

complaint

Mr L is unhappy with a used car he acquired from Black Horse Limited (Black Horse) on a hire purchase agreement. He says it wasn't of satisfactory quality.

background

The background to this complaint and my initial conclusions, were set out in my provisional decision dated 11 March 2019 - a copy of which is attached and forms part of this final decision.

I asked both parties to provide any more comments or evidence before I reconsidered the complaint and issued a final decision. I also provided Mr L with two possible options on how Black Horse could put things right, and asked Mr L to select the option he preferred.

Black Horse replied saying it accepted my provisional decision and had no further points to add.

Mr L replied saying that he accepted my provisional decision, and selected option 2 whereby he could return the car.

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 neither party has provided me with anything else to think about, I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I uphold this complaint for the reasons I set out in my provisional decision. To put things right, Blackhorse should take back the car as this is the option Mr L has indicated he prefers.

my final decision

My final decision is that I uphold this complaint. To put things right Black Horse Limited should:

- collect the car and end the agreement with nothing further to pay
- refund the deposit of £4,130 and pay 8% simple interest from the date of payment until the date of settlement*
- pay £350 compensation for the distress and inconvenience caused (if it hasn't already made this payment to Mr L)

* HM Revenue & Customs requires Black Horse Limited to take off tax from this interest. Black Horse Limited must give Mr L a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 May 2019.

Lisa Lowe

Ombudsman

provisional decision

complaint

Mr L is unhappy with a used car he acquired from Black Horse Limited (Black Horse) on a hire purchase agreement. He says it wasn't of satisfactory quality.

Background

Mr L acquired a used car in March 2017 on a hire purchase agreement. The car was first registered in 2013 and the cash price of the car was £14,610 (excluding any finance charges, interest or fees).

Mr L says that he noticed a burning smell shortly after taking possession of the car and took it to a local car dealer in May 2017. He says the dealer couldn't initially find anything wrong but told him to come back if the problem persisted. Mr L says he continued to notice a burning smell and took the car

back to the same dealer later in May 2017. At this point the dealer replaced the timing chain tensioner, saying it was leaking oil and causing the burning smell. This work was completed under warranty at no cost to Mr L.

Mr L says the problem reoccurred in 2018, with a noticeable burning smell, the engine overheating and with the engine management light (EML) illuminating. At this point Mr L raised a complaint with Black Horse, saying that he wanted to reject the car as he didn't believe it was of satisfactory quality and that the current problems were linked to the previous problem. Mr L also raised a concern about the mileage of the car, which was recorded on the hire purchase agreement as nearly 64,000 miles – whereas the odometer on the car showed approximately 40,000 miles at the point of supply.

Black Horse responded to Mr L in April 2018 saying that the recent issues with the EML and burning smell were related to each other, but not to the original problem from 2017. They said that the most recent issue was a problem with the charge pressure hose, which needed replacing. They also said that they provided the previous repair information to an independent engineer who told them that the previous problems with the timing chain tensioner seal, and the more recent issue with the charge pressure hose, wouldn't have been present at the point of sale.

But Black Horse acknowledged that there did appear to be a discrepancy between the mileage on the hire purchase agreement and what the odometer on the car was showing. But Black Horse didn't uphold Mr L's complaint or allow him to reject the car.

Mr L wasn't happy with the response from Black Horse, so he brought his complaint to our service.

Since we've had the complaint Black Horse has agreed to allow Mr L to reject the car, saying they'll refund the deposit he paid of £4,130 and pay 8% simple interest on it, as well as making a payment of £350 for the distress and inconvenience Mr L was caused.

Mr L rejected the offer saying that he wanted to purchase the car from Black Horse in resolution of his complaint, explaining this was because of the time and money he's invested in the car. But, he wanted to buy the car for a discounted price because of the incorrect mileage.

An investigator looked into Mr L's complaint and felt that Black Horse's offer was fair and reasonable in the circumstances. Mr L disagreed with the investigators recommendation, saying he wanted the option to purchase the car and asked for an ombudsman to review the case.

my provisional findings

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

Legislation – in this case is the Consumer Rights Act 2015 (CRA) – implies a term into the supply contract that the car must be of satisfactory quality and that it must meet any description given. As the supplier and finance provider, Black Horse is responsible for the quality and description of the car it provided under the agreement. In addition, section 56 of the Consumer Rights Act 1974 provides that Black Horse can also be held liable for what the dealership said about the goods and credit agreement, if what was said turns out to be incorrect.

was the car mis-sold/mis-described

Mr L has told us that when he went to view the car, he noticed a discrepancy between the mileage shown on the car odometer and what was stated on the advertisement for the car that he'd seen online. But Mr L says he was told that it was a mistake on the website advert and that the mileage recorded on the odometer was correct. So he went ahead with purchasing the car. I find his explanation as to what happened plausible.

