

## **The complaint**

Mr M complains that a vehicle he acquired through a hire purchase agreement with Black Horse Limited trading as Land Rover Financial Services ("Black Horse") wasn't of satisfactory quality. He says he should have been allowed to hand the vehicle back because of significant delays to its repair.

## **What happened**

In June 2023, Mr M entered into a hire purchase agreement with Black Horse to acquire a used vehicle. The vehicle had covered 35,262 miles at the time and had a cash price of £44,250. The total amount payable under the agreement was £51,851. Mr M paid a deposit of £20,000 and the remaining amount was financed by the hire purchase agreement.

In the following month, the vehicle's engine management light came on, so Mr M took it back to the dealership. The vehicle was repaired and returned but a week later the light came back on. Mr M was then advised that the hybrid battery needed to be replaced. So, he took the vehicle back to the dealership for this to take place.

Mr M then complained to Black Horse in early September 2023 as he was given no timescale of when the battery would be replaced, which meant he was paying for a vehicle that he couldn't use. Black Horse replied on 21 September 2023 saying the battery was on back order with no current timescale for arrival. They said the dealership had given Mr M a courtesy five-seater vehicle, but Mr M had told them he needed a seven-seater vehicle. Black Horse said Mr M was on a waiting list for this.

Black Horse offered Mr M £200 distress and inconvenience for the issues with the vehicle and £338.58 for loss of enjoyment covering the period 1 July 2023 to 6 October 2023.

Mr M wasn't happy with Black Horse's response and referred his complaint to our service. Black Horse then offered Mr M a further £195.47 for loss of enjoyment of the vehicle covering the period 7 October 2023 to 30 November 2023. Mr M didn't wish to accept the offer and said he should be allowed to reject the vehicle and hand it back. He said that he asked to reject the vehicle at the start of October 2023.

Our investigator recommended that Mr M's complaint should be upheld. He said Black Horse should have allowed Mr M to reject the vehicle because it wasn't reasonable for him to wait such a long time for it to be repaired, and with no indication of when that would happen. He also pointed out that Mr M had already had one repair carried out on the vehicle prior to the issue with the battery. So, he felt that Mr M was entitled to invoke his final right to reject the vehicle in line with the Consumer Rights Act 2015 ("CRA"). Our investigator set out what Black Horse should do to financially compensate Mr M.

Black Horse didn't agree. They said the vehicle had been repaired in December 2023 and they had no control over the delays to the battery being available. They also said that Mr M had been given a courtesy vehicle and they offered him a fair compensation package for not being able to drive the vehicle.

As agreement couldn't be reached, Mr M's complaint has been passed to me to decide.

I issued my provisional decision on 3 October 2024, an extract of which is below and which forms part of my final decision.

*'Black Horse supplied the vehicle to Mr M under a regulated hire purchase agreement. Because of that, our service can consider complaints about the hire purchase agreement and the goods, in this case the vehicle. Black Horse has an obligation to ensure it was of satisfactory quality – as set out in the CRA. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the vehicle.*

*Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods: (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.*

*It's reasonable in my view to note the vehicle wasn't new and had travelled just over 35,000 miles at the time of supply. So, it wouldn't be reasonable to expect a used vehicle like this to be in the same 'as new' showroom condition which it would have been in when manufactured and first supplied. But just because the vehicle was used with some mileage, doesn't mean that Black Horse has no requirements in relation to satisfactory quality.*

*It seems to me that Black Horse accepts that Mr M was entitled to a remedy under the CRA; they've referred to this legislation in their correspondence with us. For the avoidance of doubt though, I find that the vehicle wasn't of satisfactory quality when it was supplied. The vehicle needed a repair very shortly after it was supplied and then required a rather more significant repair, in the replacement of the hybrid battery, within a month or so of Mr M acquiring it. I wouldn't expect a 'reasonable' person to have expected these issues to have happened so soon after acquisition when the vehicle hadn't covered particularly high mileage and when the cash price was significant, being as it was close to £50,000.*

*As I've found, and it seems that Black Horse accepts, that the vehicle wasn't of satisfactory quality when it was supplied to Mr M, I will now set out what I currently think should be done to put things right.*

*I note that Black Horse has felt throughout that it wasn't reasonable for Mr M to be allowed to reject the vehicle and hand it back. They've said the delays in getting the hybrid battery was something they couldn't control. And Black Horse has said that Mr M accepted the repair and was given a courtesy vehicle so he could stay mobile.*

*I agree that Mr M agreed for the repair to take place. However, that doesn't mean that Mr M was duty-bound to accept that come what may. The CRA sets out the following under Section 23:*

*'Right to repair or replacement*

*(2) If the consumer requires the trader to repair or replace the goods, the trader must –*

*(a) do so within a reasonable time and without significant inconvenience to the consumer.....'*

*I appreciate that Black Horse had no control over lead times for the hybrid battery but that doesn't negate Mr M's rights under the CRA. When Mr M complained to Black Horse, they told him that the lead time was unknown. I can understand why Mr M then asked to reject the vehicle. At the start of December 2023, the vehicle still hadn't been repaired after four months. Mr M was left in limbo with no idea on when the part would arrive. I would pose Black Horse a question here; what if the lead time turned out to be 10 months? Surely there comes a point where the repair hasn't happened within a reasonable time and without*

significant inconvenience. In Mr M's case, I think three to four months without any indication of when the vehicle would be repaired qualifies as both these things.

I realise that Mr M was given a courtesy vehicle. But, as Black Horse notes, the type of vehicle given wasn't what Mr M required for his needs. And that doesn't in my view offset what I've set out in my preceding paragraph.

