

Complaint

Mr J has complained about the quality of a car that Black Horse Limited ("Black Horse") supplied to him through a hire-purchase agreement.

Background

In May 2022, Black Horse provided Mr J with finance for a used car. The car was just over three years old and it had completed 68,732 miles at the time of supply. The cash price of the vehicle was £21,781.50. Mr J paid a deposit of £2,794.01 and applied for finance to cover the remainder of the funds needed to complete the purchase. Black Horse accepted Mr J's application and entered into a 48-month hire-purchase agreement with him.

The loan was for £18,987.49 had an APR of 6.9%, interest, fees and total charges of £3,818.93 (made up of interest of £3,817.93 and an option to purchase fee of £1) and the total amount to be repaid of £22,806.42 (not including Mr J's deposit) was due to be repaid in 47 monthly instalments of £289.86 followed by a final monthly payment of £9,183.00 which Mr J had to make if he decided he wanted to keep the car.

Mr J had issues with the car and had repairs carried out in October 2022 and January 2023. Mr J contacted Black Horse about these issues in January 2023. It treated what it considered to be Mr J's concerns as a complaint and sent him a final response telling him that he could refer matters here if he was unhappy as long as he did this within six months. I've explained in a separate decision that as Mr J did not do this, I'm unable to consider matters relating to these issues. I'm therefore not going into them in any detail in this final decision.

In September 2023, the vehicle broke down. A report from the breakdown provider stated that this was due to a broken crank pulley. The vehicle was recovered to a garage and the crank pulley was repaired. Mr J paid for that repair and just under two weeks later complained to Black Horse arguing that he should be entitled to reject the vehicle, bearing in mind all of the faults that had occurred since he acquired the car.

Black Horse reviewed Mr J's complaint and upheld it. I appreciate that Mr J may not agree that it did as it didn't accept his rejection of the car. Nonetheless, as Black Horse agreed that the fault meant that the car it supplied was not of satisfactory quality but instead offered to reimburse Mr J the cost of the repairs as well as pay him £80 for any distress and inconvenience he may have experienced, this would be considered an uphold with an alternative settlement. Mr J was unhappy with matters and referred his complaint to our service.

Mr J's complaint was subsequently reviewed by one of our investigators. She thought that Black Horse had already had its chance to repair the vehicle prior to January 2023 and so Mr J was entitled to reject the car. As a result, she upheld Mr J's complaint and said that Black Horse should accept his rejection.

Black Horse did not accept the investigator's assessment. It said that it had never been given an opportunity to repair the issues Mr J had on either occasion. It said that it, in any

event, accepted the repairs Mr J arranged to be carried out and offered to reimburse his costs. As Black Horse didn't agree with the investigator's assessment, the complaint was passed to an ombudsman.

My provisional decision of 21 November 2024

I issued a provisional decision – on 21 November 2024 - setting out why I was not intending to uphold Mr J's complaint.

In summary, I wasn't intending to uphold Mr J's complaint because I was satisfied that what Black Horse had already done to put things right was fair and reasonable in all the circumstances and I didn't think that it needed to do anything more.

Black Horse's response to my provisional decision

Black Horse confirmed that it agreed with my provisional decision and that it didn't have anything further for me to consider ahead of my final decision.

Mr J's response to my provisional decision

Mr J disagreed with my provisional decision. In summary his main reasons for doing so were:

1. There was a perception in my provisional decision that he had more experience in matters than he actually did.
2. He did not officially complain to Black Horse in January 2023 and simply brought the issues with the car to its attention as he wanted to know whether it could help him with the supplying dealer.
3. He is rejecting the car on the grounds of quality and safety and the mechanical failures occurring from May 22 to September 23. This just seems to be discounted on what would be seen to be a 'technicality'. This is particularly as he referred the complaint within seven months and Black Horse did not respond to the complaint in time.
4. The Consumer Rights Act provides a supplier with one opportunity to repair faulty goods and should that repair fail the customer has the right to reject the goods. So Black Horse doesn't get one opportunity to repair each fault – simply one chance to repair the car.
5. He had the car fixed straight away after it broke down in September 2023. He rejected the car after the repair because it was a significant break down after a business trip.
6. He disagrees that £80 for the distress and inconvenience he has experienced is fair and reasonable.

Although, I've summarised Mr J's response to my provisional decision, I've read and considered everything he has said.

While I've set out arguments 2 and 3 in my summary of Mr J's response to my provisional decision, I've separately responded on why I'm satisfied that Black Horse was reasonably entitled to consider that Mr J's correspondence of January 2023 constituted a complaint and that it was required to respond accordingly.

