicle that the dealer replaced the front tyres.

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 would like to thank both parties for their responses. I want to assure them that I have considered everything carefully. I'm sorry to disappoint Mr P but nothing that's been said or sent to us has persuaded me to change my mind. I've taken on board what he said about who took the photographs of the vehicle before it was supplied but that doesn't make a material difference to my provisional conclusions.

For the reasons I've given already, I can't fairly find Black Horse has done something wrong here. I'm very sorry to hear about Mr P's health issues and I have sympathy for the situation he finds himself in now but I am not persuaded that I can fairly require Black Horse to do anything further. I realise this isn't the outcome Mr P wanted but he's not obliged to accept what I've said - in which case it remains open to him to pursue the matter by any alternative means available.

My final decision

For the reasons set out above, my decision is I am unable to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 August 2023.

Claire Jackson
Ombudsman