

The complaint

Mrs D is unhappy that a car supplied to her under a hire purchase agreement with Black Horse Limited trading as Land Rover Financial Services ('LRFS') was of an unsatisfactory quality.

Mrs D has been represented during the claim and complaint process by Mr D. For ease of reference, I will refer to any comments made, or any action taken, by either Mrs D or Mr D as "Mrs D" throughout the decision.

What happened

In June 2022, Mrs D was supplied with a used car through a hire purchase agreement with LRFS. She paid a deposit of £996.72, and the agreement was for £102,170.63 over 48 months; with 47 monthly payments of £1,909.75 and a final payment of £38,697. At the time of supply, the car was just over one year old, and had done 14,782 miles.

Mrs D experienced problems with the car, and it went back to the supplying dealership several times for repair. She says that, on each occasion, the car was returned to her with some faults not fixed. The car went back for repairs to the seats on 18 April 2023, where it remains. However, Mrs D has been provided with a courtesy car during all periods of repair.

Unhappy with the delays in the repair to the seats, resulting from parts not being available, Mrs D complained to LRFS. LRFS upheld this complaint on 10 October 2023, offering to pay £2,861.33 compensation for the trouble and inconvenience Mrs D had suffered. This compensation was to cover the period 18 April to 31 October 2023 and LRFS said that, if the repair was delayed longer than 31 October 2023, they would calculate further compensation for the period until Mrs D was given the car back.

Mrs D wasn't happy with LRFS's response, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was an ongoing fault with the car, caused by a lack of reasonable durability, and this made the car of an unsatisfactory quality. Due to the delays in the car being repaired, the investigator said that Mrs D should now be allowed to reject it.

The investigator recommended that LRFS end the agreement; collect both the car and courtesy car; refund Mrs D 20% of all the payments she'd made; and pay her an additional £500 for the distress and inconvenience she'd been caused.

Mrs D agreed with the investigator, but LRFS made several requests to be given more time for them to respond. Despite having had since 13 January 2024, LRFS haven't responded to the investigator's view. However, Mrs D has said LRFS have now told her the car has been repaired and is ready for collection – something she doesn't want to do, and she still wants to reject the car.

Given this, 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. Mrs D was supplied with a car 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 car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, LRFS 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 car 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 car was supplied, unless LRFS can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mrs D to show it was present when the car was supplied.

So, if I thought the car was faulty when Mrs D took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask LRFS to put this right.

In this instance, it's not disputed there was a problem with the seats on the car that was supplied, nor that this fault means the car isn't sufficiently durable as no reasonable person would expect the seats to fail on a car that cost over £100,000, after just a year. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think LRFS should do to put things right.

Putting things right

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 conform 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 dealership AND a single chance of repair for LRFS – 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.

It's not disputed that repairs were attempted on the car, on a number of occasions, before 18 April 2023 – the last time Mrs D was in possession of the car. As I've already said, it's also not disputed that the car still has a fault. Given this, I'm satisfied the single chance of repair

has been taken, and the attempted repair was unsuccessful. So, under section 24(5) of the CRA, Mrs D now has the right to reject.

I've also noted that 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*

Given that the car went in for repair in April 2023, and it wasn't repaired when the investigator issued their opinion in January 2024, I'm satisfied that LRFS failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mrs D should also be able to reject the car.

Mrs D has said that LRFS have now told her the car is ready for collection. But LRFS haven't confirmed this to be the case. However, even if I assume the car has been repaired, I haven't seen anything to show me the repair has been successfully completed. So, any repair at this stage doesn't change my mind that Mrs D has the right of rejection under both sections 23(2)(a) and 24(5) of the CRA. Mrs D has made it clear that she wants to exercise this right, and I'm satisfied she should be able to do so.

The car has been off the road and undrivable since 18 April 2023. However, while the car has been awaiting repair, Mrs D was provided with a courtesy car to keep her mobile. Because of this, I think it's only fair that she pays for this usage. However, this courtesy car wasn't of an equivalent specification to the car Mrs D was paying for and, as she was denied use of the car she was paying for for an extended period, I also think it's fair that LRFS refund some of the payments Mrs D made.

When they made their compensation offer in October 2023, LRFS offered to refund 20% of the payments Mrs D was making. I think this fairly reflects the impaired use caused by the car not being of a satisfactory quality, so LRFS should extend this offer to all payments Mrs D has made after 18 April 2023.

Finally, it's clear that Mrs D has been significantly inconvenienced by what's happened, and this has impacted on her ability to look after a disabled relative (as the courtesy car was missing the accessibility features she required). So, I think LRFS should also compensate her for this. The investigator had recommended LRFS pay her £500, 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, LRFS should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mrs D;
- remove any adverse entries relating to this agreement from Mrs D's credit file;
- refund the deposit Mrs D paid (if any part of this deposit is made up of funds paid through a dealer contribution, LRFS is entitled to retain that proportion of the deposit);
- refund 20% of the payments Mrs D has paid from 18 April 2023 onwards;
- apply 8% simple yearly interest on the refund, calculated from the date Mrs D made the payments to the date of the refund[†]; and
- pay Mrs D an additional £500 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†If HM Revenue & Customs requires LRFS to take off tax from this interest, LRFS must give Mrs D a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Mrs D's complaint about Black Horse Limited trading as Land Rover Financial Services. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 3 April 2024.

Andrew Burford
Ombudsman