As I've done so, I do not propose to repeat why this is the case in this final decision. I've therefore also considered everything else in the context that I'm satisfied that Mr J first complained to Black Horse in January 2023 and then made a second complaint in September 2023.

My findings

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

As I explained in my provisional decision, the finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Black Horse purchased the vehicle from the dealership Mr J visited. Mr J then hired the vehicle from Black Horse and paid a monthly amount to it in return. Black Horse remained the legal owner of the vehicle under the agreement until Mr J's loan was repaid.

This arrangement resulted in Black Horse being the supplier of Mr J's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Mr J's agreement with Black Horse. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

I'm satisfied that, as the parties are in agreement that it wasn't, I don't need to decide whether the car Black Horse supplied to Mr J was of satisfactory quality. All I need to decide here is whether what Black Horse has agreed to do to put things right for Mr J is fair and reasonable in all the circumstances of his complaint.

Why I'm satisfied that what Black Horse has already agreed to do is fair and reasonable

Having carefully considered everything, including the responses to my provisional decision, I'm satisfied that what Black Horse has already agreed to do to put things right for Mr J is fair and reasonable in all the circumstances. And I'm not upholding the complaint. I'll explain why I think that this is the case in a little more detail.

As I've explained in my provisional decision, I appreciate Mr J's frustration at the fact that a fair bit of remedial work has been required on the car, this was something that he did not anticipate when he took delivery and that he now wants us to consider everything that has happened since he acquired the vehicle. I also acknowledge Mr J's strength of feeling on this matter and what he's said about not feeling safe in the car given all the issues he's had.

However, I've separately explained to Mr J that I'm only able to consider what happened once the car broke down in September 2023. There is no dispute that Mr J not only agreed to the vehicle being recovered to a garage, his arranging of these repairs himself and then paying for them, without involving Black Horse is indicative of him accepting a repair of the broken crank pulley.

In reaching my conclusions, I've thought about what our investigator has said about being persuaded that Mr J accepting the repair should not now preclude him from rejecting the car, as Mr J's course of action was reasonable in circumstances where he was not aware of his right regarding rejection. But I'm afraid that this is not a view that I agree with.

I accept that Mr J has provided evidence of the research that he carried out once the car had broken down in September 2023 and I'm even prepared to accept that him reading the information and watching the video that he did, is what prompted him to contact Black Horse and reject the car on 26 September 2023. However, I'm afraid that I'm not persuaded that this means Mr J should now be able to retrospectively reject the vehicle.

Indeed, while Mr J may have decided to carry out his research in September 2023, it remains unclear to me why he didn't choose to do this, when he clearly had cause to do so, earlier. I say this particularly as Mr J contacted Black Horse in January 2023. Even if I were to accept his argument that this wasn't a complaint, which I wish to make clear for the reasons I've already separately explained, I'm not persuaded is the case, at the very least he must have emailed Black Horse expecting it to do something. I can't see why else he would have emailed Black Horse at that stage.

Furthermore, it is unclear why Mr J did not fully explore his rights in relation to the car at this stage, or at least before arranging for the car to be repaired, once it broke down, in September 2023. This is particularly as Black Horse doesn't appear to have resolved matters to his satisfaction. I appreciate Mr J says he as a consumer didn't know what to do.

However, even if I were to accept this, this would still have been the case when he did decide to research the matter in September 2023. The question I need to consider is not what Mr J may, or may not have known about the CRA and his rights in January 2023. The question I need to consider is whether his decision to only carry out his research after he had the car repaired in September 2023, means that it would be fair and reasonable for Mr J to retrospectively reject the car.

Having considered Mr J's further arguments, I remain satisfied that Mr J was in a position to carry out his research in January 2023 and he had sufficient reason to do so. So I don't think the fact that he chose to carry out his research, after the car had once again been repaired, in September 2023, means that it would be fair and reasonable for me to require Black Horse to now accept his rejection.

In reaching my conclusions, I've noted that, in response to my provisional decision, Mr J said:

"The Consumer Rights Act 2015 sets out that a business has one opportunity to repair faulty goods and, if that repair fails, then the customer has the right to reject the goods. It's the established approach of this service that we look at this car as one item – rather than each component in the car. So Black Horse doesn't get one opportunity to repair each fault – simply one chance to repair the car".

I think that Mr J has taken this paragraph from our investigator's original assessment of his complaint. I accept some of what has been stated. However, I think that the position is a little more nuanced than the investigator's summary. For example, a supplier has one opportunity to repair a fault, which meant that a car was not of satisfactory quality at the point of supply. If a supplier agreed to repair a minor issue, rather than one carried out to remedy a fault that rendered the car not of satisfactory quality, it does not necessarily mean that the car requiring a further repair, at any point in the future, automatically entitles the customer to reject the car.

