

The complaint

Mr W complains about the quality of a used car he acquired through a hire purchase agreement with Black Horse Limited trading as Jaguar Financial Services ('Jaguar FS'). Mr W says that there were faults with the car right from the start. And he has only been able to drive it for five months out of the eleven he has owned it. He now wants to reject the car.

What happened

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

I've issued a decision separately saying that I can't look at some parts of Mr W's complaint. And I've issued a provisional decision saying that the remainder of Mr W's complaint, that I can look at, shouldn't be upheld. A copy of the background from the provisional decision and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision:

Mr W's complaint is about the quality of a car he acquired in April 2023. The car was used, and it was first registered in January 2019. So, it was just over four years old when Mr W received it. It had covered 44,993 miles.

Mr W acquired the car using a hire purchase agreement that was started in April 2023. The vehicle had a retail price of £33,343. Mr W paid £29,850 meaning £3,493 was financed. This agreement was to be repaid through 24 monthly instalments of £163.28. Mr W settled the finance in June 2023. I've noted that he sold the car in 2024 at what he said was a significant price reduction of £23,000.

Below is a summary of the issues complained of by Mr W and the investigation and repair work that has been carried out by the dealership, alongside what has happened in respect of the complaint.

Mr W says that he experienced problems with the car straight away and I've seen the complaint he made in his email of 10 July 2023. This email lists the faults with the car as being briefly: the air conditioning was not working properly, the frunk was leaking, there was a split rubber gaiter, a brake system warning light was intermittently showing, the gesture tailgate wasn't always working correctly, and the car was subject to a safety recall.

Black Horse issued a final response letter (FRL) on 18 August 2023. It said that it was upholding the complaints about the vehicle which it said were first raised in June 2023, and were in the email of July 2023. It agreed to cover the cost of the repairs that the car still needed, which was the air conditioning, the brake warning light and the door seals. It asked Mr W for a quote from a VAT registered garage, and it offered £300 for any distress and inconvenience that had occurred. Mr W accepted this offer, and the car was booked in for repairs later.

I've considered the issues raised in this complaint of July 2023, and the response of August 2023 separately. These issues won't form part of my consideration of the quality of the car here.

On 8 February 2024, Mr W also complained about some further problems he was having with the car. These were that it was not charging fully, and the battery was draining. There were some problems with the range of it, and it had broken down using a fast charger.

Jaguar FS issued a second FRL dated 23 February 2024 which didn't uphold this complaint. It said Mr W complained about the charging problems and an overall dissatisfaction regarding the quality of the car, but these issues occurred ten months into the agreement, and so it didn't think they were problems that were apparent at the time of supply. It didn't reconsider the earlier issues Mr W had complained about.

Mr W didn't agree with this and brought his complaint to the Financial Ombudsman Service.

One of our Investigators considered this complaint a number of times. Partly because it wasn't clear at first that the earlier issues that Mr W had raised shouldn't be considered. But in the most recent consideration of the complaint our Investigator said that Mr W's complaint should be upheld.

She said that the car wasn't of satisfactory quality when it was supplied to Mr W, and he had been without it for a significant period. And so, Jaguar FS should repay some of the monthly payments he had made and a distress and inconvenience payment of £200.

Mr W and Jaguar FS didn't agree with the Investigator. Jaguar FS said that Mr W's complaint was being upheld due to issues that were part of the first complaint. This wasn't right as Mr W had brought this complaint to the Financial Ombudsman Service too late. And our Investigator had recommended that Mr W be refunded for payments he had not made as he had repaid the finance.

And Mr W also didn't agree as the compensation recommended doesn't adequately reflect the time he was without the car and the losses he suffered overall when he sold it.

Because Mr W and Jaguar FS didn't agree, this matter has been passed to me to issue a decision.

What I've provisionally 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 need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

The finance in this case was a regulated hire purchase agreement – so we can consider a complaint relating to it. Jaguar FS as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that 'the quality of the goods is satisfactory'.

To be considered 'satisfactory', the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account 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 car's history.

The CRA quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

This car was about four years old when Mr W acquired it and it had travelled 44,993 miles. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Mr W should have been able to use it for a reasonable period of time before it needed significant work.

