

The complaint

Mrs H has complained about the quality of a car she acquired under a hire purchase agreement with Black Horse Ltd trading as Land Rover Financial Services. She's also unhappy with the affordability checks that were carried out when she took out the agreement.

What happened

In April 2019 Mrs H acquired a used car under a four-year hire purchase agreement with Black Horse. The car was a year old and had covered around 8,000 miles. The car cost around £37,000 and Mrs H paid a deposit of around £2,500. Monthly payments were around £600 per month and there was a final payment of around £16,000.

Around nine months after acquiring the car Mrs H raised a quality dispute because smoke was coming from the exhaust. Mrs H took the car back to the dealer and it traced the fault to a turbo charger and replaced it, which cost around £2,000. The dealer also said further damage may have occurred due to the lack of servicing and that Mrs H had been made aware. The mileage at this point was around 30,500.

When Mrs H collected the car she quickly saw the engine management light had come on so she contacted the dealer again, and it informed her the car needed a new engine.

Mrs H complained to the dealer and Black Horse. Black Horse arranged an independent inspection that said the failure was caused by a lack of servicing and there was no evidence the fault was present or developing at the point of supply. Black Horse therefore didn't uphold the complaint. It said Mrs H had covered over 22,000 miles in nine months and that she'd not serviced the car in line with the manufacturer guidelines. Black Horse said a service was due around 10,500 miles prior to the failure.

Mrs H took her complaint against the dealer to another alternative dispute resolution (ADR) scheme that didn't uphold her complaint. It said the evidence suggests the turbo and engine failed because of a lack of servicing and not because of an inherent fault.

Mrs H raised another complaint with Black Horse in May 2022. Black Horse noted Mrs H said the root cause of the faults was an oil leak. And that the car was returned without an engine rebuild. She also raised concerns about falsification of her income by the dealer to get the finance approved. She's questioned the affordability checks that were carried out, and that if her income hadn't been inflated, she wouldn't have been granted the finance agreement.

Black Horse sent a further final response to say there was no evidence an oil leak that Mrs H reported was caused by the dealer or was present at the point of supply. It also didn't uphold a complaint about the car being delivered back without an engine rebuild because it says the engine was stripped for inspection and put back in the car when it was delivered back. It also said Mrs H received a copy of the agreement and signed it. It said if she was unhappy with any of the terms she wasn't obligated to proceed. It said Mrs H supplied the income and expenditure which was applied in order to complete the affordability checks. It said it carried

out checks with the credit reference agencies before granting the finance. It didn't uphold the complaint, and Mrs H referred it to our service to consider.

Our investigator looked into things but didn't make any recommendations. She didn't think there was enough evidence the car wasn't of satisfactory quality. She noted Mrs H had said her son carried out the pre-sales process and liaised with the dealer. And that she'd not seen enough evidence of Mrs H's income so she couldn't conclude the salary had been inflated by the dealer.

Mrs H didn't agree. She said she'd sent in evidence of her bank statements and that she'd supply more information. She said her income had been falsified and that the car possibly had an oil leak when it was supplied which caused the knock-on problems. Or that they were caused by the dealer. Mrs H supplied a copy of her P60 for the tax year to 5 April 2020.

As things couldn't be resolved, the complaint was passed to me to make a decision. I requested further evidence through our investigator. We asked Mrs H to supply us a copy of her full credit file, three months bank statements leading up to the Black Horse agreement for all the accounts she used and details of her income and expenditure. This is so we could establish Mrs H's financial situation at the time she entered into the agreement, because she'd indicated she wouldn't have been able to afford the agreement had the dealer not inflated her salary – implying Black Horse shouldn't have lent to her.

Mrs H said she'd not be able to send her credit file, but she found a couple of statements for joint accounts she held. Mrs H sent a statement for one account from November 2018 to February 2019. And from another account which looks like it's from February to March 2018. The copies of the statements we've been sent aren't very clear.

I issued a provisional decision that said:

I want to acknowledge 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'm required to decide matters quickly and with minimum formality. But I want to assure Mrs H and Black Horse that I've reviewed everything on file. And 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'm conscious that Mrs H had six months to refer her complaint to our service off the back of Black Horse's final response letter that it sent in August 2020. Mrs H referred her complaint to our service in June 2022 off the back of another final response letter Black Horse sent that month.

It looks like Black Horse reinvestigated Mrs H's complaint about the quality of the car because of further evidence from Mrs H. She also raised new points that had not been considered before. For the avoidance of doubt, and given it looks like Black Horse reinvestigated the matter, I intend to say the complaint about the quality of goods was brought in time because it was reinvestigated due to the new evidence, and that the other complaints about the delivery back of the car and the affordability can also be considered under this complaint. If Black Horse disagrees with any of this, it should let me know in response to this provisional decision.

Quality of goods

Mrs H didn't offer substantive responses to our investigator's view on the quality of the car. But for completeness, I've thought about this part of the complaint.

