

## **The complaint**

Mrs N complains about the refund she is due, in relation to car that was supplied through a hire purchase agreement with Black Horse Limited trading as Land Rover Financial Services (BHL).

## **What happened**

In November 2022 Mrs N acquired a used car from BHL with a hire purchase agreement. The cash price of the car was £34,049. The hire purchase agreement shows Mrs N paid a deposit of £2,426.77. So, the total amount financed on the agreement was £31,622.23 payable over 48 monthly repayments of £542.03, and a final repayment of £14,759.

In March 2023 Mrs N complained to BHL about several issues she was experiencing with the car. Mrs N said she wanted to reject the car. In April 2023 BHL issued their final response upholding Mrs N's complaint. To make things right BHL said they'd arrange for a refund of £4,099.36 which included, any payments she'd made towards her agreement and her deposit, less any charge for usage.

BHL provided a breakdown of the refund which included a deposit refund of £2,426.77.

Unhappy with their decision, Mrs N brought her complaint to our service for investigation. BHL provided our investigator with a copy of the sales invoice which confirmed that Mrs C made a part payment of £7,000. It also showed that she part exchanged a vehicle that had existing finance on it. The part exchanged vehicle was valued at £15,250 and had a finance settlement balance of £19,823.

Having looked into all the information on file, our investigator recommended that Mrs N's complaint should not be upheld. Our investigator concluded that although Mrs N had made a payment of £7,000, a significant amount of it was used to offset some negative equity from the part exchanged vehicle, so found BHL's actions in the circumstances to be fair.

BHL accepted this recommendation. Mrs N didn't. She said she believed the whole amount was being put towards the car as a deposit. However, as our investigator's view remained unchanged, Mrs N asked that her complaint be referred to an ombudsman 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.

The agreement in this case is a regulated hire purchase agreement. As such, this service is able to consider complaints relating to it.

Mrs N's concern appears to be that she was told her deposit was £7,000, and expects a full refund of it, given her car is being rejected due to it being of unsatisfactory quality. Mrs N has referred to emails where she was told her deposit was £7,000 and says the documentation she was given didn't show a breakdown of the deposit or give details of her part exchange.

The financial Conduct Authority (FCA) have set out 11 principles for business, which are considered as fundamental obligations. The principles can be found within the FCA handbook. Principle seven says:

*"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading".*

Mrs N says she was led to believe she'd paid a deposit of £7,000 which she should receive as a refund as her deposit was to be returned to her. So, I've considered whether BHL were clear in how they communicated the deposit amount to Mrs N.

Mrs N provided us with a copy of an email (dated October 2022) she received from the dealership. In it the dealership advises: *"we have also changed your figures showing a total deposit of £7,000"*. On 3 July 2023, Mrs N also provided us with a copy of the vehicle order form which showed the balance due from Mrs N for the car was £7,000. BHL also provided us with a copy of the vehicle order form and the sales invoice for the car, as well as the hire purchase agreement. So, I've looked at these point-of-sale documents which should be clear about the transaction related to the supply of the car and what Mrs N was required to pay.

The sales invoice and the vehicle order form both include a breakdown of the costs. This is in section 4 of the vehicle order form and under the statement summary on the sales invoice.

Both documents state the total price as £34,049, the part exchanged value as £15,250 and the finance settlement on the part exchanged car as £19,823.23. So, it's clear from the documents that Mrs N's part exchanged car was valued at an amount that was less than the finance attached to it, which means it was in negative equity by £4,573.23.

I acknowledge the documents don't have the negative amount recorded on them, however I'm satisfied from what I've seen that they are reasonably transparent to show that the existing finance on the car being part exchanged, was more than its value.

The documents also show that Mrs N was making a payment of £7,000 towards the transaction. On the sales invoice it's noted as *"part payment received"*, and on the vehicle order form it's noted as *"balance due from customer"*.

On the finance agreement the deposit amount is recorded as £2,426.77 and the total amount being financed as £31,622.23. On the sales invoice this is recorded as the *"net total due"*. On the vehicle order form, it's recorded as *"balance to finance"*.

The deposit amount of £2,426.77 is noted on the front page of the hire purchase agreement which Mrs N had signed. I also can see that Mrs N signed a copy of the vehicle order form and so would have seen that her existing car was in negative equity.

I'm satisfied that the breakdown of information on the point-of-sale document was clear and transparent enough for Mrs N to know that her existing car was in negative equity by £4,573.23 which had been transferred to her contribution of £7,000.

I acknowledge Mrs N was told in an email her total deposit was £7,000, however the point-of-sale documents, which form the contract between Mrs N and BHL, do not refer to the £7,000 as a deposit. As the car was being rejected, Mrs N hasn't specifically said whether she expected BHL to absorb the £4,573.23. However, I'm satisfied that expecting BHL to do so would be unreasonable and unfair in the circumstances.

As BHL took on the existing debt from Mrs N's car, I think it's reasonable that they deducted the amount of negative equity (£4,573.23) leaving a deposit amount of £2,426.77.

All things considered, I recognise Mrs N made a payment contribution of £7,000 which she believed to be a deposit, and I acknowledge she may not have had a conversation with BHL about how those funds were going to be used, however I'm satisfied it was applied to the agreement to offset the negative equity that was owed by Mrs N, which allowed her to acquire the car at the monthly rate that she got it for.

As I've concluded that BHL acted fairly by refunding the deposit amount of £2,426.77, I don't require BHL to take any action in respect of this complaint.

### **My final decision**

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mrs N's complaint about Black Horse Limited trading as Land Rover Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 9 November 2023.

Benjamin John  
**Ombudsman**