Furthermore, whether or not I agree with the investigator's statement (which Mr J has supported) in full, in part, or not at all, it, in any event, doesn't reflect what has happened in this case. I say this because Black Horse didn't get one opportunity to repair each fault, or even one chance to repair the car.

As I explained in my provisional decision, Mr J did not notify Black Horse about the issues he was having until after the time he had each issue repaired. And Mr J's actions actually deprived Black Horse of the opportunity to inspect the vehicle, investigate any fault and its right to repair a fault as the supplier of Mr J's car. So while both our investigator and Mr J are correct in saying that a supplier has one opportunity to repair a fault which rendered a car not of satisfactory quality when it was supplied, the supplier – Black Horse – has never had the opportunity to repair the car in this case.

In these circumstances, I do not think that it would be fair and reasonable for me to now require Black Horse to accept a retrospective rejection of the car, on the basis that Mr J may now have second thoughts on arranging and accepting the repairs he did, rather than carry out the research he did in September 2023 earlier.

I appreciate that Mr J has said that he's unsure why I have placed so much emphasis on how he acted at the respective times. But I'm required to consider what's fair and reasonable in all the circumstances. And Mr J's actions at the respective times are relevant to whether Black Horse acted fairly and reasonably.

Indeed, as I explained in my provisional decision, I might have felt differently about things if this were a case where Black Horse had encouraged Mr J down the route of accepting a repair when it was obvious that rejection was the fair and reasonable outcome. But Black Horse did not arrange or direct Mr J to get the car repaired here and it's only fair and reasonable for me to consider why this was the case, which includes considering Mr J's actions.

As I'm satisfied that Mr J arranged, accepted and authorised the repair in September 2023, I think that it would only be fair and reasonable for Mr J to now reject the vehicle if that repair was unsuccessful. I've also therefore also considered whether the repair carried out in September 2023 was successful.

In considering this matter, I've noted that Mr J previously said that he did not know whether the repair to the crank pulley was successful and that the car was still juddering. This is why I considered things such as the car's most recent MOT, which was carried out after the crank pulley was repaired as well as Mr J still driving the car. I accept that the MOT pass in itself does not mean that the car was of satisfactory quality.

Nonetheless, in these circumstances, and while I've noted what Mr J has said about the car juddering, in the absence of an independent report or some other corroborating evidence of the repair having failed, I'm satisfied that the available evidence indicates that it is more likely than not that the repair to the crank pulley was successful. This is especially the case as I've not been provided with anything since my provisional decision suggesting that this is the case either.

Therefore, I remain satisfied that it would not be fair and reasonable for me to direct Black Horse to now accept Mr J's rejection of the vehicle, on account of the repair carried out to the crank pulley having failed.

Overall and having considered everything, I'm satisfied that Black Horse's offer to reimburse Mr J the cost of the repairs he incurred in September 2023, together with interest at 8% a year simple until the date of settlement as well as £80 for any distress and inconvenience he's experienced, is fair and reasonable in all the circumstances.

I note that, in his response to my provisional decision, Mr J has asked me to explain why I consider £80 is fair and reasonable. In the first instance, it's worth noting that awards for distress and inconvenience are typically modest. I also have to consider any distress and

inconvenience that Black Horse caused Mr J. And as it was contacted after the respective repairs were carried out, what it is actually responsible for is limited.

I also note that Mr J is extremely unhappy that Black Horse took nine weeks to issue its final response to the complaint he made in September 2023. Nonetheless, I have to be mindful of the fact that complaint handling isn't an activity that I'm able to consider a complaint about. So I cannot make an additional award of compensation for Mr J's Black Horse's complaint handling.

Having kept all of this in mind and what I'm able to make an award for, while Mr J being supplied with a car that was not of satisfactory quality caused him more than the levels of frustration and annoyance typically associated with ordinary life, I'm satisfied that the £80 in compensation Black Horse has offered to pay is fair and reasonable.

As this is the case, I'm satisfied what Black Horse has agreed to do to put things right is fair and reasonable in all the circumstances of Mr J's complaint. I'm therefore not requiring it to do anything more or anything further and leave it up to Mr J whether he wishes to accept the offer Black Horse made in its final response.

I do appreciate that this will be very disappointing for Mr J – particularly as Mr J feels strongly about this matter and our investigator suggested that Black Horse should accept his rejection of the car. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained here, as well in my provisional decision of 21 November 2024 and my decision on jurisdiction, I'm satisfied that what Black Horse has agreed to do to put things right for Mr J is fair and reasonable in all the circumstances. Therefore, I'm not upholding the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 April 2025.

Jeshen Narayanan
Ombudsman