

The complaint

Mr G complains about the quality of a car supplied to him by Black Horse Limited ("BH").

What happened

Mr G acquired a car under a 60 month hire purchase agreement with BH in November 2023. The car cost around £15,000. A deposit payment of £2,302 was paid. Mr G also purchased a warranty for £1,995, which was also financed by BH as part of the agreement.

Under the agreement, Mr G was required to make 59 payments of £341.65, followed by a final payment of £341.65 if he wanted to keep the car. At the time of supply, the car was around seven years old and the mileage was around 18,300. The car was supplied by a dealership I'll refer to as "D".

Shortly after acquiring the car, Mr G had the tracking corrected by a third party under warranty. Following this, Mr G says he noticed a cracking noise coming from the car. He says he contacted D who said it couldn't look at the car until February 2024. He told D he wanted a full refund for all the payments he had made towards the agreement.

Mr G referred a complaint to BH. Mr G explained the issues with the car and said there were also vibrations from the foot pedal when reversing, a warning message on the car's dashboard and the top mounts were worn and rattling. BH asked Mr G to obtain an independent report. Mr G took the car to two independent parties. Both confirmed the car had structural damage and that there was sludge contamination.

Mr G told BH that between 9 February 2024 and 9 March 2024, he had to use a family member's car to be able to travel to work and back. He said this caused inconvenience to him and the family member as he had to be added as a driver to their insurance. He said he had to repair and insure his previous car for £1,500 to keep himself mobile.

BH issued its response to Mr G's complaint in April 2024. It upheld Mr G's complaint and said it would pay for the cost of repairs. It asked Mr G to send it a quote from a VAT registered garage. It also agreed to pay Mr G £273.37 for the cost of temporary insurance to keep him mobile, in addition to statutory interest on this amount. BH also agreed to pay Mr G £300 for the distress and inconvenience caused.

Mr G agreed to BH's offer. But he said he had made two payments towards his hire purchase agreement in February and March 2024, despite not driving the car. He said he hoped these payments could be added to his reimbursement. BH said it wasn't willing to increase its offer.

Following the complaint being referred to this service, BH said it would also like to make an additional offer to pay Mr G £163.99 for the loss of enjoyment he suffered between the date of sale and 10 April 2024.

Our investigator looked into the complaint and said BH's offer to repair the car was fair and reasonable, but she said BH should collect the car, arrange the repair and provide Mr G with a courtesy car, so he can continue with his daily routine. She said that Mr G should be refunded any payments he has made since 10 March 2024 and pay 15% for the impaired usage between 2 December 2023 until 8 February 2024. She also recommended that Mr G be reimbursed for the cost of the independent report and that BH pay Mr G £300 for the distress and inconvenience caused to him.

Mr G disagreed and said the car was not worth anywhere near the price he paid for it. He said the investigators comments about not declining the car within 30 days were ridiculous and that the car had been in an accident which had been covered up.

Our investigator said that BH was entitled to a chance to repair the car. She said in relation to previous damage, there wasn't any evidence to suggest a repair wouldn't resolve the fault and it wouldn't be fair to consider any potential faults that haven't happened.

Mr G said when the car was supplied to him it was inherently faulty and he had been driving round in it whilst it was in an inherently dangerous condition, putting his safety and other road users at risk. He said the accident had been covered up behind a new panel and a spray job.

BH said Mr G didn't provide it with costs of repairs to consider whether they were disproportionate or not. BH said when Mr G accepted its offer in April 2024, he told it the car was in a garage and he was awaiting a repair quote. BH asked Mr G to provide the details of the garage and it would be happy to contact it to arrange repairs. It said if the cost of repairs was disproportionate, it would support an alternative remedy. It said it could arrange to collect the car from Mr G to arrange repairs but as it couldn't provide a courtesy car, it would cover any loss of use experienced by Mr G whilst repairs are carried out. It also asked Mr G to provide a picture of the odometer.

Mr G provided a photograph showing the mileage of the car was 23,013. He said the car was taken off the road and parked at a family member's house since late February 2024. He said whilst he had taken the car in for repairs, the garage said it didn't want to complete the work. He said whilst he didn't think it was fair, if BH agreed to take the car to a manufacturer approved garage, he would be happy to have the car repaired.

