

The complaint

Mr R complains about the quality of a used car that was supplied through a hire purchase agreement with Black Horse Limited (BHL). Mr R is also unhappy with the level of service he received from them.

What happened

In November 2023, Mr R acquired a used car through a hire purchase agreement with BHL. The car was about seven years old and had travelled 75,970 miles when it was supplied. The cash price of the car was £13,300. Mr R paid a deposit of £152, so the total amount financed on this agreement was £13,148 payable over 60 months.

Mr R said on 2 January 2024 the engine management light came on putting the car into limp mode. Mr R said he brought his car into the dealership for them to repair, however when he collected it, he experienced the same problem as before. Mr R said he brought the car back to the dealership on 16 February 2024 and was told it couldn't be repaired until 14 March 2024.

On 13 March 2024 BHL issued their final response to the complaint which they upheld. In it BHL said they accepted full liability to support with the repairs, advising the dealership would cover those costs. They also agreed to pay Mr R £1,089.50 which was made up of refunds, compensation, and interest.

Mr R said his work has been impacted as he had to pay to use a work van, and he's also been paying the insurance for a vehicle he couldn't use. Mr R said he wants to reject the vehicle and end the agreement.

Unhappy with their decision, Mr R brought his complaint to our service for investigation. In an email dated 19 March 2024 Mr R said he was told the car wouldn't be fixed until 2 April 2024.

Mr R sent in copies of emails he received from the dealership confirming that the fault identified was the pressure sensor which they'd replaced and retested. Both parties confirmed in their submission that the following work was carried out:

- Manifold removed, cleaned and refitted
- Replaced EGR bypass control solenoid

BHL system notes say that Mr R accepted their final response outcome on 13 March 2024 as settlement for the complaint. BHL further advised that Mr R had collected the car on 22 March 2024. Considering the further delays to the repair, BHL revised their compensation to offer Mr R a further £112.32 for the loss of use which included 8% simple interest.

On 30 March 2024 Mr R emailed to say the sunroof on his car had stopped working.

Having reviewed all the information on file one of our investigators recommended that Mr R's complaint should be upheld. The investigator concluded that Mr R had requested rejection

after it had failed the initial repair, and that under the CRA Mr R should be afforded that opportunity.

Mr R responded to the investigator's view reiterating that he wanted to reject the car. BHL also responded to disagree with the investigator's view. BHL said they didn't think Mr R had the grounds to reject the car. They felt each issue was different and had been repaired which Mr R has accepted. So as the investigator's view remained unchanged, the case has been referred to me for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr R complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr R's complaint about BHL. BHL is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering 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 vehicle's history.

My starting point is that BHL supplied Mr R with a used vehicle that had travelled 75,970 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage which may impact its overall quality and reliability, so there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle.

Having said that, the car was priced at £13,300 which isn't insignificant. So, I think it is fair to say that a reasonable person would expect it could offer a reasonable duration without any major issues, for example, if it has been well maintained and serviced.

From the information provided I'm satisfied there was a fault with the car. This is apparent from the invoices dated in February 2024 which confirm a large build up of carbon in the manifold and an air leak which was rectified.

In their final response BHL confirmed they were upholding the complaint and accepted full liability to support the repairs under the CRA. The CRA also says (unless established otherwise) *'goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day'*.

Both parties are in agreement that the fault occurred within the first six months from supply. So, in the circumstances I don't see that the quality of the car at the point of supply is in dispute here. So, having considered the car was faulty and that it wasn't of satisfactory quality when it was supplied, I've considered what BHL should do to put things right.

In their final response BHL offered to pay Mr R £1,089.50. this was made up of:

- £830.76 for loss of use
- 8% interest added; and
- £250 compensation for the distress and inconvenience caused

In their file submission to our service BHL revised their offer to include an additional £112.32 to reflect a further nine days loss of use (inclusive of 8% interest) up to the 22 March 2024 when the car was returned to Mr R.

However, despite BHL advising that Mr R had accepted their initial offer, Mr R has told us that he wanted to reject the car and end the agreement. In their view the investigator recommended a rejection of the car, however I note Mr R has still rejected their recommendation. So, I think there may have been some confusion here.

Under the CRA, as the car wasn't of satisfactory quality when it was supplied, it means it didn't conform to the contract. However, as Mr R requested a rejection more than 30 days from supply, BHL has a right to repair it in the first instance. BHL carried out an initial repair in February 2024. However, following their repair Mr R reported further issues which were confirmed by BHL in their file submission and final response.

From the evidence provided I can see that Mr R requested a rejection of the car on 23 February 2024, this was recorded on BHL system notes. It was a few days after the first repair was carried out, however Mr R said he experienced further issues with it.

In their file submission BHL said they believe the two issues were separate aspects, however I'm satisfied that under the CRA the first repair was the dealership's opportunity to resolve any issues with the car. Particularly as the second issue occurred within a particularly short time after the first.

I acknowledge Mr R may have accepted the refund offered by BHL, but I don't see this as giving up his right to reject a car that has had to go in for repairs twice within the first six months from supply. I don't think it takes away his right to reject.

The CRA says a consumer who has the final right to reject may only do so in one of these situations:

(a) after one repair or one replacement, the goods do not conform to the contract.

Following the initial repair in February 2024, Mr R reported further issues which were confirmed by BHL and which they accepted liability for. Under the CRA, I'm satisfied that

following the first repair of the car, it still didn't conform to the contract because it was faulty. Under the CRA I'm satisfied that Mr R has the final right to reject it. So, I'll be instructing BHL to facilitate this outcome.

Given BHL has already refunded to Mr R for the loss of use and paid compensation, which I think fairly reflects the distress and inconvenience caused, I'll be instructing BHL to collect Mr R's car, end the agreement with nothing further to pay and to refund Mr R's deposit to him with 8% interest. And to ensure no adverse information exists on his credit file in relation to the agreement.

I acknowledge Mr R has also complained about having to pay for car insurance and the warranty. As Mr R had use of the car, and insurance is something that would have been required, I think it's reasonable to say that Mr R had the benefit of cover for a car he was using, although it was in for repairs the car is still required to have insurance cover on it.

The warranty was a choice Mr R opted for and a form of cover that he had the benefit of knowing was present (this is despite whether it may have been used or not). I've seen no evidence that the warranty was a mandatory condition of purchase. So, I don't think it'd be fair to ask BHL to reimburse this for him.

My final decision

To settle the complaint Black Horse Limited has already made an offer to pay Mr R £1,089.50 and an additional £112.32, which includes a refund for loss of use, 8% added interest and compensation for the inconvenience caused.

However, as I uphold this complaint, I also instruct Black Horse Limited to facilitate a rejection of the car for Mr R. So, in addition to what has already been offered, I instruct Black Horse Limited to:

- collect the car at no additional cost to Mr R
- end the hire purchase agreement with nothing further to pay
- refund the deposit Mr R paid (if any part of this deposit is made up of funds paid through a dealer contribution, Black Horse Limited is entitled to retain that proportion of the deposit) and pay 8% yearly simple interest calculated from the date of payment to the date of settlement.
- remove any adverse information that may have been recorded with the credit reference agencies in respect of the damage.

If Black Horse Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 June 2024.

Benjamin John
Ombudsman