

The complaint

Mrs M has complained that she is unhappy with the quality of two vehicles she acquired in May 2020 and November 2021 using hire purchase agreements with Black Horse Limited, trading as Land Rover Financial Services ("Black Horse").

What happened

Mrs M bought a used Land Rover in May 2020, with a mileage at the point of supply of 3,755. The car was about eight months old. The price was £27,000, of which Mrs M borrowed £23,050.87 using a 37-month hire purchase agreement. The monthly payment was £362.57, with a final payment of £16,341 if she decided to keep the car at the end of the agreement.

Mrs M said the car had issues from the outset, in particular with the Diesel Particulate Filter ("DPF"), which were highlighted to Black Horse. After numerous issues she said she had to sell the car as it was unfit for purpose and undrivable.

She traded the car in in November 2021 and acquired another car through a different dealership. Again this was a used Land Rover, (an online check suggests it was just over two years old) with a mileage at the point of supply of 20,316. The price of the car was £44,950, of which Mrs M borrowed £42,760.27 using a 49-month hire purchase agreement. The monthly payment was £691.85, with a final payment of £19,393. Mrs M said this car was delivered with a number plate which fell off after the delivery, a speeding ticket to pay from the delivery driver, and issues with marks on the car. She added that the dealer would not accept a return, so after 4 weeks she chose to sell the car.

Mrs M then acquired a third vehicle, through a third dealership, but did not raise a complaint about the quality of this vehicle. Having said that, after our investigator issued his view on the complaint, Mrs M did allude to some issues with the third vehicle. However, as it does not seem that Black Horse has had an opportunity to consider those issues, I cannot consider the third vehicle in this decision. Mrs M should contact Black Horse in the first instance if she remains unhappy about the third vehicle.

I should also say that Mrs M has complained about the financing arrangements for the vehicles, in particular the affordability, but this is being considered separately – in this complaint I am looking only at the quality of the vehicles.

Mrs M complained to Black Horse about the first car in July 2022. In its final response letter, Black Horse said it did not uphold Mrs M's complaint about the first vehicle, in summary because a third-party main dealer confirmed that the reason that she was experiencing issues relating to the DPF on the vehicle was due to her driving style rather than there being a fault with the DPF system.

Mrs M also complained to Black Horse about the second car in July 2022. Black Horse issued its final response letter the following month, saying that it had partly upheld the complaint, and offering compensation of £143.73 for loss of enjoyment and trouble and upset. Black Horse said that the dealership had offered to cover the cost of the repairs, but

there was no evidence that Mrs M had arranged for the repairs to be completed prior to trading in the vehicle, and that she had chosen to trade it in rather than taking up the dealership's offer, and this was before Black Horse's involvement in the case.

Black Horse also told us that it was not aware of Mrs M's concerns about the cars until July 2022.

Mrs M was unhappy with Black Horse's response, so she brought her complaint to this service. Our investigator looked into the complaint, but didn't think it should be upheld. Mrs M disagreed and asked that the complaint be passed to an ombudsman for review.

I issued a provisional decision earlier this month, in which I explained that, although I agreed with the investigator's view, more information had since been provided so I wanted to give both parties an opportunity to comment.

Black Horse said it had nothing further to add. Mrs M responded to say that she didn't accept the outcome. I have set out her comments in more detail below.

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've decided not to uphold Mrs M's complaint. I'll explain why.

Because Black Horse supplied each car under a hire-purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case, the first car was about eight months old and the second about two years old, with mileages of 3,755 and 20,316 respectively. The prices were lower than those of new cars. So it's reasonable to expect that parts of each car would have suffered a degree of wear and tear, and that a used car would likely need repair and maintenance sooner than a new car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming to contract – that is, it then being of satisfactory quality.

In my provisional decision I set out my reasoning as follows:

I set out above the information that Mrs M and Black Horse provided about the sequence of events. Black Horse sent in copies of the hire purchase agreements and notes of its contact with Mrs M, as well as its notes from its review of Mrs M's complaint. Mrs M sent in copies of correspondence with Black Horse, further information about the timeline of events, and four breakdown reports from occasions when roadside assistance was needed with the first car (although she said there were numerous other occasions).

Looking at the first car, Black Horse's notes of its contact with Mrs M show that she called on 23 June 2020 to say that the car had broken down three times since purchase.

Unfortunately, there is no call recording, and no more detail on the notes, so I have no further information on what was discussed. But I can see that there was no further contact logged with Black Horse until August 2021, when Mrs M requested a settlement figure for the agreement, and no further reference to problems with this car until Mrs M made her complaint.

I've looked at the breakdown reports, which were dated 11 and 13 June 2020, 26 November 2020, and 25 August 2021. Three refer to DPF issues, and one to an issue with the oxygen sensor. Mrs M had mentioned other breakdowns, so we contacted Land Rover Assistance. Although it could only give us limited information over the phone, it did confirm the dates of call out – but the only dates on its system for Mrs M's period of ownership were those corresponding to the four reports Mrs M had sent in.

I've also looked at the information provided by Black Horse. In its final response letter it referenced the four breakdown reports mentioned above. Black Horse also said that the dealership that supplied the car to Mrs M had stated that it had not seen the vehicle since it was supplied, but that another garage - a third-party main dealer - confirmed the repairs it had completed.

