

The complaint

Miss L is unhappy that a caravan supplied to her under a hire purchase agreement with Black Horse Limited was of an unsatisfactory quality.

What happened

On 21 March 2022, Miss L was supplied with a new caravan through a hire purchase agreement with Black Horse. She paid a deposit of £10,819.46 and the agreement was for £57,475.52 over 120 months; with monthly payments of £737.91.

Shortly after being supplied with the caravan, Miss L complained to Black Horse about a large number of issues with it. Following a repair, Black Horse didn't think there were any remaining faults that weren't snagging or minor cosmetic issues. So, they didn't uphold the complaint.

Miss L wasn't happy with this response, and she brought her complaint to the Financial Ombudsman Service for investigation.

An independent inspection took place on 5 May 2023. The inspector said there were still issues with the caravan. Because the caravan was brand new at the point of supply and given the purchase price and amount and length of the monthly payments, our investigator said she wouldn't expect Miss L to experience so many issues. The investigator also didn't agree that these were just 'snagging issues' as Black Horse had ascertained, especially with issues such as a non-working boiler.

As such, the investigator said the caravan wasn't of a satisfactory quality when it was supplied. The independent inspector had said that the issues with the caravan were something the supplying dealer would be expected to rectify. The supplying dealer had already attempted a repair on the caravan, and the independent inspector had confirmed these repairs had been unsuccessful, as issues still remained. So, the investigator said Miss L should now be allowed to reject the caravan. She also said that Black Horse should pay Miss L an additional £350 for the trouble and upset she'd been caused.

Miss L didn't agree with the investigator. She said this would leave her financially out of pocket and without a caravan. And what she wanted was what she paid for – a brand new caravan. Black Horse said replacing the caravan wasn't possible as they don't have fleets of caravans at their disposal, and any replacement would be reliant on the dealer having a suitable replacement in stock. This is something they have no control over.

Black Horse also said there was no evidence of any fault with the boiler, nor any evidence of any previous repair to it. They thought the issues with the trim and skirting were snagging issues that a dealer would be expected to sort out, and the investigator hadn't given sufficient weight to the independent inspector's report.

They said that caravans are hand-built leisure accommodation, and it's widely accepted that adjustments and rectification works are required – which is snagging – and these don't make the caravan of an unsatisfactory quality *“because a reasonable person should expect to*

have small adjustments and rectification completed on a new hand-built leisure accommodation product.” Black Horse said that the trim on the wardrobe was repaired on 19 July 2023, and the skirting in the toilet could be fixed if necessary.

Given this, Black Horse didn’t think that rejection was appropriate in the circumstances.

Because neither party agreed with the investigator, this matter has been passed to me 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. Miss L was supplied with a caravan under a hire purchase agreement. This is a regulated consumer credit agreement which means we’re able to investigate complaints about it.

The Consumer Rights Act 2015 (‘CRA’) says, amongst other things, that the caravan should’ve been of a satisfactory quality when supplied. And if it wasn’t, as the supplier of goods, Black Horse are responsible. What’s satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle’s history and its durability. Durability means that the components of the caravan must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it’s assumed the fault was present when the caravan was supplied, unless Black Horse can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it’s for Miss L to show it was present when the caravan was supplied.

So, if I thought the caravan was faulty when Miss L took possession of it, or that the caravan wasn’t sufficiently durable, and this made the caravan not of a satisfactory quality, it’d be fair and reasonable to ask Black Horse to put this right.

Before I address the faults with the caravan itself, I feel it would be helpful for me to refer to the relevant parts of the CRA. Section 9(3) says *“the quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods – (b) appearance and finish, (c) freedom from minor defects.”* Given this was a brand-new high value item, I think any reasonable person would expect the caravan to comply with sections 9(3)(b) and (c) of the CRA. However, I’ve also considered Black Horse’s comments about the hand-built nature of the product, and the reasonable expectation there would be minor snagging issues.

While I’m generally in agreement with Black Horse’s assessment on this, section 24(5) of the CRA says *“a consumer who has ... the right to reject may only exercise [this] and may only*

do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.” This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it’s not a single chance of repair for the dealer AND a single chance of repair for Black Horse – the first attempted repair is the single chance at repair. What’s more, if a different fault arises after a previous repair, even if those faults aren’t related, the single chance of repair has already happened – it’s not a single chance of repair per fault.

In the case of snagging, I’d expect this to be completed, so far as is reasonably possible, as a single repair. The CRA is clear that if the single chance at repair fails then Miss L has the right of rejection.

