

The complaint

Mr C has complained that a car he acquired using a hire-purchase agreement with Black Horse Limited ("Black Horse") was misrepresented to him, as he was not told it had been salvaged before he acquired it.

What happened

Mr C acquired a used BMW in October 2021, using a hire purchase agreement with Black Horse. The car cost £17,975, of which Mr C borrowed £15,314.15 over a term of 49 months. The monthly repayment was £283.47, with a final payment of £5,419 if Mr C wanted to keep the car at the end of the term. The car was four years old, with a mileage of 39,476, at the point of supply.

Mr C recently wanted to sell the car, but he told us he discovered that the car had been salvaged before it was supplied to him, and this has significantly reduced its resale value. He also said that some garages he had approached had refused the car completely because of this. Mr C said that, had he known that the car had been through a salvage auction, he would not have taken it.

Mr C initially complained to the dealership, which accepted that there was a problem, but he was told he should contact Black Horse as the finance provider. This he did, but Black Horse did not agree and therefore didn't uphold the complaint. It said it had carried out an HPI check, which had no markers showing that the car had been salvaged or written off in the past. Black Horse said that as the HPI check was clear, it had met its obligations and had supplied a vehicle that was of satisfactory quality.

Mr C was unhappy with this, so he brought his complaint to this service. Our investigator looked into the complaint but didn't think it should be upheld. Mr C disagreed and asked for the complaint to be reviewed by an ombudsman.

I issued a provisional decision in January 2024, in which I explained why I thought Mr C's complaint should be upheld and what I proposed that Black Horse should do to put things right. Mr C responded to say he had nothing further to add. Black Horse responded to say that it didn't agree with my conclusions, but in any case it could not comply with my proposals for redress as the car had already been returned to the dealership and various amounts refunded. I've set out below the details of the information it provided.

This further information changed my conclusions about the complaint, so I issued a second provisional decision, in which I said that, although I still thought there had been a misrepresentation, I didn't consider that Mr C had suffered a financial loss, so I no longer proposed to uphold Mr C's complaint.

Black Horse responded to say that it agreed with my second provisional decision. Mr C said that he didn't agree with it, in that he didn't think he had been fully compensated. I've considered this point below.

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 decided not to uphold Mr C's complaint. I'll explain why.

I set out my reasoning in my first provisional decision as follows:

"Mr C sent in a copy of the report that he had obtained about the car, along with photos of the vehicle. He also provided a copy of an email chain between him and the dealership that supplied the car, and later on he sent in emails from the dealer which had initially agreed to buy the car in June 2023, but which changed its offer after it discovered the vehicle had previously been sold via a salvage auction. Black Horse sent in copies of the HPI check from June 2023 (although not the checks it carried out in 2021) and the hire purchase agreement from 2021.

Mr C acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and therefore this service is able to look into complaints about it. I have also taken into account s.56 of the Consumer Credit Act (1974), which explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier before the consumer enters into the credit agreement.

If Mr C was given a false statement of fact or law, and if that false statement was a significant reason why he entered into the agreement, I may think the agreement – or the car - had been misrepresented to him. There may also be a misrepresentation by omission – that is, a failure to disclose something material to Mr C.

As I noted above, Mr C acquired the car in October 2021.

Mr C sent in emails from the dealer to which he intended to sell the car. The initial figure he was offered was £13,792 on 1 June 2023. A week later there was a further email to say that post sale checks had discovered that the car had previously been sold via salvage auction (a link was provided to a website showing the details) and the dealer said that had it known that at the point of sale it would not have agreed to purchase the vehicle. However, the dealer offered a revised price of £9,278.86 (which would not pay off the remaining amount due under the hire purchase agreement). Mr C didn't want to accept this, so the planned sale was not completed.

Mr C also told us that other garages had refused to purchase the car because it had been through a salvage auction, although as these discussions were over the phone he couldn't provide documentary evidence.

The report sent in by Mr C was not from HPI, but rather from a different car check company. It showed a result of 'fail' and 'significant issues found', and included a link to an online archive of cars sold at salvage auctions. The information via that link shows the car categorised as 'used unrecorded' and under the description it says "N/s/f susp, starts and drives, hpi clear." The sale date is listed as May 2018.

'Unrecorded' (category U) status is generally applied to a vehicle known to have been involved in an accident which wasn't reported to the insurance company at the time. There are various reasons for this, for example where the driver wasn't insured or where car was stolen and later recovered.