Our investigator asked Mr G to obtain a quote for the cost of the repairs. Mr G declined to do this and explained he wanted to reject the car. Mr G provided a HPI check which showed the car was roadworthy and he reiterated his complaint.

As Mr G remains in disagreement, the case has been passed to me to decide.

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 considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr G was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

I've read and considered the whole file and acknowledge that Mr G has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

In this case, neither party appears to dispute that the car had faults with it. I'm satisfied, having reviewed all the supporting information, that the car was of unsatisfactory quality at the time it was supplied to Mr G.

The outstanding issue for me to decide is how BH should put things right.

Mr G has said he would like to reject the car because of the extent of the damage to the car. I've considered whether I think this is fair in the circumstances.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality. The CRA also outlines the remedies available when goods are not of satisfactory quality.

In this case, Mr G contacted D in January 2024 about a cracking noise. However, D was unable to inspect the car until February 2024. Mr G took the car to a specialist who confirmed that there was a noise coming from the nearside rear of the car. They said there was a substantial repair to the chassis of the car and this was visible through rivets, spot welds and heavy overspray on the underside of the car. The mileage at the time was 22,927.

Following this, a company I'll refer to as "L" carried out an inspection of the car. The mileage at the time was 23,007.

L said the coolant expansion bottle was contaminated with sludge, the left hand rear quarter panel roof had high body filler content and there was a poorly secured part panel (rivets).. It also mentioned that, *"there are serious shortcomings with impact damage repairs and the efficiency of the cooling system will be hindered by significant sludge contamination. The vehicle's overall condition isn't of the merchantable quality normally expected from the average dealer and consequently the vehicle is considered unroadworthy."*

Mr G says he first told D about the issue with the cracking in December 2023. He has provided pictures of a chat dated 1 December 2023, in which Mr G says he can hear a knocking noise coming from the left of the car. However, it's not clear who this was sent to.

The first correspondence with D that Mr G has provided supporting information from is dated January 2024. The CRA says that a consumer has a 30 day short-term right to reject goods that are of unsatisfactory quality. In this case, that is 30 days from the date the car was delivered or supplied to Mr G. The CRA also says if a consumer doesn't exercise their short-term right to reject goods, the consumer loses this right, unless it is agreed by both the consumer and trader that it can be exercised at a later date. In this case, Mr G didn't exercise his right to reject the car within 30 days and neither was there any agreement between Mr G or BH that he would be able to exercise this right at a later date. So, at the time Mr G complained to D and BH, he didn't have the right to reject the car.

I accept that Mr G said he had issues with the tracking of the car prior to referring his concerns to D about the cracking noise in January 2024. However, the tracking issue appears to have been carried out under warranty, by a third party at no cost to Mr G and whilst Mr G said it was agreed with D that it would repair the tracking before supplying the car to him, there is no supporting information to confirm his. I note the tracking was carried out after the car had covered approximately 570 miles and I don't consider that tracking causes a car to be of unsatisfactory quality, as this issue can occur immediately or over time depending on how a car is driven and maintained. So, by having the tracking repaired within the 30 days, this doesn't mean that Mr G exercised his short-term right to reject the car or that D or BH had the chance to repair any faults. But in any event, I don't think BH was liable to repair the issue with the tracking, as I don't consider it makes the car of unsatisfactory quality.

In addition, whilst Mr G says he didn't accept BH's offer of repair, system notes show that Mr G agreed to accept the offer to repair the car made by BH on 11 April 2024. He told BH that the car was in the garage and he hadn't had a quote yet. BH told Mr G it would review the quote once it was provided and he would receive payment within 14 days for the agreed amount of £577.37. As Mr G agreed with BH's offer, BH made the payment of £577.37 to Mr G on 16 April 2024. Mr G also sent BH an email confirming he was awaiting a quote for the repair.

The CRA under 23(6) states that where a repair is agreed, a customer can't then require the trader to provide a replacement or exercise their short-term right to reject, without giving the

trader a reasonable time to repair the car, unless it would cause significant inconvenience to the customer.

