

## The complaint

Mrs L is unhappy that Black Horse Limited didn't correctly account for a deposit when they supplied her with a car under a hire purchase agreement.

## What happened

On 31 May 2022, Mrs L was supplied with a used car through a hire purchase agreement with Black Horse. The cash price of the car was £19,490 and the agreement shows she paid a £1,989.60 deposit. Black Horse financed the £17,500.40 difference over 49 months, with 48 monthly repayments of £290.38, and a final payment of £7,350.

Mrs L wasn't happy with the car she was supplied with. She says she wanted an automatic, but the car supplied was a semi-automatic, something she was unaware of at the point of supply, as she never test drove the car. She complained to the supplying dealership about this, and they agreed to take the car back, settling the finance with Black Horse. The settlement value was £18,493.64, and Mrs L says the dealership then sold the car for £19,450 – almost exactly what she paid for it.

The dealership provided Mrs L with a replacement used car, also financed through a hire purchase agreement with Black Horse. The invoice for this car, signed by Mrs L on 7 July 2022, shows the agreed purchase price of the car was £13,094. The second agreement doesn't show that Mrs L paid any deposit, but this agreement was for £12,500 over 60 months, with monthly payments of £262.38.

After receiving her first annual statement, Mrs L complained to Black Horse that the £2,000 deposit she paid in May 2022, when she was supplied with the first car, hadn't been applied to the second agreement. Black Horse responded to this complaint on 19 July 2023, saying there was no evidence to suggest she paid a £2,000 deposit towards the second car, nor was there anything from the dealership to suggest this should've been included. So, they didn't uphold her complaint.

Unhappy with Black Horse's response, Mrs L brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, under section 56 of the Consumer Credit Act 1974 ('CCA'), the dealership was acting as an agent of Black Horse when arranging this finance, so we were able to consider this complaint against Black Horse.

However, the investigator said there was nothing to show that Mrs L paid any deposit towards the second car, nor that the deposit was carried over from the first agreement to the second. As such, they didn't think Black Horse had done anything wrong.

Mrs L didn't agree with the investigator's opinion. She referred to the invoice of 7 July 2022, showing a purchase price of £13,094, and said she "*presumed [this] was after the £2000 had been included ... at no point was it discussed with the dealership that the £2000 would NOT be used in the new agreement.*" Mrs L was also unhappy that the dealership sold the first car

for around £1,000 more than the settlement figure they paid Black Horse, and had she sold the car back to the dealership for £19,450, she would've received this £1,000.

The investigator explained why Mrs L's comments didn't change their mind, and Mrs L asked for an ombudsman to make a 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs L was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Although Mrs L has complained about the deposit not being applied to the second agreement, as there are two agreements that have a bearing on this complaint, I will be considering both within my decision. However, and while I appreciate why Mrs L is linking these two agreements together, they are separate financial transactions, and I will be dealing with them as such.

#### *the first agreement*

It's not disputed that Mrs L paid a £1,989.60 deposit as part of the first agreement, and when she was supplied with the first car. I've noted why Mrs L didn't think the car was suitable for her needs, and it had been mis-sold to her. I've also noted she handed back the car within the dealership's cooling-off period. However, there was no similar period relating to the first agreement.

The agreement Mrs L signed clearly stated *"if you withdraw, you must pay us the total amount of credit we are lending you for the Vehicle ... you must pay this amount without delay and within 30 days after giving notice of withdrawal."* So, there was no right for Mrs L to hand back the car and walk away from the deal, with a refund of her deposit and any payments she may have paid.

Mrs L agreed to hand back the car to the dealership, in exchange for them repaying the outstanding finance. The finance was repaid on 21 July 2022, in line with the terms Mrs L had agreed to. As this agreement to take back the car and repay the finance wasn't something linked to the dealership acting as a credit broker i.e., they weren't setting up a new finance arrangement relating to the first car, then section 56 of the CCA doesn't apply, and the dealership weren't acting as Black Horse when arranging to take back the car.

I've noted Mrs L's comments that the dealership sold the car for more than the settlement figure, and she feels she's entitled to this profit. However, I don't agree. Mrs L agreed to sell the car back to the dealership for the settlement value, not what she paid for it. And, if the dealership had sold the car for less than the settlement figure, then Mrs L wouldn't expect them to ask her to repay any shortfall. So, it follows that she's not entitled to any profit.

By taking back the car, and settling the agreement with Black Horse, this completed the first transaction.

### *the second agreement*

The first and second agreement were back-to-back transactions, Mrs L settled the first agreement and took out the second agreement. However, this doesn't mean they are the same, or linked, transactions; these are two completely separate agreements that just happen to involve the same parties – Mrs L, Black Horse, and the dealership acting as credit broker. As such, it doesn't follow that the component parts of the first agreement, in this case the deposit Mrs L paid, automatically become part of the second agreement.

Mrs L has said that she presumed the deposit she'd paid as part of the first agreement formed part of the second agreement, and no-one told her otherwise. While I wasn't party to these conversations, from what Mrs L has said, it's my understanding that she assumed this to be the case and therefore didn't ask.

Had she asked, then it's more likely than not that the dealership would've explained the deposit wasn't transferred, as it formed part of the settlement agreement. But, by not asking, or giving any other indication of what she assumed to be the case, the dealership didn't know to explain this to her. And they wouldn't necessarily have thought to do this, as the first agreement was separate to the second agreement.

Notwithstanding this, the invoice of 7 July 2022 shows the purchase price of the car was £13,094, whereas the second agreement shows this to be £12,500. If both of these documents are correct, then there is a difference of £594. While this is not the amount of the deposit Mrs L paid for the first agreement, it does indicate that some form of deposit was accounted for in the second agreement. But I've seen nothing to show me that this difference should've been the £1,989.60 Mrs L believes.

As such, and while I appreciate this will come as a disappointment to Mrs L, I'm satisfied that Black Horse haven't disregarded a deposit that should've been applied to the second agreement. So, I won't be asking them to do anything more.

### **My final decision**

For the reasons explained, I don't uphold Mrs L's complaint about Black Horse Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 11 April 2024.

Andrew Burford  
**Ombudsman**