Mrs H acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mrs H entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. Black Horse is the “trader” for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of delivery.

In Mrs H’s case, the car supplied was used and had covered around 8,000 miles. There’d be different expectations than if it was a brand-new car. But it’s worth pointing out Mrs H paid around £37,000 and the car was only a year old. I don’t think she’d have expected it to have any major issues shortly after acquiring it.

I think there’s enough evidence to demonstrate there are faults with the car. It required a new turbo and, as I understand it, a new engine. But like our investigator found, I simply don’t have enough evidence the faults were present or developing at the point of supply.

It’s important to note the only independent evidence I have, by way of the independent report, says that in the technician’s opinion the engine failure was caused by a lack of servicing. And there’s no evidence to suggest that this fault was present or developing at the point of sale. Similarly, I’ve got no evidence to demonstrate the fault with the turbo was because of an inherent problem or that the engine fault was linked to work carried out by the dealer.

I agree with our investigator that it’s relevant Mrs H was able to cover over 20,000 miles before the faults manifested. While I appreciate Mrs H’s comments that cars can drive on slow oil leaks for a long time, I’ve simply not been shown any evidence to suggest the engine failure (or turbo fault) was caused by an oil leak that was present or developing at the point of supply. I don’t find there’s sufficient evidence to show the car wasn’t of satisfactory quality.

I’ve also thought about the comments about the car not being serviced. It seems likely this is the cause of the faults. I understand the car needs to be serviced every two years or 20,000 miles – whichever comes sooner. I’ve not seen anything to indicate Mrs H had been told the car was serviced prior to her acquiring it, or that she’d not need to service it. The hire purchase agreement sets out Mrs H was required to service the car in accordance with the manufacturer’s recommendations.

Therefore, taking all this into account, there aren’t grounds to say the car wasn’t of satisfactory quality when it was supplied, or that Mrs H has been misled in some way regarding the servicing of it.

Car returned without a rebuilt engine

Black Horse didn’t uphold this part of Mrs H’s complaint because the dealer said it stripped the engine and the engine was put back in the car when it was returned. I understand Black Horse paid for this. I’m not sure exactly what happened when the car was returned. And we’ve not been given supporting evidence from Mrs H. But given I’ve not found there

was a breach of contract with regards to the quality of the car, I don't consider I've got the grounds to direct Black Horse to do anything in relation to this in any event.

Affordability

I've also thought about Mrs H's complaint about the affordability checks that were carried out and the way the agreement was brokered. We've explained how we consider complaints about unaffordable lending on our website. I've thought about this approach when deciding this part of Mrs H's complaint.

Mrs H said her son spoke to the salesperson at the dealer when applying for the agreement. She says the only time she went into the dealer was to sign the contract. She says she thought her income was approximately £24,000 but the salesperson had inflated it to help get the finance agreed. Mrs H also says she didn't supply any payslips.

Black Horse says it was supplied an income for Mrs H of £44,000. But Mrs H says this was incorrect. The acquisition happened quite a few years ago so it's going to be difficult to reach firm conclusions about what was discussed at the time. I'm conscious that some of the negotiations happened between Mrs H's son and the dealer so Mrs H wasn't involved. But I'm also mindful Mrs H has raised a complaint about the affordability of the agreement. So I think it's sensible to focus on that, because it's directly linked to the declared income.

Our investigator didn't think about the affordability aspect of the complaint because Black Horse didn't substantively refer to it in its final response. But given Mrs H has raised an affordability aspect with Black Horse, I think I ought to consider it.

Black Horse was required to make sure, via its lending decision, that Mrs H could sustainably repay the borrowing. The checks that Black Horse were required to carry out had to be 'borrower focused'. So instead of seeing how statistically likely Mrs H was to repay the borrowing, it needed to assess whether she could sustainably repay the borrowing, taking into account her personal circumstances. And it needed to base its creditworthiness assessment on sufficient information.

What is considered proportionate will depend on a number of factors such as (but not limited to): the type, amount and duration of the credit; the frequency and size of the repayments; the total amount payable and total charge for credit; the interest rate and any other costs which may be payable; any other potential adverse consequences for the customer arising from a failure to make payment.

In this case, if she wanted to keep the car, Mrs H was asked to pay back over £45,000 over four years with payments of around £600 – a significant commitment over a moderate term.

Black Horse has said it was advised Mrs H had a disposable income of nearly £1,700 and that it carried out credit checks. It's shown us details of the checks it carried out. I'd like to have more information about what certain information on the checks mean before saying whether I felt Black Horse's checks were proportionate. But the problem I have is that even if I were to say Black Horse's checks weren't proportionate, I don't have sufficient evidence to decide what proportionate checks would have found – and therefore whether the agreement was affordable.

