

## **The complaint**

Ms A complains about the quality of a used car that was supplied through a hire purchase agreement with Black Horse Limited trading as Land Rover Financial Services (BHL).

## **What happened**

In April 2022 Ms A acquired a used car through a hire purchase agreement from BHL. The car was about 17 months old and had travelled 10,320 miles. The cash price of the car was £35,995. Ms A paid a deposit of £10,000, so the total amount financed on the agreement was £25,995 payable over 49 months.

Ms A said the day after she'd collected the car she noticed the EML was illuminated. She said the dealership arranged for an inspection which diagnosed a problem with the Diesel Particulate Filter (DPF). Ms A said the car would also lose power when going uphill.

Ms A said she took her car in to a dealership garage without a courtesy car provided, and that the guarantee covered the cost of a replacement DPF costing around £2,000.

Ms A said that in February 2023 the dashboard blacked out for five seconds. She brought her car into the dealership the following day with no courtesy car available and said she was told by the dealership that the car required a software update, that it needed new brake pads and had excess oil in it.

Ms A said the software update was completed, the brake pads replaced, but that she brought it back to the franchised dealership for them to investigate the alignment of the brakes. Ms A also wasn't happy with the condition of the courtesy car or that it was an automatic transmission, despite her driving a manual.

Ms A explained that the whole situation has caused her some inconvenience, particularly as she is registered disabled and needs a vehicle for commuting to work and to help her family get to appointments.

In February 2023 BHL issued their final response to Ms A's complaint which they upheld in part. They agreed that the DPF and EGR cooler required replacing so soon after supply. However, they didn't uphold the issue with the dashboard lights as they said the manufacturer confirmed it was not faulty, just that it required an update, and the brake pads BHL considered as wear and tear, particularly in consideration that Ms A had travelled around 9,000 miles since she'd been supplied the car.

BHL offered to pay Ms A £115 for loss of use and compensation for the inconvenience caused. BHL also said they'd refund any taxi fares she incurred. Ms A said she wanted her money back and to get a new car through a different dealership.

Unhappy with their decision, Ms A brought her complaint to our service for investigation. In April 2023 Ms A gave an update on her car. She said after noticing a burning smell and smoke around the engine she arranged for her car to be brought into the franchised dealership, but there were no problems identified. Ms A says she believes this is a manufacturing fault and that she doesn't feel safe driving the car.

Having reviewed all the information on file, one of our investigators recommended that Ms A's complaint should not be upheld.

BHL accepted this recommendation. Ms A didn't. She said the whole issue has affected her mental health and that she has major safety issues with her car. So, Ms A asked for an ombudsman to look at her complaint.

In October 2023 Ms A told the investigator that she was involved in a serious traffic collision where the car had to be towed. Ms A was particularly concerned that the driver's airbag did not deploy.

### **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. 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. The CRA also explains the durability of goods is part of satisfactory quality.

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 Ms A with a used car that had travelled over 10,000 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, potentially impacting 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 £35,995 which isn't insignificant. It also wasn't a particularly old vehicle. 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, especially if it has been well maintained and serviced.

From the information provided I'm persuaded there was a fault with the car. This is apparent from the case notes provided by BHL where the dealership has acknowledged the issues

reported by Ms A and that the DPF was replaced. The dealership invoice also confirms a software update was carried out in February 2023, in addition to BHL acknowledging the DPF and EGR cooler being replaced soon after purchase. Having considered the car had a fault, I've considered whether it was of satisfactory quality when it was supplied to Ms A.

#### *satisfactory quality*

In their final response BHL acknowledge the replacement of the DPF and EGR cooler soon after purchase, in May 2022. They upheld this part of Ms A's complaint. Components like the EGR and DPF failing on a vehicle, priced at over £35,000 and that was less than two years old is unexpected, and I think is fair to say unreasonable, particularly as Ms A had the vehicle for less than a month. I'm satisfied that the components weren't suitably durable.

I don't think there's any dispute that the car wasn't of satisfactory quality when it was supplied to Ms A, however these issues were repaired the following month and without cost to Ms A. Under the CRA I'm satisfied it was fair that the car was repaired for Ms A.

I acknowledge Ms A has provided an invoice showing the DPF was replaced in June 2023 along with a new sensor; and I recognise Ms A may feel this is linked to the initial issue, however I've not seen any evidence of why the DPF was replaced in June 2023 or that Ms A has paid for it or experienced any unreasonable inconvenience as a result. In addition, the invoice advised that following a road test the car was 'all ok'. So, I don't think it's reasonable to expect BHL to do anything more in relation to this.

Ms A has also advised of the dashboard cutting out, which the dealership applied a software update to; however, I've seen no evidence that this problem was repeated.

In relation to the other issues reported, for example the wearing of the brakes and oil overfill, as identified in a health check report dated February 2023, provided by Ms A, I'm persuaded these are likely due to usage, wear and tear. The health check hasn't noted any suspected underlying issues or causes. At the time of the health check, Ms A had driven the car for about 9,000 miles from when it was supplied to her, so it's likely the wear to the brakes was caused during this period of travel. In addition, Ms A also hasn't provided any evidence, for example in the form of a diagnostic or inspection report that the issues with the oil or brakes were as a result of any underlying issues. So, I'm not persuaded these issues highlight an inherent or underlying fault, and so I won't be asking BHL to do anything in relation to it.

Ms A has recently advised our investigator, in October 2023, that she had concerns about the deployment of the airbag when she was involved in a collision. And I recognise this would have likely been a particularly stressful and worrying situation for Ms A to be in. I don't have any evidence which supports Ms A's concerns about the airbag, and I'm not aware that BHL have had an opportunity to consider these concerns. So, Ms A may decide to contact BHL about this so the appropriate action, if any, can be taken.

In their Final response, BHL offered to pay Ms A £115.53 to acknowledge the loss of use and for any distress and inconvenience caused. This included an 8% interest payment. BHL also offered to refund to Ms A any out of pocket expenses for taxi fares if she could provide evidence of the costs incurred.

I recognise Ms A has said the whole experience has impacted her mental health and that there was insufficient consideration from BHL for her disability. However, I'm not persuaded this was exacerbated or made worse as a result of how Ms A was treated. So, I'm satisfied the resolution offered by BHL is fair in the circumstances and so I won't be asking them to do anything more in relation to this complaint.

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 25 December 2023.

Benjamin John  
**Ombudsman**