The CRA sets out a number of possible remedies where goods were found to have not been of satisfactory quality. One of those remedies is to allow for the goods to be repaired. Where that doesn't resolve the issue, as in this complaint, the consumer can seek the right to reject the goods. I've had regard to the CRA when considering what a fair and reasonable remedy is in this instance for Mr M.

I'm satisfied, for the reasons I've set out above, that it would be reasonable for Black Horse to now accept Mr M's request to reject the vehicle and end his hire purchase agreement with them.

Black Horse needs therefore to arrange to take back the vehicle from Mr M and end the agreement with nothing further owed, and at no cost to him. I also find that Mr M should be refunded the £20,000 deposit he paid towards the agreement, with interest.

As Mr M did use a courtesy vehicle, he was kept mobile up until the vehicle was repaired in December 2023 although this wasn't a like for like vehicle. So, I don't think it would be reasonable to refund him all of the payments he made to Black Horse between August 2023 and December 2023. Black Horse offered Mr M a pro-rated total of £534.05 of the payments he made during this period and that appears reasonable to me. So, Black Horse should pay this.

Mr M has though, from what I can see, barely used the vehicle since it was returned to him in December 2023. I currently think therefore that Black Horse should refund him all the payments he made to the hire purchase agreement from December 2023 to the present time, with interest.

Mr M has asked for other losses to be refunded to him. He's sent in an invoice from the dealership from June 2023 where he purchased various additional extras for the vehicle, as follows:

- Life Shine - £249.17
- Wheel seal alloy protection - £82.50
- 36 months SMART - £445
- 48 months GAP insurance - £599
- 36 months tyre insurance - £404
- Total (inc: VAT) - £1,846.

I don't think that Mr M has had much, if any, use of the items above which to my knowledge weren't financed by the hire purchase agreement. So, assuming that to be the case, I think it is reasonable for this to be refunded to him, with interest.

Mr M also sent us a bank statement which shows he paid £143.22 to insure the vehicle. I note that Mr M drove the courtesy vehicle for four months so it wouldn't be reasonable to say this should be refunded in full, as he needed to be insured to drive this, unless of course he paid separately for insurance for the courtesy vehicle. This isn't an exact science, but I think a refund of £90 is fair in this situation.

I also think Mr M has been inconvenienced by being given a vehicle that was of unsatisfactory quality, and for what transpired once it was identified that it needed a new

*battery. I currently think a payment of £300 is reasonable here, which includes the £200 Black Horse proposed in their offer to him.*

*Finally, Black Horse should ensure that no adverse information is recorded on Mr M's credit file in respect of the hire purchase agreement'.*

I invited both parties to give me any further comments or evidence that they wanted me to consider.

Black Horse replied saying that, while they didn't agree with everything I'd said in my provisional decision, they were happy to accept the overall proposed outcome.

Mr M replied saying that he paid £2,113.92 for the insurance, and not £143.22 as I'd said. He also said that he didn't use the courtesy car as it wasn't suitable for his needs, so felt he should get a full refund of the payments he made to Black Horse between August 2023 and December 2023. Mr M mentioned that he paid a deposit of £749 to the dealership and that Black Horse should compensate him for the time he spent on this dispute including visits to the dealership and repeated calls he made to try to resolve matters.

### **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'd firstly like to apologise to both parties for incorrectly saying that Mr M paid £143.22 for the insurance to the vehicle. This was in fact, as Mr M says, £2,113.92. In my provisional decision, I said that Black Horse should refund a proportion of this insurance cost as Mr M had paid for this without using the vehicle subject to this complaint but also acknowledging that the dealership had provided him with a courtesy vehicle.

Mr M says though that he didn't use the courtesy vehicle as it wasn't suitable and would like the whole £2,113.92 refunded as well as the payments he made to Black Horse between August 2023 and December 2023.

I appreciate that Mr M didn't think the courtesy vehicle was suitable. But he was offered to be kept mobile and I can't be certain that he was completely unable to use this, despite the inconvenience that it wasn't like for like. So, I still think Black Horse's offer to refund payments pro-rated for this period is fair. And I think the principle I set out in my provisional decision about Black Horse refunding Mr M a proportion of the insurance cost is also fair. As I said in that decision, establishing a fair amount isn't an exact science. Overall, I think £1,500 is a reasonable figure. Black Horse has asked for proof of the cost Mr M paid, and I've attached this proof in my covering e-mail.

I've also considered Mr M's comments about the deposit he paid to the dealership. The deposit amount as shown on the finance agreement is £20,000 so I think this is likely the overall deposit Mr M paid. I will therefore be sticking with this figure.

Finally, my proposed award of distress and inconvenience is intended to reflect not just the fact that Mr M was given a vehicle of unsatisfactory quality, but also the overall inconvenience he was caused. I still think £300 is a reasonable figure in respect of this.

### **My final decision**

I uphold this complaint and direct Black Horse Limited trading as Land Rover Financial Services to do the following:

- arrange to take back the vehicle from Mr M and end the agreement with nothing further owed, and at no cost to him.
- refund Mr M the £20,000 deposit he paid towards the agreement, with interest.
- refund Mr M £534.05 representing a pro-rated amount of the payments he made between August 2023 and December 2023.
- refund him all the payments he made to the hire purchase agreement from December 2023 to the present time, with interest.
- pay Mr M £1,846 which he spent on additional extras for the vehicle that he couldn't use, with interest.
- pay Mr M £1,500 representing a proportion of the insurance cost he paid for the vehicle.
- pay Mr M a total of £300 for the distress and inconvenience he was caused.
- ensure that no adverse information is recorded on Mr M's credit file in respect of the hire purchase agreement.

Interest on the above awards where stated is to be paid at 8% simple, from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 November 2024.

Daniel Picken  
**Ombudsman**