

## The complaint

Mr H complains about the service he has received from Black Horse Limited ('Black Horse'). He says that the vehicle was mis-sold and he feels that he was pressured into buying it. He says he was told to ignore some of the sales material he was provided with when he bought the car. He also thinks the customer service he has received has been poor at times.

## What happened

Our Investigator thought the complaint should be upheld. Black Horse disagreed with the Investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Mr H's complaint should be upheld in part. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

## What I said in my provisional decision

*In July 2023 Mr H entered into a hire purchase agreement with Black Horse. He used this to acquire a used car with a value of £13,999. He received £1,603.76 as a part exchange from his existing car, so he financed £12,395.24. The agreement was for 49 months, and he was due to make 48 repayments of £236.71 and a final payment of £5,203. If Mr H made all the repayments, then he would pay a total amount of £18,168.84.*

*Mr H says he has now sold the car and received back £9,905. The cost of settling the finance was £12,161.60 so Mr H says he still had to pay £2,656.00. Mr H would like the difference between these two amounts as compensation.*

*Mr H has complained to Black Horse saying that the contract was misrepresented to him, and the finance was mis-sold. He says this is because:*

- *He was told not to watch an information video about the car finance.*
- *He thinks the sale was rushed and the agreement wasn't fully explained to him.*
- *He was told the car would have a full tank of fuel, but it only had (about) a quarter of a tank.*
- *He was told the finance agreement would have a term of 36 months rather than the 49 it had*

*He also says that Black Horse took too long to look at his complaint and some of its employees were rude to him.*

*Mr H has made his complaint to Black Horse who has upheld it in part. It said that:*

- *The dealership did not say that Mr H would receive a full tank of fuel.*
- *Its records confirm that Mr H was provided with pre-contract information that explained the finance agreement terms and conditions. Mr H signed this to confirm he had received it.*
- *Mr H then spoke about the finance agreement in a telephone call shortly after it started, and it was reasonable to say that he understood it.*
- *The mileage allowance was discussed in this call and Mr H agreed to keep it at 8000 miles each year.*
- *It had provided some of the information that Mr H had asked for in a data subject access request but not the telephone calls.*

*Black Horse did accept that some of the customer service interactions between Mr H and it, in relation to the complaint, could have been better, and they clearly did not meet Mr H's expectations. It has paid £35 compensation for this.*

*Mr H didn't accept what Black Horse had said and he brought his complaint to the Financial Ombudsman Service. He reiterated his complaint points and said that he was looking for the difference in the value that he sold the vehicle for and finance settlement amount. And some compensation for the distress and inconvenience this had caused him.*

*One of our Investigators considered his complaint and thought that it should be upheld. He thought that Mr H's testimony about what happened in the dealership was plausible and consistent. And that Black Horse hadn't provided much to show that what Mr H said wasn't correct, other than fairly general statements such as the correct sales process was followed. And he did note that the pre contract information showed that Mr H's personal circumstances weren't recorded correctly, for example his income was shown as being £1 and there were no expenditure details. So, he didn't think it was likely that Mr H had seen this document as he would have noticed these mistakes.*

*Our Investigator thought it was likely that Mr H wasn't provided with complete information about the sale of the car and the finance agreement. And he was likely pressured to purchase the car. He thought Mr H should receive the amount he had lost when he sold the car and ended the finance agreement plus £150 compensation for the distress this had caused him.*

*Black Horse didn't agree, and it provided some further information that wasn't made available to the Investigator. It said that:*

- *Mr H had raised the mileage in a post-sale questionnaire, but in a follow up call to this he had agreed to it remaining at 8,000*
- *No other concerns were raised.*
- *The electronic finance proposal Black Horse had showed correct amounts for his income and expenditure and other financial information.*
- *The dealership's representative had provided his recollections and said that the longer term was chosen to reduce the monthly costs of the car. He would have fully explained the finance agreement and wouldn't have advised Mr H to 'skip' the video.*

