

The complaint

Mr B complains that Black Horse Limited trading as Jaguar Financial Services (“Black Horse”) mis-sold a finance agreement and required him to pay the outstanding balance after his car was written off.

What happened

In October 2022 Mr B purchased a new car at a cost of £76,730. This was funded by a deposit of £4,000 and the balance by finance provided by Black Horse. In December 2024 the car was in an accident and the insurance company decided to write it off. It paid Black Horse £28,330. This left a balance outstanding on the finance of £17,473. Black Horse asked Mr B to pay this, but didn’t believe that was fair.

He complained and said he should have been advised to take out GAP insurance. He also said he had not been made fully aware of what would happen in the circumstances he subsequently encountered. He has also said that Black Horse has been unjustly enriched as a result of the accident.

Black Horse rejected his complaint and said it had acted in accordance with the terms and conditions of the agreement. Mr B brought a complaint to this service where it was considered by one of our investigators who didn’t recommend it be upheld. He agreed that while the events were unfortunate Black Horse was entitled to seek the outstanding balance from Mr B.

He didn’t agree and said Black Horse had a responsibility to make him aware of GAP insurance. He had assumed it was only useful for the first year or so. He said the agreement was not clear and transparent in that it didn’t explain that he may be responsible for the shortfall with sufficient clarity. He believed this fell foul of the guidance on transparency in the Consumer Credit Sourcebook (“CONC”). The reference was in the small print of a 32-page document. Also, the title was misleading. He thought that the wording of the total loss clause was not as clear as had been suggested and he disagreed with our investigator’s interpretation of the word ‘may’ in this context.

Finally, he felt that Black Horse had been unjustly enriched by the events at his expense. If the agreement had gone to term and the car returned Black Horse would not have obtained the full amount due on the loan.

I sought clarification on the bank’s approach to shortfalls such as this one and asked if it would consider reducing the sum it was seeking from Mr B. The bank said it normally sought payment from customers unless there were exceptional circumstances and Mr B had not persuaded it that there were exceptional circumstances. It also noted Mr B had covered 28,436 miles after 26 months when the accident happened. The mileage allowance under the agreement was 30,833 over 37 months. It believed this higher usage would have accelerated the depreciation on the car and influenced the insurer’s valuation.

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.

When the evidence is incomplete, inconclusive or contradictory as some of it is here – I've reached my outcome on the balance of probabilities – that is, what I consider likely to have happened given the available evidence and the wider circumstances.

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I also want to assure Mr B that I've reviewed everything on file. If I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I should make it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them.

Mr B has been most unfortunate and he has my sympathy, but I do not consider I can uphold his complaint. I will explain why.

The key part of the agreement Mr B signed states:

“B4. Are there rules about how to spend insurance money from a claim?”

Yes.

If the Vehicle can be repaired, you must use the insurance money to get the repairs done.

However, if Vehicle may be stolen or a total loss (explained below). If this happens, you must tell us without delay. You must use the insurance money towards paying the outstanding balance under the Agreement. We'll reduce this amount by any money you are due to get back for early settlement. This is called a rebate of charges. If there is any money left over, this is called a surplus and you can keep it. If the insurer pays the money to us directly we'll use it to pay off your outstanding balance. after any rebate of charges. We'll also pay any surplus to you.

If the insurance money less than the outstanding balance (less any rebate of charges), we may require you to pay us the difference.

By this Agreement, you transfer to us all of your rights to any Insurance money due in these circumstances regarding the Vehicle.

By total loss we mean the Vehicle is uneconomic to repair, for example because the repairs cost more than the Vehicle is worth. It may also mean that the Vehicle is destroyed or damaged beyond repair.”

I appreciate Mr B considers this was hidden away in the small print, but I believe it was readily available to him to read before he signed the document. I do not know if Mr B read the document he signed, but the relevant section was not hidden away. Quite simply I cannot say it was hidden away in small print. It is clear and explains what will happen if the car is written off and if there is a shortfall in the insurance pay out. Black Horse has acted in accordance with the document Mr B signed. I do not consider it was necessary for the sales

representative to have specifically pointed out this section. Nor does the use of the word 'may' prevent Black Horse from seeking payment from Mr B. It simply allows the bank to exercise discretion if it considers that to be appropriate.

Black Horse has said that this dealership does not, as part of its sales process, sell GAP insurance. It was not acting as an adviser to Mr B and it was not under any obligation to point out he may wish to consider such an insurance policy. It was his responsibility to ensure he had taken out whatever protection he felt appropriate. In any event we cannot say that Mr B would have taken out GAP insurance if it had been brought to his attention.

I appreciate Mr B has been left with a significant balance to pay, but as Black Horse has pointed out the car had covered a significant number of miles at the time of the accident and so its value would have diminished as a result. And I do not consider any alleged enrichment prevents Black Horse from exercising its right to reclaim the balance due.

Mr B signed an agreement and had the opportunity to be satisfied with what he was signing and I cannot require Black Horse to overlook the terms and conditions of that agreement. It does not consider there were exceptional circumstances which would allow it to reduce or cancel the sum owed. I have seen nothing which would allow me to challenge that conclusion.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 December 2025.

Ivor Graham
Ombudsman