Was there a fault with the car

As I've outlined above, the faults that I'm looking at here are the issues Mr W had in February 2024. He had problems with the battery charging and the range of the car. And he's explained that he tried to charge the car using a high voltage charger. This caused it to break down and it needed to be recovered. It's established that the car did have battery and charging faults.

Was the car of satisfactory quality bearing in mind these faults

I've gone on to consider if the car was of satisfactory quality given these faults. In order to be able to say that the car was of unsatisfactory quality, because of these issues alone, I need to be able to reasonably say that they were present, or developing, at the point of supply. And that they were faults with the car rather than they were due to ordinary wear and tear.

Jaguar FS said the faults happened too far on from the point of supply for them to have been present when supplied. I appreciate the charging and related problems with the car happened about ten months after Mr W got the car, but I need to consider whether the car was durable. If parts or systems of it fail prematurely, this might indicate there was already a problem with the car when it was supplied.

Having thought about this, I've seen no indication that the charging and battery problems were present or developing at the time of sale. I've born in mind that the car had travelled around 47,500 miles at this point, and no party to the complaint has said that, or indicated, that the car had charging or battery problems before this time.

And even if there was some evidence of this, it would probably be reasonable to say that these problems were due to ordinary wear and tear. Or a situation where a part or system had gone wrong as will happen from time to time in a used car. I understand the charging problem was resolved with a software update.

I have taken on board that Mr W did not have use of the car for all the ten months he owned it. But this was due to the other problems he had with it, which had started earlier and that I'm not looking at here.

Overall, I don't think it's likely that the problems I am considering here were apparent or developing at the time the car was supplied to Mr W. So, I don't think it's reasonable to say that the car wasn't of satisfactory quality at the point of sale due to them. And whilst the car breakdown was unfortunate, I don't think that Jaguar FS should be responsible for putting the faults with the car right or paying any compensation.

Having looked at all of what has been provided to me I can fully understand why Mr W will not agree with this. I can see that the problems that he has had with the car have been significant and ongoing and they weren't resolved to his satisfaction. But, as I have communicated to him separately, I cannot consider the other issues he has raised as they weren't brought to the Financial Ombudsman in time. I think it's reasonable to say that most of this complaint concerns these earlier events.

Developments:

Black Horse, and Mr W, received my provisional decision. Black Horse didn't have anything to add after it had seen it.

Mr W didn't agree with my provisional decision. He said that there was some evidence that the car still has ongoing charging problems, as the new owner has contacted him to confirm this. And this indicated that the car was faulty when he purchased it. And he thinks I should reconsider whether a payment for the distress and inconvenience he suffered should be paid, as the charging problems caused him significant issues. Mr W thinks my decision will not be a deterrent to Black Horse.

As no agreement has been reached, I've gone on to issue my 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.

Whilst I've thought about what Mr W has said he hasn't really raised any new issues, or provided any further information, after receiving my provisional decision. So, I've reached the same conclusions I reached before, for the same reasons.

As Mr W has, I think recognised, I can't really consider anything that has happened with the car after he sold it. I do accept that the car he acquired had charging problems as I've outlined earlier. But I still don't think this problem means that the car was of unsatisfactory quality at the time of sale. And the fact that the subsequent owner may be having similar charging problems doesn't affect this. It seems reasonable to say that a fault that developed when Mr W owned the car which hasn't been rectified yet. But as Mr W now doesn't own the car this has no impact on his complaint.

Mr W thinks I should make an award to compensate him for the distress and inconvenience he suffered due to the problems he had with the car. To make any award of compensation I need to uphold a complaint. I still don't think the car was of unsatisfactory quality when it was supplied to Mr W, and so I'm not upholding his complaint about the quality issues he had with the vehicle.

I don't disagree that all the problems Mr W had with the car could have been distressing for him. But as I said in my earlier decision, most of the issues he has complained about, which may have caused this distress, are ones that I cannot now consider. Overall, I don't think Black Horse should now pay compensation.

Mr W thinks this is unfair and won't act as a deterrent to Black Horse. My role here is to consider individual complaints and it's beyond my remit to look at the issues that have been brought to me based on a business's wider conduct. And I do have to make decisions using the framework and powers that I have. Which I've done. But again, I'm sorry that we can't help Mr W further here.

My final decision

For the reasons set out above, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 March 2025.

Andy Burlinson
Ombudsman