In the case of Mr C's car, it's impossible to know the extent of the problems with the car in 2018, although photographs on the archive site don't show clear damage to the bodywork. From what's on the archive site it seems the issue with the car was related to the suspension. I note the car was only eight months old when it went to the salvage auction, and it would seem unusual for a relatively new car to be sent to a salvage auction without there being some issue. However, it's impossible to say what repairs might have been needed or were carried out.

As I noted above, Mr C contacted the supplying dealership, and I have a copy of the email exchange, in which the dealership said that it was looking to have the vehicle returned due to the HPI report showing as Category U. In a later email it referred to Mr C receiving a refund (taking account of wear and tear and mileage whilst he'd had the car) and in a further email it said that Mr C should contact Black Horse as it would determine the level of refund. The dealership said it would liaise with Black Horse.

However, Black Horse did not agree with this. In its final response letter to Mr C it said it believed that this vehicle was sold in satisfactory condition by the dealer and therefore it did not uphold the complaint.

Black Horse further said to us that as part of any finance application, it would ensure that an HPI check on the vehicle is clear (and it sent in a recent HPI check on the car, saying this was clear). It also said that checking whether a vehicle has been at an auction site during its lifetime does not form part of a HPI check. Black Horse went on to say that the car has passed several MOT tests since 2018, and the suspension would have been checked – no issues are listed on the car's MOT history. And Mr C has not complained of any faults with the car since he acquired it.

Black Horse later reiterated that there were no markers recorded on the vehicle's HPI – it showed as clear. It said it would expect the dealership to ensure that a vehicle was of a satisfactory quality, fit for purpose and as described at the time of supply. Just because a vehicle has been to an auction site previously does not mean it is not of a satisfactory quality, fit for purpose or as described. Black Horse also said that a used vehicle could have been sold by previous owners in a number of different ways, be this through private sales, trades with garages, sales at auction and so on, and it would not expect a dealer to go through this, and in any case the information would not be available to a dealership. Therefore, it would not be able to agree that information was withheld from Mr C as it would not have been available at that time.

Black Horse also said that it told the dealership that it would not be looking to accept the return of the vehicle as it didn't believe there is a quality issue with the vehicle or that it mis-sold the vehicle to Mr C, but should the dealership wish to accept the return of the vehicle it could do this. For Black Horse to agree the vehicle was misrepresented to Mr C, it said it would need to agree that it would have been aware of that information prior to sale, and also that information would have impacted Mr C's decision to purchase the vehicle where Black Horse withheld it. But this was not information it would have been aware of at the point of supply.

I've carefully considered Black Horse's arguments. However, whilst I accept that cars may be sold in a variety of ways, in this case the car went through a salvage auction rather than simply a used car auction, and this clearly has a material effect on the value of the car. Black Horse said the information wouldn't have been available at the time of supply. But it seems to have been easily available to the dealer to which Mr C was planning to sell the car – and Mr C told us other dealers had refused the car, which suggests it was available to them also.

Looking at the websites that have been highlighted in this case, they seem to have been in existence for some time. So I can't see why this information wouldn't have been available to Black Horse, or the supplying dealership, at the point of supply. And I think it's reasonable to take it that Black Horse ought reasonably to have completed sufficient checks to enable it to identify any factors that would materially affect the value of the car on which it was lending.

I also note that Black Horse refers to the HPI report being clear, but this appears to be contradicted by a comment in one of the emails from the supplying dealership to Mr C – it says "After discussions with the team, we are looking to return the vehicle to us due to the HPI report showing as Category U." It seems that the supplying dealership has accepted something went wrong. And as I noted above, under s.56 of the Consumer Credit Act (1974), finance providers are liable for what they say and for what is said by a credit broker or a supplier before the consumer enters into the credit agreement.

I accept that Mr C has had use of the car without any reported issues, but this complaint is not about faults on the car – rather that it was misrepresented.

In summary, my current conclusion is that there was a misrepresentation by omission, in that the previous sale of the car via a salvage auction was not disclosed to Mr C, and it was important information that ought reasonably to have been known or discovered prior to supply. And I am satisfied that Mr C would not have acquired the car had he known about the car having been through a salvage auction."

I had said in my first provisional decision that I was proposing to uphold Mr C's complaint, and to require Black Horse to end the hire purchase agreement with nothing further to pay, and to refund the deposit Mr C had paid, with interest. However, as Mr C had had the uninterrupted use of the car since he acquired it, I didn't consider it fair to require Black Horse to refund any of the monthly payments Mr C had made under the agreement.