*As no agreement was reached the complaint has been passed to me to consider.*

### ***What I've provisionally decided – and why***

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

*Mr H says he was given false information by the broker and car dealer, and this led to him entering into the agreement for the car. I understand that Black Horse wasn't a party to these negotiations, and it wasn't aware of what was discussed between Mr H and the broker. But it can still be responsible for what was discussed and the information that Mr H was provided by the broker. This is because section 56 of the Consumer Credit Act 1974 establishes that a finance company can be held responsible for antecedent negotiations carried out by their agent that takes place before the agreement is entered into.*

*So, in order to uphold this complaint, I need to be satisfied that a misrepresentation has taken place. This would mean I need to be satisfied of both of the following:*

- *A false statement of fact about the car or the agreement was made.*
- *This false statement induced Mr H into entering into the agreement.*

*If this is the case, I would be satisfied that a misrepresentation has taken place and could ask Black Horse to act accordingly to put things right. This wouldn't mean making these false statements true, but would probably mean putting Mr H in the position he would have been in had he not entered into the agreement.*

*I'm issuing a provisional decision in this case as Black Horse responded to our Investigator's opinion in some detail and provided some new evidence and commentary. And it has asked the dealership for its recollections about what happened here which have been provided. This information wasn't available when our Investigator considered the complaint.*

***Was a false statement made about the car?***

*As I've outlined above Mr H essentially said that the sale of the car was very rushed, and he wasn't provided with enough time to consider the paperwork in full. And some of the information he was provided was misleading in any event. He says he was told to ignore some of the explanatory materials that were provided (the video), and he was told that the car he was acquiring would have a full tank of fuel.*

*Black Horse has now said that it has contacted the employee from the dealership who has said that he did recall Mr H and that he fully explained all the finance agreement to him. A longer term was chosen as Mr H wanted to reduce the monthly amount he would pay. He says that he didn't tell Mr H not to watch the information video.*

*So, I think it's reasonable to say that both parties' version of events is different and conflicting, but I don't think it's now right to say that Mr H's is now more persuasive or consistent than Black Horse's.*

*And I have noted that in some of the phone calls I've listened to between Mr H and Black Horse Mr H confirmed that he signed the pre-contract information document, but believed he was declining an extended warranty when he did this. And he was aware of the explanatory video, but it may have been 'talked over' at times. Given this I don't think I can now reasonably say that this information wasn't provided to Mr H.*

*I've looked at the documentation to see if it has clear information about the finance agreement and what he would ultimately pay for the car. And whether this gives an indication about how the car sale was conducted.*

*Black Horse has provided the pre-contract information document. This does have some incorrect information on it. It shows that Black Horse based whether Mr H could afford the lending on some incorrect (or incomplete) information about him in respect of details like Mr H's income and expenditure.*

*Black Horse has now shown that it did hold correct information about Mr H and it based its lending decision on this. It has provided some screenshots from its internal systems that show it asked what Mr H earned and spent and recorded these correctly. And it based its lending decision on these correct amounts rather than the amounts the pre-contract document showed.*

*Our Investigator said that due to these mistakes it's likely that Mr H didn't see this document. But I don't agree with this now. Mr H signed the document. And the car dealer has recalled going through the finance agreement with him. The dealership has said that some aspects of it, such as the term, were discussed in detail. And the dealer has now noted that the contract was lengthened due to Mr H wanting to pay a lower amount each month.*

*So, my starting point is that Mr H was provided, and did see, the pre-contract information document, and this document does contain information about the contract. It does say that the agreement had a mileage allowance of 8,000 miles and a term of 49 months.*

*And I understand that Mr H provided a customer service questionnaire and indicated that he wasn't happy with the mileage allowance on the finance agreement. He then spoke to Black Horse over the telephone, and they discussed the finance agreement. Mr H seemed comfortable at this point with the agreement, and he decided to leave it as it was. He understood it at this point and didn't want to make any changes to it.*