I don't have the job sheets for these repairs, but Black Horse said that the first was in June 2020, when the DPF was replaced at a mileage of 4,137. In October 2020 there was an oil and filter change. A few months later, in February 2021, the DPF was replaced again, at a mileage of 7,729 miles. And in June 2021 there was another oil and filter change.

I can see from the complaint-handling notes that when Black Horse contacted the third-party main dealer, a fifth repair was stated, in December 2020, relating to the oxygen sensor. This seems to follow on from the breakdown report for November 2020 mentioned above.

Black Horse said the third-party main dealer had stated there was no fault with the DPF and the reason for the issues occurring was due to the type of journeys the vehicle was being subjected to.

Black Horse further referred to the vehicle's handbook, which described the DPF self-cleaning process (called regeneration) and the driving conditions required to achieve this, along with the consequences of these driving conditions not being met. And it referred to comments provided to it by the manufacturer, which included the following:

'A driving style consisting of mainly short journeys or low speeds (<20 minutes, <25mph / 40kph) results in the vehicle not being able to meet the parameters required to carry out an automatic regeneration.

In these conditions, soot levels can build up and cause the vehicle to present an amber warning light, followed quickly by a red warning light if driving styles are not changed to allow an automatic regeneration cycle.'

I've had a look at the manufacturer's website, and it says:

'During normal driving conditions, the DPF collects particulates in the exhaust to be burned off when it reaches a high temperature. As the filter becomes full, a cleaning process occurs automatically. This is known as regeneration. Shorter journeys, such as those often taken in a city, can make this process more difficult to achieve as the system does not get hot enough.'

On the website there is also an explanation of the relevant warning lights (red, amber and green) and what to do when the amber or red lights show. All this is consistent with the manufacturer's comments to Black Horse.

Clearly the first replacement of the DPF in June 2020 was very soon after Mrs M acquired the car – the following month – and Mrs M had only driven around 380 miles. And there had been two breakdowns, with the DPF mentioned on the reports. So I accept it's possible there was a fault with the DPF when Mrs M acquired the car. But this was remedied when the DPF was replaced, and I understand this was done under warranty and at no cost to Mrs M.

The second replacement of the DPF took place in February 2021 (also under warranty) only eight months later. But I can see that Mrs M had driven just under 3,600 miles in that period, which is lower than average. So it's possible that Mrs M's driving pattern didn't meet the conditions for an automatic regeneration cycle to take place. I also note that the breakdown report dated six months later - in August 2021 – which referenced a regeneration of the DPF having been performed, showed a mileage of 11,019 miles. So Mrs M had driven about 3,300 miles in the six months since the replacement of the DPF - again lower than average.

I've thought carefully about what both parties have said. As the car was sold some time ago, and therefore a separate, independent, inspection isn't possible, I have to base my conclusions on the evidence I do have.

I accept that the DPF had to be replaced a second time, but the information from the manufacturer, and that from the third-party main dealer, suggests that this was due to the driving pattern - and the relatively low mileage is consistent with this. If there had been an ongoing fault with the DPF system, I would have expected to see more frequent reports of performance issues with the car, but at this point I haven't seen evidence of this. Of the four breakdown reports provided, the first two were prior to the first DPF replacement, the third was unrelated to the DPF system, and the fourth showed that a regeneration of the DPF system was required and completed.

I appreciate that Mrs M has referred to other breakdowns, but no evidence has been provided, and as I mentioned above, Land Rover Assistance only had the four breakdown dates mentioned above on its system. So taking everything into account, I'm not satisfied there's enough evidence to say that the car wasn't of satisfactory quality at the point of supply (or at least after the initial replacement of the DPF).

With regard to the second car, I have very limited information, and Mrs M only kept the car for a very short time. The brief description I have of the faults that Mrs M complained about - a number plate that came off and marks on the car - does not suggest that Ms M had problems driving the car. I understand that the dealership offered to remedy the faults, but Mrs M chose to trade in the car. And as I noted above, Black Horse offered compensation of £143.73 for loss of enjoyment and trouble and upset.

I've looked at what both parties have said about the second car, but the faults mentioned don't seem to be unreasonable for a car of that age and mileage, and I don't have enough evidence to suggest that the car wasn't of satisfactory quality when Mrs M acquired it. I consider Black Horse's offer of compensation to be fair and reasonable in the circumstances, so I don't propose to ask it to do anything further."

I further said in my provisional decision that my conclusion was that there was insufficient evidence for me to fairly say that the cars weren't of satisfactory quality, and therefore I didn't propose to uphold Mrs M's complaint.

As I noted above, Black Horse had nothing further to add. Mrs M was unhappy with my conclusions, saying that the first car broke down within days and was less than a year old when she acquired it. She said there were known issues and considerable breakdowns, and she had provided us with the dealership and Land Rover Assistance details as they would hold details of all of the faults along with the device history from the sale which they refused to provide to her.

I do understand that Mrs M feels strongly about this, in particular the first car. However, I explained in my provisional decision that we contacted Land Rover Assistance, and that the dealership that supplied the car to Mrs M had stated that it had not seen the vehicle since it was supplied. I reviewed all of the evidence available, but as the car was sold some time ago, that evidence is necessarily limited.

I've carefully considered Mrs M's comments, but no new evidence has been supplied and therefore I have no basis on which to change my conclusions. So I am not upholding this complaint.

My final decision

For the reasons stated above I've decided not to uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 August 2023.

Jan Ferrari
Ombudsman