

The complaint

Miss L complains about the quality of a car she financed with Black Horse Limited ('BH').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

BH supplied the car to Miss L on hire purchase in February 2023. Miss L says from an early stage she has been experiencing electrical faults with it and would like to reject it.

Miss L complained to BH which looked at the issues with the car on a couple of occasions. It would not accept her request to reject the car. However, it did offer to pay her £100 compensation for distress and inconvenience caused by the matter.

The complaint was then referred to this service. BH then made an offer of settlement in January 2024 after looking into things further. In summary, it agreed the car was not fit for purpose/not durable and it would take it back and pay compensation. It said it would retain some payments to reflect Miss L's use of the car to date.

Miss L did not agree with this offer as she wants a full refund of her payments and more compensation. She asked our investigator to come to a view. Because Miss L did not agree with our investigator's proposal to put things right the matter has now been referred to me for a final decision.

I issued a provisional decision as follows:

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

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BH is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any

description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') 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 can be aspects of the quality of goods.

BH supplied Miss L with a second-hand car that was around 6 months old and had done around 400 miles at the point of supply. The dealer priced it at £17,599. While the car was technically second-hand and would have suffered some minor wear and tear the expectation of quality would be high in these circumstances. And similar to that of a brand-new car.

Since this complaint has been at this service Miss L has pointed to an invoice from a main dealer ('Dealer B' which appears to have carried out all the repairs to the car) that she says shows the car needs expensive repairs related to the battery. However, it has since been established by Dealer B that this invoice does not relate to Miss L's car so I will not be referring to it here in respect of the evidence of faults with the car.

I note that BH accepts the car is not of satisfactory quality and agreed to take it back. Therefore, I do not consider it necessary to go into great detail in respect of a finding on satisfactory quality. However, for completeness I will cover it briefly.

It appears there is limited information in the form of original job cards showing the issues that Miss L has had with the car. However, I do have a summary of the work history for the car from Dealer B, and the information that BH and Miss L have provided.

For completeness I note that an independent report was carried out on the car which focused on condensation issues. It was unable to identify a fault. But in light of the other information available I don't consider this report changes my finding on the quality of the car.

Based on the information I have it appears the car has had several electrical faults since Miss L took delivery of it. The early issues she appears to have reported to the dealer within the first week or two since taking delivery (where Miss L requests to reject the car). Initially it appears the side door was not unlocking properly – which eventually resulted in a faulty component being identified by Dealer B and replaced. Then following this it appears there were other faults claimed by Miss L which Dealer B has confirmed it identified and repaired including the tyre sensors being faulty and the cruise control not working as expected.

I also note that while these are not clearly confirmed as faults – Miss L had previously reported the car was not starting up as expected, that she had problems with the air conditioning steaming up the car, and the radio screen turning itself off. She also reported an issue with a brake light.

I think the issue with the brake light is likely to be a normal wear and tear repair. And the issue with the condensation isn't clearly a fault based on the information I have seen. However, everything else seems more than would be reasonably expected for a nearly new car within the first year of Miss L's use (and noting that although she has used the car during this time she does not appear to have covered excessive mileage).

Overall, I consider the car was likely not of satisfactory quality at the point of supply, particularly noting it was nearly new. And Miss L should have been given an opportunity to reject the car under the CRA at an earlier stage (either because she asserted her right to

reject within the first 30 days from delivery, or because more than one attempt at repair became necessary). I also note that Miss L has said that she still has issues with the car including with the stop/start engine feature and the cruise control. And while I don't have a lot of information about the current issues – it seems, based on the history of electrical issues, that it is more likely than not the car is suffering from faults related to the inherent issues Miss L has had looked at by Dealer B to date.

Overall, I consider it is fair that Miss L can give the car back and get compensation. However, Miss L has not agreed with the proposals made to date. It is now for me to decide what is fair and reasonable in the circumstances and with the relevant law in mind.

My starting point is that BH should collect the car at no cost to Miss L. It should also end her hire purchase agreement without any adverse footprint on her credit file.

BH should also refund Miss L the £2,000 deposit she has paid.