As I noted above, Mr C responded to my first provisional decision to say that he had nothing further to add. Black Horse responded to say that it didn't agree that misrepresentation had occurred, but in any case the dealership had already resolved the matter by taking back the car.

I explained my reasons for changing my conclusions in my second provisional decision as follows:

"I'll deal with the misrepresentation issue first. Black Horse set out a number of reasons for disagreeing with my conclusions, but in summary, the dealership made clear the checks it undertook before supplying the car, Mr C could have undertaken additional searches if he had other concerns, and in any case it is not clear that the car had salvage title rather than just having been sold via a salvage auction.

I've thought about these points. However, it isn't entirely clear what checks the dealership should have undertaken, given that it seemed to accept that an error had occurred. The car having been sold through a salvage auction clearly affected its value – as shown by the reduced amount offered to Mr C when he tried to sell the car. And as I stated in my provisional decision, I think Black Horse ought reasonably to have completed sufficient checks to enable it to identify any factors that would materially affect the value of the car on which it was lending. So I remain of the view that there was a misrepresentation by omission in this case.

However, Black Horse also said that the car had, in fact, been accepted back by the dealership in August 2023, and the agreement had ended. This included the dealership issuing a full refund of Mr C's deposit to him, and a full refund to Black Horse of the advance

it paid to the dealership. Black Horse in turn refunded all 19 payments Mr C had made under the agreement. The amount involved was £5,385.93.

It is surprising that neither party had told us about this during the course of this complaint. So we asked both parties for more information about the settlement.

Mr C said that the dealership agreed to take the car back and clear the remaining finance with Black Horse as a way of resolution. So Black Horse had been paid in full, but had done nothing to support him or offer any compensation. He then said that he had had a refund of the difference in the part exchange value from the dealership when he'd traded in his previous vehicle, plus the money he paid for the extra warranty. And he sent in a copy of an e-mail from the dealership, dated July 2023, confirming a refund of £2,560.85. Mr C later confirmed that he had received the payment of £5,385.93 from Black Horse, but said he thought it was related to interest rather than the monthly payments. (Black Horse confirmed that the cheque was presented on 16 August 2023.)

Black Horse has provided its computer records of the settlement of the account, and a statement of transactions. I've been able to confirm from these that Mr C had made 19 payments of £283.47 under the agreement, and that the payment of £5,385.93 was a full refund of these payments. The agreement ended, so no further payments were due from Mr C.

In my first provisional decision, I had proposed that Mr C be refunded his deposit – the amount stated on the finance agreement was £2,660.85 - plus interest. The dealership refunded slightly less than that, without the addition of interest. But Mr C has also received a refund of all of the monthly payments – and therefore has had an overall refund of £7,946.78, an amount substantially higher than I proposed. He has effectively had the uninterrupted use of the car for 19 months without charge.

On this basis, although I remain of the view that there was a misrepresentation by omission when Mr C acquired the car, the amount already paid to Mr C means that I don't consider that Mr C has suffered a financial loss, and nor do I consider it fair to require Black Horse to make any further payment."

I said in my second provisional decision that, as a result of all this, and as I didn't think Mr C had lost out, I didn't propose to uphold this complaint.

Black Horse responded to my second provisional decision to say that it agreed with my conclusions. Mr C didn't agree that he had been compensated fully – he said that he accepted that the payments he'd made under the hire purchase agreement, had been returned, but he said that Black Horse's letter had been misleading as it had only referred to interest on the agreement being refunded, and he thought Black Horse should have done more. The refund from the dealership was in relation to the difference in part exchange value between his previous car and this one.

I've thought about what Mr C said. And I accept that I haven't seen the letter Black Horse sent him, so I don't know how clearly the refund was explained. However, although I remain of the view that there was a misrepresentation, Mr C has already had a refund of most of his deposit, and has effectively had the uninterrupted use of the car free of charge for 19 months as a result of all of his payments having been refunded. The total amount refunded was nearly £8,000.

As I explained in my second provisional decision, this is substantially more than I considered it fair to award in my earlier provisional decision. The general principle this service uses in awarding redress is that the consumer should be put in the position they would have been in

had the error not occurred. In this case the refund of the monthly payments, when Mr C has had use of the car, has in my view put him in a better position than he would otherwise have been in. So I have no reason to change my conclusion that Mr C has not suffered a financial loss, and therefore I've decided not to uphold this complaint.

My final decision

For the reasons given above, I have decided not to uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 April 2024.

Jan Ferrari
Ombudsman