

The complaint

Miss H complains about the quality of a car that was supplied through a hire purchase agreement with Black Horse Limited (BHL).

What happened

In June 2023, Miss H acquired a used car through a hire purchase agreement with BHL. The car had travelled 1,485 miles when it was supplied to Miss H. The cash price of the car was £37,599. Miss H paid a deposit of £9,447 which included a part exchanged vehicle.

Miss H was due to make 60 monthly repayments of £616.26

Miss H complained to BHL about a number of electrical issues she experienced with the car since acquiring it. In summary, Miss H said highlighted the following issues:

- A faulty horn
- Car braking involuntarily
- Alarms sounding
- Airbag sign illuminating
- Car shows as being in drive but is unable to move as it says release parking brake
- App incorrectly shows the bonnet, doors and windows as being open

Miss H says she also wasn't told the car had previously been broken into.

BHL hadn't responded to Miss H's complaint within eight weeks, so she brought it to our service where it was passed to one of our investigators to look into.

In July 2024 Miss H told our investigator that BHL agreed to a rejection of the car but were intending on applying excess mileage charges in the region of one monthly payment per 1,000 miles, which she disputed as there was no indication of this in her agreement.

On 16 July 2024, BHL issued their final response to Miss H's complaint. In summary, BHL agreed with the concerns raised by Miss H and upheld her complaint. To resolve matters BHL offered to collect the car and end the agreement, to pay Miss H £12,921.37 which included her deposit and the repayments she's made towards the car, less usage charges. The payment also included £300 as compensation for the distress and inconvenience caused.

Miss H told the investigator that she didn't accept the offer made by BHL as she felt it was unfair, particularly relating to the interest payable on the refunds. Miss H also believed her credit file was adversely affected by BHL adding a marker on her account.

Having reviewed the information on file the investigator recommended that in addition to their offer, BHL should also pay a cancellation charge for the related GAP insurance and to apply the 8% simple interest on the deposit paid.

BHL agreed to pay the cancellation charge but didn't agree that they should also pay interest on Miss H's deposit, as it was in the form of a part exchanged asset and not cash.

The investigator's view remained unchanged, so, BHL asked that the case be referred to an ombudsman for a final decision.

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 what is fair and reasonable, I've thought about all the evidence and information provided afresh and 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.

I've read and considered the whole file, but I'll concentrate my comments 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.

Miss H complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Miss H's complaint about BHL. BHL is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering 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 consider might include things like the age and mileage at the time of sale and the vehicle's history.

Here, the car was acquired used, with a cash price of around £37,599 and with 1,485 miles. So, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second hand, more road-worn car and that it could be used – free from defects for a considerable period of time

Both parties have agreed that the car was faulty. Miss H raised a number of issues with it in her complaint, and BHL in their final response, agreed with Miss H's concerns and upheld it. So, I'm satisfied that the car wasn't supplied in a condition that was of satisfactory quality, and I'm also satisfied that this isn't in dispute here.

What appears to be in dispute is how the complaint should be resolved.

In their final response BHL has offered to:

- refund the repayments Miss H already made and pay 8% interest on the amount

- refund the deposit Miss H paid of £9,447
- pay £300 in compensation
- deduct the equivalent of a monthly repayment for each 1,000 miles travelled to reflect fair usage

In an email dated 15 August 2024, BHL confirmed that Miss H accepted their offer, and the account was going through the closure process.

However, Miss H believed the 8% interest should also be applied to the deposit paid and that she should receive more compensation for the impact this has had on her credit file. Miss H believed the impact on her credit file impacted her mortgage application.

Although Miss H has provided some evidence which shows her mortgage application was likely impacted by a marker on her account related to BHL, BHL have confirmed that it relates to a separate issue which is the subject of a different complaint raised to them by Miss H, so I've not considered this as part of my decision.

In consideration of the offer made by BHL, I think it's fair in the most part. I say this because as the car supplied was not of satisfactory quality, and it hasn't been successfully repaired, under the CRA Miss H is able to reject it. So, I think it's fair that Miss H is refunded her deposit and repayments and given the inconvenience caused I'm satisfied that £300 in compensation is a fair reflection in the circumstances. I've not seen any reason to consider Miss H has been materially or financially impacted to a greater value.

I also think it's right that Miss H should pay for the usage she's had, and although there's no exact science to it, BHL's calculation of a monthly repayment for every 1,000 miles travelled appears reasonable. I've considered that 1,000 miles travel each month seems reasonable. Miss H had the car for around 12 or 13 months before it was collected and returned. I recognise there would have been some impaired usage, however being charged for around seven and half months, despite Miss H having had it in her possession for over a year, I think is fair in all the circumstances.

I recognise Miss H would likely have not driven it as frequently as she would have liked, or would have experienced impaired usage, however I'm satisfied that around seven and half monthly repayments (as per BHL's calculation of a monthly repayment for every thousand miles travelled), fairly accounts for the issues Miss H experienced whilst using it.

In relation to the 8% simple interest, I'm satisfied that this should also be applied to the deposit Miss H made.

I think it would be helpful to explain briefly when I'd expect to see 8% simple interest being applied. In general terms, I'd expect to see this being paid to Miss H for any time she was deprived of money and didn't have use of it because of what went wrong. In relation to the deposit, Miss H was deprived of the use of these funds when she paid this towards the agreement for a car which was of unsatisfactory quality. So, it seems reasonable 8% interest had been added here.

BHL have made the argument that Miss H wasn't deprived of funds when she part exchanged her car as it was an asset she chose to exchange. But I don't agree here. I need to consider what actually happened when Miss H part exchanged her car. When Miss H part exchanged her car, she essentially sold the car to the dealer for cash. Rather than paying these funds to Miss H, the dealer would have paid the funds to BHL. So, this means I don't

agree with BHL's argument that this should be treated differently to a cash deposit in terms of paying interest on it.

So, I think it's fair that Miss H receives the deposit value back with 8% simple interest to recognise her inability to use it or to realise the value.

I'm also in agreement that BHL should cover the cost of the GAP insurance cancellation fee, as Miss H has provided evidence that she is being charged it.

BHL should also ensure there is no adverse information recorded on Miss H's credit file in relation to this issue.

My final decision

To settle the complaint Black Horse Limited has confirmed that they've already collected the car from Miss H and have made a payment to her of £13,546.36 to reflect their offer as described in my decision. They've also confirmed that the agreement is being closed, and Miss H's credit file has been amended to remove any adverse information.

So, in addition to what they've already done to resolve the complaint, I also instruct Black Horse Limited to:

- (if not already done) reimburse to Miss H the cancellation fee related to the associated GAP insurance
- pay 8% simple interest on her deposit refund

If Black Horse Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss H how much it's taken off. It should also give Miss H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 13 June 2025.

Benjamin John
Ombudsman