Miss L has mentioned that she is legally entitled to return the car and get a full refund. However, I do not consider this to be accurate or fair in any event. Miss L has been using the car and covered about 10,000 miles in it. I note the CRA section 24(8) says:

'If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered'

So my starting point is that BH is able to retain the monthly rentals for the period Miss L has been using the car. However, Miss L will be entitled to a refund for the time she has not been using the car. And she should get back an amount to reflect the time she has been using the car but with impaired use due to the various faults.

It isn't clear how long Miss L was out of the car due to repairs that have been carried out to date (which appear to have taken place with Dealer B from July 2023 onwards). However, based on the information I have this appears to add up to about a week in total. To reflect this loss of use BH should refund Miss L one week of her July 2023 monthly payment.

Although Miss L has been using the car in the main – the electrical issues have impaired that usage to a degree. For example, she had problems with the door not opening at one point, and she then appears to have had other issues like the cruise control and stop/start not functioning as expected. She has still covered notable mileage in the car – however, I think she should get back a small percentage refund of monthly payments she has made to reflect this impaired use. This isn't a science but, in the circumstances, I think a 15% of monthly payments she made until she stopped using the car would be fair and reasonable – noting that some issues have been rectified along the way.

Miss L has also said she has stopped using the car from September 2024 due to the ongoing faults. In particular she says the issues with the cruise control and stop/start which have been getting worse. I don't have a lot of information about the recent issues but it doesn't seem unreasonable that Miss L would stop using the car if she is worried about its safety.

I note that at the last service carried out on 30 August 2024 the mileage is recorded as 9,611 and the current mileage of the car is 10,139. As a result it seems fair that Miss L pays for at least September 2024 as it looks like she did another 500 odd miles in the car since the end of August 2024. However, as long as the mileage on collection of the car has not increased more than a nominal mileage (say 20 miles) since the current mileage reading stated above

BH should refund Miss L in full for all monthly payments she has made from October 2024 onward.

I now turn to other expenses which Miss L has claimed. It appears she has requested to be reimbursed for servicing carried out to the car in August 2023 (£154.41) and a service in August 2024 (£337). Miss L would always have had some servicing costs running a car that she used so I don't consider it fair she gets back the first service as since then she had travelled around another 7,000 miles in the car. However, the second service she won't really benefit from as she stopped using the car shortly after (and is looking to reject the car) so she should get this back.

There is an invoice to Miss L from Dealer B from November 2023 for a repair relating to a rear light – however based on how Miss L said this was likely damaged it is not something BH should be responsible for paying to fix. However, I note Miss L appears to have also been billed for a diagnostic investigation relating to the cruise control (where error codes were identified and cleared) which she paid £30.60 for so she should fairly get this back as it appears related to the underlying electrical faults she has complained about.

I note Miss L has in the past referred to wanting to be reimbursed for additional charges from when she financed the car including 'asset protection' and 'synthetic coat'. However, this appears to have been incorporated into the finance so these will not be refunded as separate lump sums. As part of my redress Miss L will not be paying for these from the point she discontinued use of the car but will be fairly charged for pro-rated use.

I note Miss L has said the matter has caused her distress and inconvenience which could have been avoided had BH accepted the car back at an earlier stage. I am sorry to hear about the impact on Miss L and I agree that ideally the situation should have been sorted out sooner. Ultimately BH is responsible for the quality of the goods - but in its mitigation I can see it appears that Dealer B initially did not provide it with the information about the early issues Miss L experienced (confirming the fault found and repair it carried out with the door actuator) until October 2023. It appears that when BH initially requested information Dealer B could not find a record of Miss L's car. So I think this contributed to the length of time it took BH to recognise that Miss L had the right to hand the car back.

I think as a result of BH not taking the car back sooner Miss L has been caused more than the levels of frustration and annoyance than would reasonably be expected in day-to-day life and this has gone on for a notable period of time. Miss L has been running back and forth to the garage in respect of repairs and has referred to her wasted time and stress. This is not a science but looking at our scale of awards for distress and inconvenience (as shown on our website) I consider that an award of £300 is fair and reasonable here. I know Miss L is expecting a lot more than this – but I don't consider that in line with our approach to compensation awards in the circumstances here.