In this instance, it’s not disputed there were initially faults with the caravan, which Black Horse consider to be snagging. Nor is it disputed that the supplying dealership attempted to repair these issues when they were raised by Miss L. Which I consider to be the single chance of repair allowable under the CRA. As such, I’ll focus on what’s happened after this single chance at repair took place.

I’ve seen a copy of the independent inspector’s report for the inspection that took place on 5 May 2023. In this report, the inspector confirmed that previous repairs to the caravan had already taken place. The inspector also said there were still outstanding issues:

- *“the trim on the wardrobe door was coming away – replaced with smaller door so repair not adequate ... issue is present. It is cosmetic and will not affect the use of the caravan ... the dealer should replace this as a snagging issue”*
- *“wooden boiler carcass and fridge/freezer unit is starting to swell ... issue is present. However, it is cosmetic only and will not affect the use of the caravan ... the most likely cause is the in stepping of rain water through the door way ... the carcass piece will need to be replaced ... [this is] a characteristic of the design ... I would recommend a high and low vent is fitted to the partition between the fridge enclosure and the boiler cupboard. The owner may want to consider a domestic style high and low vent in the boiler cupboard door”*
- *“skirting in smaller toilet is off the wall-come away ... an issue is present. There is a gap between the wall and skirting board ... this is a cosmetic issue and has no effect on the use of the caravan. It is easily remedied with appropriate gap filler and should be treated as a snagging issue by the dealer”*

Based on this, I’m satisfied there are still outstanding issues with the caravan. This report also shows that the dealer’s attempts to fix the snagging issues had been unsuccessful.

In their comments on the investigator’s report, Black Horse provided an email update from the dealer. This confirmed that the wardrobe door had been repaired on 19 July 2023, and a replacement boiler carcass had been sent to the caravan park for fitting on 15 March 2023. The independent inspector’s report of 5 May 2023 showed this carcass hadn’t been fitted, and the dealer’s email made no reference to this fitting now having taken place. As such, it’s reasonable for me to conclude that this repair still hasn’t happened.

Finally, the dealer’s email says they have no record of any repair to the toilet skirting having taken place. What’s more, they make no reference to the inspector’s recommendation that vents need to be fitted to the partition between the fridge-freezer and boiler. So, it’s reasonable for me to assume that this work also hasn’t been completed.

Section 23 of the CRA states:

If the consumer requires the trader to repair or replace the goods, the trader must –

(a) do so within a reasonable time and without significant inconvenience to the consumer

I'm in agreement with Black Horse that the outstanding issues with the caravan could and should be classed as snagging issues. However, under sections 9(3)(b) and (c) of the CRA, these are still faults that make the caravan of an unsatisfactory quality. And they should've been fixed. And Black Horse have indicated that they should now be fixed.

However, what I consider important is that, while these issues can still be fixed, they haven't been, even following multiple attempts at repair. And I don't think it's fair that Miss L should be forced to suffer further attempts at repair, especially when section 24(5) of the CRA only gives the dealer/Black Horse a single chance at repair. And Miss L had made it clear she doesn't want further repair attempts to take place. It's also arguable that, by not arranging for the snagging issues to be completed for almost a year after the caravan was supplied to Miss L, Black Horse have also failed to comply with section 23(2)(a) of the CRA.

So, in these circumstances, I'm satisfied that Miss L should now be given the right to reject the caravan.

Putting things right

The independent inspector has confirmed that the issues were cosmetic snagging issues, and don't affect the ability to use the caravan. As such, I'm satisfied Miss L has been able to use the caravan and, because of this, I think it's only fair that she pays for this usage. So, I won't be asking Black Horse to refund any of the payments she's made.

However, it's clear that Miss L has been inconvenienced by having to arrange for the caravan to be repaired on more than one occasion, and by these repairs being unsuccessful. So, I think Black Horse should compensate her for this. The investigator had recommended Black Horse pay her £350, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Black Horse should:

- end the agreement with nothing more to pay;
- collect the caravan at no cost to Miss L;
- remove any adverse entries relating to this agreement from Miss L's credit file;
- refund the deposit Miss L paid (if any part of this deposit is made up of funds paid through a dealer contribution, Black Horse is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest on the refund, calculated from the date Miss L made the payment to the date of the refund[†]; and
- pay Miss L an additional £350 to compensate her for the trouble and inconvenience caused by being supplied with a caravan that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Black Horse to take off tax from this interest, Black Horse must give Miss L a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss L's complaint about Black Horse Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 27 February 2024.

Andrew Burford
Ombudsman