

The complaint

Mr O complains that Black Horse Limited trading as Jaguar Financial Services ("Black Horse") has added unfair charges to his account at the end of a hire purchase agreement. And he also complains that, as a result of those charges not being paid, Black Horse has unfairly added a default to his credit file.

What happened

In April 2019, Mr O was supplied with a used car through a hire purchase agreement with Black Horse. The agreement was for £18,000 over 49 months, with monthly repayments of £286.63. Mr O also paid a cash deposit of £2,500. At the time it was sold, the car was approaching three years old and had done 13,000 miles.

Mr O has previously complained that the car was not of a satisfactory quality when it was supplied to him. That complaint has been decided by another ombudsman. So in this decision I will be making no further findings about any faults that Mr O says were present in the car when it was supplied to him. I will simply be considering what happened at the end of the hire purchase agreement in May 2023.

The hire purchase agreement allowed Mr O to purchase his car at the end of the agreement by making a final repayment of £9,350. Or, alternatively, he could return the car to Black Horse with no further payments due. But in order to return the car, Mr O agreed that its mileage at the end of the agreement wouldn't exceed 53,833 miles. The hire purchase agreement set out some excess mileage charges that would apply if the agreed mileage limit was exceeded.

When Mr O returned the car it had a mileage of 115,450 miles – so he had exceeded the permitted mileage by 65,532 miles. Black Horse wrote to Mr O to tell him that, in accordance with the terms of the hire purchase agreement it was imposing an excess mileage charge of £11,009.37. Mr O failed to make the required payment so Black Horse added a default to his account.

Mr O complained to Black Horse about what had happened. Black Horse said that it thought it had been correct in how it had calculated the excess mileage charge. But it told Mr O that, as a gesture of goodwill, it was willing to reduce the excess mileage charge to £4,385.45 to account for the money it had received from the sale of the car. And it said that if that balance was paid within 30 days it would remove the default from Mr O's credit file. It later told Mr O that it wouldn't be chasing him any further for the money he owed. Unhappy with that response Mr O brought his complaint to us.

Mr O's complaint has been assessed by one of our investigators. She thought that Black Horse had fairly calculated the excess mileage charges that were clearly shown on the hire purchase agreement Mr O had signed. And she thought that Black Horse had made it clear to Mr O that it would only remove the default from his credit file if he settled what he owed. She thought the default had been added fairly. So the investigator didn't think Mr O's complaint should be upheld.

Mr O didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr O and by Black Horse. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I appreciate that Mr O feels that the excess mileage on his car is directly related to the problems he says he faced with its reliability. But the question of whether or not the car was of a satisfactory quality when it was supplied has already been considered by another ombudsman. It wouldn't be right to reconsider those matters here. So in this decision I will simply look at what happened when the hire purchase agreement ended.

The hire purchase agreement that Mr O signed clearly set out what would happen at the end of the agreement. Of course I have no way of knowing what information Mr O was given verbally when he signed the agreement. But in the absence of any compelling evidence to the contrary, I think it likely that any discussions would have been on similar lines to the terms shown in the agreement.

At the conclusion of the agreement Mr O was able to either make a final repayment of £9,350, or he could return the car to Black Horse with nothing further to pay. But in order for the return of the car to be allowed, Mr O agreed to keep the car's mileage within an agreed amount. Specifically Mr O agreed to not exceed a total mileage of 53,833 miles. The hire purchase agreement set out the additional costs Mr O would need to pay for any mileage he had done above that limit.

When Mr O returned the car, the mileage was significantly in excess of the agreed limit. The mileage on return was 115,450 miles. So, under the terms of the hire purchase agreement Black Horse notified Mr O that he would need to pay an excess mileage charge of £11,009.37. When Mr O failed to make that payment he was in default of his hire purchase agreement, and Black Horse reported that default to the credit reference agencies as it was required to do.

I haven't seen anything to make me think that the mileage reported by Black Horse when the car was returned was incorrect. Nor have I seen anything to suggest that Mr O's hire purchase agreement did not contain details of the expected mileage, and excess mileage charges. So I am satisfied that the excess mileage charge Black Horse calculated is in line with the agreement and so payable by Mr O.

After it had looked at Mr O's complaint, Black Horse reduced the payment it required Mr O to make to £4,385.45. I think that was a fair and reasonable action. The hire purchase agreement set out the amount Mr O would need to pay Black Horse to purchase the car at the end of the agreement. So I think that reasonably represents its value to Black Horse at that time. So, after Black Horse completed the sale of Mr O's car, it seems to me its loss due to the excess mileage was less than the charge set out in the agreement.

It does seem that Black Horse has decided to no longer pursue Mr O for that outstanding balance, although of course it will reasonably still report the default to his credit file. It provided Mr O with an opportunity to repay the outstanding balance and have the default removed. Mr O chose not to take that opportunity, so I cannot conclude that Black Horse is acting unfairly by continuing to report the default.

I appreciate this decision will be disappointing for Mr O. It seems clear that he has been unhappy with the car that was supplied to him. But another ombudsman has decided that the car was of a sufficient quality when it was supplied. And in this final decision I have concluded that the excess mileage charges imposed by Black Horse were fair and reasonable and in line with the terms of the agreement. So I don't think the complaint should be upheld.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Black Horse Limited trading as Jaguar Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 November 2024.

Paul Reilly
Ombudsman