In Mr G's case, I'm satisfied that he agreed to allow BH to arrange a repair. Mr G was also aware of the extent of damage to the car and the issues highlighted by L and the specialist in their reports, before he accepted the offer made by BH. If Mr G was unhappy with the offer made by BH, he could have asked BH to consider a rejection at that point, but he didn't do this. Instead, he agreed to have the car repaired.

I understand that BH were and are still willing to pay for the cost to repair the car. BH has also agreed to collect the car at no further cost to Mr G to enable repairs to be carried out. But Mr G hasn't provided any details of any quotes to BH to enable it to pay for the cost of repairs. BH has also said it would be happy to review quotes from Mr G's chosen garage and depending on the quotes, it will review whether a repair is the right remedy.

However, as Mr G agreed to a repair, he no longer has the right to reject the car as he hasn't provided BH with a reasonable time to repair the car, as it is entitled to do. And so, I'm satisfied that BH is entitled to pay for the costs to repair the car. BH has already agreed to do this at a garage of Mr G's choice. It has also agreed to pay for the cost of transporting the car to Mr G's chosen garage. I'm satisfied that this is fair and reasonable in the circumstances.

Mr G didn't have use of the car between 9 February 2024 and 9 March 2024. Mr G said he used a family member's car during this period and provided supporting information to show his insurance costs of £273.37. BH refunded this amount with applicable interest to Mr G. I think this amount is fair and reasonable in the circumstances, as Mr G would have always had to pay to keep mobile and as he was kept mobile during this period of time, I don't think BH need to also refund the amount of the monthly payment Mr G paid during this time.

Having said this, I think BH should refund the monthly rental costs from 9 March 2024 onwards, with applicable interest. Mr G has provided a picture of the odometer of the car showing the current mileage is 23,013. I have no reason to doubt this isn't the current mileage and so, given Mr G said he stopped using the car and this is only six miles more than when L carried out its report in February 2024, I'm persuaded he did stop using the car at that point. So, I think BH should refund any rentals paid by Mr G towards the agreement from 9 March 2024, with applicable interest, until the car is repaired. If a courtesy car is provided to Mr G whilst a repair is carried out, I don't require BH to refund any rentals to Mr G during that period of time.

Both parties are in agreement that Mr G was caused some loss of enjoyment. I agree that the issues Mr G had with the car caused him impaired usage of the car. BH offered to pay Mr G £163.99 for his loss of enjoyment of the car. Our investigator said that BH should refund 15% of the rentals made between 2 December 2023 to 8 February 2024. Mr G had two rentals paid during this period of time. I consider that this amount, 15% of these monthly rentals, is fair and reasonable to compensate Mr G for his impaired usage of the car.

Mr G also incurred a cost of £273.73 for obtaining the cost of the independent report from L. As Mr G only incurred this cost as a result of the fault with the car, I think that BH should pay for the cost of this report with applicable interest.

Finally, Mr G has detailed the impact of this issue to him. He has explained that he has been caused financial difficulty and has been inconvenienced by having to use his family member's car and having to pay to repair his previous car. He also said he lost his job as a result of not having the car. I can only consider any distress and inconvenience caused to Mr G. And having done so, I'm satisfied that the £300 BH paid Mr G in April 2024 for the distress and inconvenience caused, is fair and reasonable given the circumstances Mr G has detailed.

Overall, I agree with all parties that the car supplied to Mr G was of unsatisfactory quality. BH should put things right as I've explained in this decision.

My final decision

My final decision is that I partially uphold Mr G's complaint. Black Horse Limited should do the following to put things right, if it hasn't already done so:

- Arrange to collect the car and repair the car at no further cost to Mr G;
- Refund Mr G the cost of any payments paid towards the agreement since 9 March 2023 until the date of repair. However, should Mr G be provided with a courtesy car whilst the car is repaired, BH doesn't need to refund any payments during that period;
- Pay Mr G 15% of his monthly payments for the impaired usage between 2 December 2023 to 8 February 2024;
- Pay Mr G £273.73 for the cost of obtaining the independent report from L in February 2024;
- Pay Mr G 8% simple interest on these amounts from the date of each payment until the date of settlement;*
- Pay Mr G £300 for the distress and inconvenience caused; and
- Amend any adverse information reported to credit reference agencies about this conditional sale agreement.

*If Black Horse Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 4 October 2024.

Sonia Ahmed
Ombudsman