However, it has since been identified that there is probably an issue with the accuracy of the odometer – and that it's possible the odometer has been tampered with. It appears questions about the accuracy of the odometer began in May 2018 (almost a year later) – while the car was in for assessment with a third party garage. Mr L has provided us with a job sheet from the third party garage and the invoice notes "mileage discrepancy is implausible".

From what I've seen Black Horse agree that there appears to be a problem with the odometer and it's accuracy – noting that it conflicts with the MOT history.

Mr L paid over £14,000 for a car he thought had travelled approximately 40,000 miles. In fact it is more likely that the car had travelled over 60,000 miles when he got it. All in all, I think it likely that the car had travelled a far greater distance than what was recorded on the odometer at the point it was supplied. And I think that this issue with the mileage is significant enough to mean that this car was probably mis-sold/mis-described in that the odometer reading was most likely to have been incorrect.

I know that Mr L has also raised concerns about problems he's had with the car, around the burning smell and the EML illuminating. But I don't need to make a finding on this, in light of my findings above, and in any event, it seems these problems have been repaired to Mr L's satisfaction.

what is the appropriate remedy here

I note that Black Horse has already offered Mr L the option to give back the car, which is what he originally requested as resolution to his complaint.

Mr L now wants to buy the car at a reduced price, rather than to give it back. I don't think this is an unreasonable request, taking relevant legislation into account and especially as Mr L's explained that he's put a lot of time and money into the car while he's had it.

So I've gone on to think about what would be a fair reduction. The cash price attached to the car when Mr L got it was around £14,610 and I think it likely this would have been set with the incorrect lower mileage in mind. It isn't clear what the actual mileage of the car was at that time, but it seems likely it was significantly higher and I think this would mean that the car was worth less than Mr L paid for it.

There is no perfect formula in deciding what a fair reduction should be. Having considered everything including the original purchase price of the car, age, make and so on, as well as considering valuations of the car based on differing mileage, I think a reduction of £1,000 to be deducted from an early settlement figure is reasonable in the circumstances.

In August 2018 Black Horse quoted a settlement figure of approximately £8,200, but that was only valid until 29 September 2018. So they'll need to generate an up-to-date settlement figure for Mr L and then reduce it by £1,000.

Black Horse have raised a concern about their future liability if Mr L accepts the price reduction and the car develops further faults or there are other issues. Their liability, save for any issues relating to the incorrect odometer, isn't necessarily extinguished by Mr L settling the agreement in line with my proposed decision. It is difficult to predict, what, if any future issues might arise, but this service could potentially consider a future complaint about issues that flow from Black Horses liability as the finance provider and that haven't already been addressed by this decision. Consideration of any future complaint would of course need to take account of what has happened so far.

I appreciate that Mr L may not be happy with the reduction I've decided is fair. So I think it's reasonable for him to have the option of choosing the original offer from Black Horse as an alternative.

Black Horse had already offered to pay Mr L £350 for the trouble and inconvenience caused. And regardless of which option Mr L chooses to take, I think it's reasonable for this award to still be paid.

So my provisional decision is to allow Mr L to return the car on the terms that Black Horse has already offered. Or to purchase the car based on the recommendation I've made below.

my provisional decision

My provisional decision is that I uphold this complaint. I intend to ask Black Horse Limited to:

1. Provide Mr L with a £1,000 price reduction to be deducted from an up-to-date settlement figure and to be made available to Mr L for 28 days from the date that this decision is accepted. Black Horse should also pay Mr L £350 in compensation (if it hasn't already made this payment to Mr L)
2. OR if Mr L chooses:
 - collect the car and end the agreement with nothing further to pay
 - refund the deposit of £4,130 and pay 8% simple interest from the date of payment until the date of settlement*
 - pay £350 compensation for the distress and inconvenience caused (if it hasn't already made this payment to Mr L)

* HM Revenue & Customs requires Black Horse Limited to take off tax from this interest. Black Horse Limited must give Mr L a certificate showing how much tax it's taken off if he asks for one.

Lisa Lowe
ombudsman