*Overall, I don't think the contract was materially misrepresented to Mr H. I think Mr H was provided sight of the information that he should have been before he agreed to proceed with the finance agreement. I don't think it's likely that a false statement was made about the finance or the car.*

### **Were there any other problems with the sale and the finance agreement?**

*As above the pre-contract information Mr H saw does have some mistakes on it. And I have considered what Mr H said about the sales process of the car, and the finance being rushed. It isn't unreasonable to think that whilst the explanatory video was played to him there may have been distractions in the dealership. But I haven't seen anything that persuades me this was deliberate or that Mr H didn't have the opportunity to see this information.*

*And I haven't seen anything further to support what he says about being promised a full tank of fuel. And the dealership has now said that this wouldn't happen.*

*Mr H has indicated that he himself did want the car and finance agreement relatively quickly and there may have been elements of him not realising the importance of some of the paperwork he was provided. But I don't think this changes my earlier findings that Mr H was provided with the correct information overall.*

*Mr H has said that some of the customer service he received after the sale was not what it should have been, and I've listened to the calls Mr H and Black Horse have provided about this. I can see that the relationship between both parties became strained particularly in one of the calls. But this seemed to be due to a difficulty in the Black Horse representative communicating what he could and couldn't do in respect of involving a manager rather than any rudeness. No doubt Mr H will feel strongly about this, as he did at the time, but I don't think Black Horse really fell too far below what I would have expected overall.*

*However, Mr H and Black Horse have had a number of correspondences over what is a longer running complaint, and Black Horse itself has said that it didn't do enough, I agree with this and also think that the sales process could have been better. I think this has caused Mr H some distress and inconvenience. I think the £150 the Investigator recommended is fair compensation for this.*

### **Developments**

Black Horse, and Mr H, both received my provisional decision. Black Horse agreed with what I said. Mr H, didn't agree with my provisional decision. He said:

- He informed Black Horse that he was not happy with the terms of the finance, including the mileage allowance, but was told this could not be amended.
- He was told that he was receiving a discount on the vehicle rather than that the mileage allowance being lowered, and so a term of the agreement had been changed.
- He didn't have any further evidence about what happened at the dealership.
- He has been financially disadvantaged by this as he has traded in the car and taken the negative equity forward to the new arrangement.

### **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 listened again to the call between Mr H and Black Horse that took place following the customer service survey that Mr H completed. Mr H has said he was told he couldn't alter the agreement in this call, but I don't think this is the case.

The Black Horse representative does go through the agreement again and asks him if the mileage allowance was right for him, at 8000 miles per year, or did he want this to be changed. Black Horse explained that this could be changed but it may lead to higher payments. I think it was Mr H's decision to leave the terms of the finance as they were, following this discussion. So, I still think this indicates that Mr H agreed with the terms of the finance at this time.

I've also noted what Mr H said about what happened at the dealership. I do have to consider all the parties to the complaint's version of what happened here, now they've been supplied. And Black Horse's recent information does differ from Mr H's now, as it says the dealership doesn't think Mr H was misled about things such as a full tank of fuel or the terms of the finance.

So, my starting point is that, whilst I note what Mr H has said, I can't favour one version of events over the other. To uphold Mr H's complaint about what he says he was told about the finance, I would need something further that supports what he said about being misled at the dealership. I don't have this, and as Mr H has said, he won't be able to provide this. So, I don't think it would be fair to uphold his complaint that the car and the finance was misrepresented.

I still think that Black Horse caused Mr H some distress and inconvenience and it could have done better at times. And I still think that £150 compensation is reasonable for this.

I appreciate this will not be the answer that Mr H wants, and I've noted his disappointment at my provisional decision. So, I hope my final decision does not cause any further distress to him.

### **Putting things right**

Black Horse should pay Mr H £150 for the distress and inconvenience he has been caused.

### **My final decision**

For the reasons I've explained above and in the provisional decision, I partly uphold Mr H's complaint.

Black Horse Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 January 2025.

Andy Burlinson  
**Ombudsman**