

The complaint

Mr C has complained about the quality and past history of a car he acquired using finance from Black Horse Limited.

At times, Mr C has been represented in bringing his complaint. But, for clarity, I'll refer to all submissions made on his behalf as having been made by him directly.

What happened

In November 2021, Mr C entered into a finance agreement with Black Horse for a used car. However, it broke down in September 2023, as the wet belt failed, causing engine damage. Mr C complained to Black Horse on 7 October 2023, as he said that the wet belt should be good for ten years or 150,000 miles. He also complained about: a chip in the paint work; wheel valves having to be replaced shortly after supply; issues with the door seals; the air conditioning needing to be re-gassed; and issues with the car's stop/start function.

Further, he explained that he'd not been told that the car had previously been used as a lease car. He said he'd never have entered into the agreement, had he known.

Black Horse accepted that faults with the wheel valves and door seals were present at the point of supply. It offered to refund £228.18 for loss of use and pay compensation of £200 for distress and inconvenience caused, which Mr C accepted as an interim offer, while our service looked into the other matters.

However, Black Horse didn't agree that the other issues were present, or developing, at the point of supply. And it didn't agree that the car previously having been a lease car meant Mr C could now reject it.

One of our investigators looked into what had happened. As regards the offer in respect of the wheel valves and door seals, he thought this was fair, and it had been accepted, so he didn't consider this further. And he didn't consider the chip in the paintwork, as Black Horse had provided a response to this more than six months previously, so it had been brought 'out of time' under our rules.

Turning to the other quality issues, our investigator explained that the car was already 6 years and 4 months old at the point of supply and had travelled 72,870 miles. Mr C had also been able to drive the car for 18,059 miles himself before the first of these problems started. And although Mr C maintained the car regularly, there was occasion when this was late, which may have caused the early failure of the wet belt. Because of this, on balance, he thought the problems with the wet belt, the air conditioning and the stop/start function were due to a reasonable level of wear and tear.

Our investigator then looked at the fact that the car had previously been a lease car, and Mr C's assertion that he hadn't been told about this – and, crucially, he wouldn't have entered into the agreement if he'd known. He noted that the Consumer Credit Act 1974 says a misrepresentation has taken place if the consumer were told a 'false statement of fact' about the goods, and that statement induced him into entering into a finance agreement to acquire

the goods, when he otherwise wouldn't have.

He explained that when a business is aware the car had previously been used for business purposes, the car must be advertised with this information. Further, this is material information which may affect a consumer's purchasing decision. Therefore, it must be disclosed to the consumer in the advert for the vehicle.

Our investigator could see that when the car was supplied to Mr C by the dealership, there were documents in the car relating to its use as a lease car. Because of this, he thought it more likely than not that the dealership was aware of its previous usage.

Mr C says he was not told about its previous usage. And our investigator found an advert from the dealership, published by a third party data collection service. This advert did not reflect the previous usage. Further, Mr C explained that when he found the documents in the car, he raised it directly with the dealership on more than one occasion, but it didn't provide him with an answer.

Our investigator concluded that the dealership has misrepresented the car by omission. With a misrepresentation by omission the 'false statement of fact' is not something the consumer is told; it is something there were not told that they should've been. So, Mr C should be allowed to reject the car.

Black Horse maintained that the car hadn't been misrepresented, so the complaint's been passed to me.

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, I agree with the investigator's findings, and for the same reasons he gave. There's little I can meaningfully add to the explanations and reasoning he's already given, and I adopt them here. In summary, these are as set out below.

wheel valves and door seals

Black Horse made an offer, which, Mr C accepted. So, I'm satisfied that aspect of the complaint has already been resolved.

chip in the paintwork

As this was brought out of time, I've not considered this aspect of the complaint further.

wet belt failure, air conditioning and the stop/start function

I agree that these are likely to be issues caused by reasonable wear and tear, commensurate with the age of the car. I'm aware that the wet belt failed earlier than would be desired, but this could have been because of a lack of oil. There's not sufficient evidence for me to uphold this aspect of the complaint.

use as a lease car

It's clear to me that there was a misrepresentation, by omission, and this induced Mr C to enter into the agreement. I'm satisfied, from the advert I've seen and from Mr C's own testimony, that he was almost certainly not told the car had been used as a lease car. And I

think the dealership would, or should, have known – not least because the car itself contained documents showing as much. Black Horse has queried why Mr C didn't raise this sooner. Presumably it feels that if it had been an important factor for him, then he'd have raised it before. But I'm persuaded by his testimony that he had in fact raised it with the dealership. Further, I think that any reasonable person would be very concerned to know a car had been used as a lease car. In such cases, the person may negotiate a price reduction, for example, or not buy the car at all. But there's no suggestion Mr C knew. Had he done, I think it highly unlikely he'd have proceeded. Accordingly, I think it fair that the agreement now be unwound, insofar as is possible.

Like the investigator, I'm also mindful that Mr C hasn't been able to use the car since it broke down in 24 September 2023. Although I don't think the car was 'faulty', it's also the case that Mr C shouldn't have been paying for a car that had been misrepresented to him, and that couldn't be driven. So, he should be refunded for this period.

Mr C has also incurred a consequential loss of £100, for transferring his cherished plate and associated insurance costs. He should be refunded for this, as he wouldn't have incurred it if the car hadn't been misrepresented.

I'm also persuaded that this matter has been distressing and inconvenient. Although compensation here isn't an exact science, I think a further £200 is fair to reflect this.

Putting things right

To put things right, Black Horse should:

- cancel the agreement, with nothing further to pay;
- collect the car (if this has not been done already) at no cost to Mr C, and cover any reasonably incurred storage costs;
- refund Mr C's deposit/part exchange contribution of £1,729, adding 8% simple interest a year, from the date of payment to the date of settlement;
- refund all monthly rentals for the period from 24 September 2023 to the date of settlement (on a pro rata basis for any incomplete months), adding 8% simple interest a year, from the date of each payment to the date of settlement;
- refund the £100 paid in respect of the cherished number plate/insurance, adding 8% simple interest a year, from the date of payment to the date of settlement;
- pay £200 for the distress and inconvenience caused; and
- remove all entries regarding the agreement from Mr C's credit file.

My final decision

It's my final decision to uphold this complaint. I require Black Horse Limited to take the actions set out above, in the section entitled 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 February 2025.

Elsbeth Wood

Ombudsman