Mrs H has been unable to supply copies of all her bank statements leading up to taking out the agreement for all the accounts she was using. She's also not supplied a copy of her credit file. I appreciate different checks show different things and that Black Horse may have chosen to look at something else, but I think the statements and credit file would be fair for me to consider when weighing up Mrs H's financial circumstances at the time she entered

into the agreement. Without bank statements, a credit file, or other supporting evidence, I don't find I have the grounds to say that Black Horse acted unfairly by granting finance to Mrs H. And this would be the same whether or not the income was recorded incorrectly. Therefore, for the reasons given above, I don't think there's enough evidence to show the car was of unsatisfactory quality when it was supplied. I don't think Black Horse needs to take action in relation to the engine. And I don't consider there's sufficient evidence to say Black Horse acted unfairly by granting the finance.

Black Horse hasn't supplied anything further, but Mrs H did. In summary, she says:

- The engine was disconnected so it was wrong to say it was attached. The dealer wasn't paid to reconnect it.
- She'd sent copies of the correct bank statements which were from 2019, not 2018.
- She never said her income was £44,000 – this was done by the salesperson. She questions where the evidence was that it wasn't altered. Her income was around £24,000.
- The car had repairs carried out to the diesel particulate filter (DPF) without her being consulted. And that it was returned as fixed when it wasn't.
- The garage shouldn't have taken money from her for a repair that wasn't going to work.
- There was an oil leak and that the service wasn't due until May 2020. The car should have had an oil change before it was supplied, or she should have been better informed.
- She was unable to supply a copy of her credit file.

Mrs H did supply some further bank statements. She says one set of statements shows her husband's income and outgoings. And that another statement shows her income and outgoings aside from a job she was paid in cash – but that is shown on the P45.

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.

I want to thank Mrs H for supplying further evidence, which I've considered. I do empathise with the situation. And I can understand she must be really frustrated to have spent so much money on a car that wasn't very old, and it's developed such significant problems. I can't imagine how she must have felt receiving the car back after having the turbo repaired only to find out there were still major problems with it.

However, what I have to bear in mind is that I'm considering a complaint against Black Horse. And I need to think about its responsibilities as a provider of financial services. I'm not considering a complaint against the dealer.

As the supplier of the car under the hire purchase agreement, Black Horse is responsible for a complaint about its quality. But for the reasons given in my provisional decision I've not seen enough to demonstrate there's a breach of contract in relation to the implied terms about the car's quality. I take on board Mrs H has said the car had repairs carried out to the DPF and that she tells us it was returned as fixed when it wasn't. Moreover, Mrs H said the engine wasn't reconnected more recently. But I don't have sufficient evidence the faults were as a result of the car not being of satisfactory quality. If I could make a finding the faults were as a result of the car not being of satisfactory quality, I could say there was a breach of contract and that Black Horse needed to take ownership to put things right. But without being able to establish there's a breach of contract, I don't find I have the grounds to do that.

The evidence I've seen indicates the faults were as a result of the car not being serviced properly. Mrs H has said the service wasn't due until May 2020, but I understand the car needs to be serviced every two years or 20,000 miles – whichever is sooner. So given the car had around 30,000 miles on the odometer, and it hadn't been serviced I don't think it was serviced in line with the guidelines. I've not seen anything to demonstrate Mrs H was misled about those requirements, or that she was misled about the service history of the car.

Black Horse has said it paid the dealer £1,690 for the strip down of the engine. And it paid to have the car put back together again to be delivered back to Mrs H. It says it didn't agree any repairs as the complaint wasn't upheld. It's provided evidence it asked Mrs H for evidence an oil leak was present or developing at the point of supply. Based on what I've seen, I think Black Horse acted fairly. It's taken the steps to pay to have the car inspected when it could have asked Mrs H herself to evidence the faults were inherent. It says it's paid to have the engine reassembled (although not to a working order because it doesn't have liability). So if there's any problems in relation to that – Mrs H may wish to speak to the dealer, or ultimately to Black Horse again. But I don't consider Black Horse needs to do more in relation to the quality of the car than it's already done.

With regards to the affordability, I still don't consider I've been supplied sufficient evidence the agreement was unaffordable. Mrs H says the evidence supplied shows the income for her and her husband. I've been shown three months for a joint account. Payments in and out the account both total over £23,000 for the three months. Mrs H has also provided a few months of her own statements. But I've not seen a copy of her credit file. I can see a significant number of transfers from Mrs H's husband's account which I have no further details of. Without sufficient evidence of Mrs H's full financial circumstances it wouldn't be fair to say the agreement was unaffordable. I've set out in my provisional decision that there's a lack of evidence as well about what happened when the agreement was brokered. Even if I were to make the finding Mrs H's income was input incorrectly, I still can't safely conclude the agreement wasn't affordable.

Therefore, while I sympathise with the situation, I'm not going to direct Black Horse to take any further action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 16 August 2023.

Simon Wingfield
Ombudsman