DRN-4341447

The complaint

Mr S complains about the deduction for use that Black Horse Limited, trading as Land Rover Financial Services ("LRFS"), charged him when it took back a faulty vehicle he had rejected.

What happened

In March 2021 Mr S acquired a vehicle under a personal contract purchase agreement with LRFS. The vehicle turned out not to be of satisfactory quality, and Mr S exercised his statutory right to reject it. In February 2023 LRFS accepted that he was entitled to reject the vehicle, and agreed to refund his deposit and monthly payments, less a deduction for use which was calculated based on a mileage of 20,000 miles. But when the vehicle was returned, it turned out that the mileage was almost 24,000 miles, so LRFS recalculated the deduction, increasing it by over £800. Mr S brought this complaint to our service. He said that LRFS should have honoured its original offer.

Our investigator upheld this complaint. He thought that it had been unfair of LRFS to charge Mr S for using a vehicle which he said was "unfit for purpose." He added as an aside (and not as the reason for his decision) that LRFS had charged Mr S a deduction for use of 45p a mile, when his agreement said that the charge would only be 14p a mile. But he said that did not affect the outcome, as he thought that LRFS should not have charged Mr S anything after 20,000 miles.

LRFS did not accept that opinion. It argued that Mr S had not accepted its offer right away but instead had carried on driving the vehicle, and so he had thereby increased its mileage. It pointed out that its offer letter had warned him that the deduction would change if the mileage changed. It suggested that Mr S's figure of 20,000 miles had probably been wrong in the first place, as it was unlikely that he had really driven another 4,000 miles in the short time since the offer was made. It said the charge of 14p a mile does not apply when a vehicle is rejected; this is only the charge when a vehicle is returned at the end of the hire period. LRFS asked for an ombudsman to review this case.

I wrote a provisional decision which read as follows.

What I've provisionally 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 am minded to depart from my colleague's findings, and to endorse LRFS's recalculated offer. I will explain why.

My starting point is that Parliament has decided that when goods are rejected because they do not confirm to the contract for hire or sale, it is fair for the trader to make a deduction from any sums refunded to reflect the use the consumer had of the goods while he had them. Section 24(8) of the Consumer Rights Act 2015 says:

> "If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered…"

The Financial Ombudsman Service's usual approach in cases such as this is generally to find that traders are entitled to rely on this provision. We can however depart from what the law says if we think it is fair and reasonable to do so, provided that we give reasons.

In this case, as I've said, our investigator thought it was fair to hold LRFS to its original offer, which was based on 20,000 miles, and not to charge Mr S for any use beyond that. His reason was that the car was not fit for purpose between the time Mr S said he wanted to reject the car and when he returned it. The investigator decided that the value of the car was likely to be affected by its faulty condition much more than by its mileage, so it wasn't fair for LRFS to charge him for the increased mileage during this period. However, I disagree, mainly because section 24(8) only applies specifically where goods are being rejected precisely because they are unfit for purpose or of unsatisfactory condition. Therefore my colleague's reasoning would apply in every case where section 24(8) applies, and not just in Mr S's case. I think that departing from what the law says on this subject should require a more specific reason than that.

That is my main reason for deciding that it was not unfair of LRFS to make a deduction for use from the refunded payments. But I also think that the distance driven during the relevant period is not insignificant. During this time, Mr S had continued to drive the car, since he did not have another car and he needed to go on an important business trip. Assuming that the original mileage figure of 20,000 was correct, this means Mr S drove the car for another 3,809 miles during this time. I think that LRFS was entitled to adjust its offer to reflect the updated mileage, and it had said it would do so in its offer letter.

I agree with LRFS that the rate of 14p per mile is not intended for the scenario of a car being rejected during the hire period, but only relates to when the contractual hire period comes to its end.

Taking all of this into account, I am satisfied that LRFS has not treated Mr S unfairly.

There is one other issue. In his complaint form, Mr S told us that he was also promised a further refund of £494.51 but that he didn't get it. It is not clear from the evidence I have seen what this sum relates to, but I have seen an email from the dealer to Mr S, dated 12 September 2022, which says that it has paid £484 into his account, and in Mr S's subsequent emails to the dealer he did not say that he had not received it. That sum was not deducted from LRFS's refunds (the offer letter sets out how the offer was calculated, and this sum was not part of the dealer's £1,289 gesture of good will which was set off there). So it looks as though he has received the money he was expecting to get.

My provisional decision is that I do not intend to uphold this complaint.

Responses to my provisional decision

Mr S was extremely dissatisfied with my decision. He said it was factually wrong, irrelevant, and convoluted. He did not elaborate on which parts were irrelevant or wrong. He said he assumed I must be so frightened of LRFS that I did not wish to go against them.

LRFS accepted my provisional decision and had nothing to add.

My findings

I would like to assure Mr S that I reached my provisional findings based solely on the merits of this case as I saw them, and for no other reason. He may (or may not) be reassured by the fact that a search of our public database of decisions on our website shows that I have previously upheld four cases against Black Horse Limited, most recently in May this year.[1]

Since Mr S said that what I wrote was irrelevant, I have checked his complaint form again to remind myself of what he was complaining about. I am satisfied that the essence of his complaint was about not receiving the difference between what LRFS refunded him and how much he had expected to be refunded. He had expected to be refunded £10,901.26, which he told us consisted of £10,406.75, plus an additional "service refund" of £494.51. On a further review of the evidence, I can see that the latter refund was for a service which was carried out in January 2023; it therefore cannot be the £484 which the dealer refunded to him in September 2022. I apologise for overlooking this earlier.

I have therefore looked again at LRFS's offer letter dated 6 February 2023. It says LRFS will pay Mr S £10,406.75, close his account, and update his credit file. It gives a breakdown of how the figure of £10,406.75 was arrived at: a refund of his deposit and monthly payments, minus a deduction for use charged at 45p a mile (based on 20,000 miles), plus interest, minus income tax on interest, plus £300 for inconvenience. It doesn't say LRFS would pay him anything else.

The £494.51 service refund was not mentioned in LRFS's offer. I have still considered whether I should tell LRFS to refund it anyway. But I don't think that would be fair. The usual approach when defective goods are rejected is to put the parties back in the financial position they would have been in if the goods had not been sold. In that case, Mr S would no doubt have bought some other vehicle, and he would have had to pay for that to be serviced instead. So it's not really an expense he would not have incurred but for the faults with the vehicle. I'm therefore satisfied that LRFS resolved his complaint fairly.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 November 2023.

Richard Wood
Ombudsman

[1] https://www.financial-ombudsman.org.uk/decisions-case-studies/ombudsman-decisions/search?Keyword=%22richard+wood%22&BusinessName=%22black+horse%22&Business=%22black+horse%22&IsUpheld%5B1%5D=1&Sort=relevance