My redress is on the basis that Miss L has kept up with her monthly payments (at least until and including her September 2024 payment). If Miss L has stopped paying then BH will be entitled to offset arrears against any redress due under this settlement if it wishes. Furthermore, if BH has already paid Miss L the £100 it offered her initially to resolve her complaint it can fairly deduct this from any redress due in accordance with my decision here.

If Miss L disagrees with my decision she does not have to accept it – and is free to explore any alternative offer that BH is still willing to make. Or she may decide to take the matter to court (she should consider seeking independent legal advice if she wishes to do this).

My provisional decision

I uphold this complaint and direct Black Horse Limited to:

- *Take back the car without charge;*
- *end the finance agreement with no adverse footprint on Miss L's credit file;*
- *refund Miss L her £2,000 deposit;*
- *refund Miss L a week of her July 2023 monthly payment;*
- *refund Miss L 15% of all her monthly repayments up to and including her September 2024 repayment*;*
- *refund Miss L all monthly repayments from October 2024 onwards**
- *refund Miss L the £30 she paid out for the cruise control diagnostic;*
- *refund Miss L the £337 for the service she paid for in August 2024;*
- *on all refunds pay Miss L 8% yearly simple interest calculated from the date of payment to the date of settlement; and*
- *pay Miss L £300 for distress and inconvenience.*

**if on collection of the car it becomes apparent that Miss L has used it more than 20 miles since the odometer reading specified above BH will also be entitled to retain her monthly payments from October 2024 to the date of settlement (but will still have to refund 15% of these for impaired use).*

If BH considers it should deduct tax from my interest award it should provide Miss L with a certificate of tax deduction.

BH accepted my decision.

Miss L responded to say, in summary:

1. My provisional decision gives her less than what BH offered originally;
2. had BH supported her to reject the car she would not have lost anything;
3. she paid for GAP insurance she wants refunding;
4. she is happy to take the car back to Dealer B for further inspection if needed.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below.

I will address Miss L's key points in accordance with the numbers I have assigned above (for clarity):

1. I know Miss L considers that BH made a more favourable offer than the settlement I have set out. I am not sure if BH's offer is still available as an alternative to accepting my findings or other options (like taking legal action), and I will leave it for Miss L to make those enquiries and decide what she wishes to do after weighing up the options. However, ultimately I consider my decision fair and reasonable for the reasons I have already given.
2. I agree that Miss L should have been allowed to reject the car sooner – however, that did not occur and Miss L still had use of the car – so my redress is intended to come to a fair settlement based on the particular circumstances of this complaint.
3. In relation to Miss L's point about refunding the GAP insurance. She has had some benefit from coverage during her use of the car so will fairly be charged for this period. I have already addressed this point in my provisional findings, highlighted as follows:

I note Miss L has in the past referred to wanting to be reimbursed for additional charges from when she financed the car including 'asset protection' and 'synthetic coat'. However, this appears to have been incorporated into the finance so these will not be refunded as separate lump sums. As part of my redress Miss L will not be paying for these from the point she discontinued use of the car but will be fairly charged for pro-rated use.

4. I don't think further inspections are necessary, as all parties agree the car was not of satisfactory quality based on the available evidence. The central issue here is what is a fair way to remedy matters.

Putting things right

If Miss L wishes to accept my decision I direct BH to carry out the redress below.

My final decision

I uphold this complaint and direct Black Horse Limited to:

- Take back the car without charge;
- end the finance agreement with no adverse footprint on Miss L's credit file;
- refund Miss L her £2,000 deposit;
- refund Miss L a week of her July 2023 monthly payment;
- refund Miss L 15% of all her monthly repayments up to and including her September 2024 repayment*;
- refund Miss L all monthly repayments from October 2024 onwards*;
- refund Miss L the £30 she paid out for the cruise control diagnostic;
- refund Miss L the £337 for the service she paid for in August 2024;
- on all refunds pay Miss L 8% yearly simple interest calculated from the date of payment to the date of settlement; and
- pay Miss L £300 for distress and inconvenience.

*if on collection of the car it becomes apparent that Miss L has used it more than 20 miles since the odometer reading specified above BH will also be entitled to retain her monthly payments from October 2024 to the date of settlement (but will still have to refund 15% of these for impaired use).

If BH considers it should deduct tax from my interest award it should provide Miss L with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 4 February 2025.

Mark Lancod
Ombudsman