

## The complaint

Mr P 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 Service Services (BHL). Mr P also says the car was mis-sold to him.

## What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

*In August 2022, Mr P acquired a used car with a hire purchase agreement from BHL. The car was about six years and seven months old and had travelled around 43,000 miles when it was supplied to Mr P. The cash price of the car was £21,109. Mr P part exchanged an existing vehicle for the value of £14,800 in addition to a deposit payment of £1,000. So, the total amount financed on the agreement was £5,309 payable over 48 Months.*

*Mr P said since being supplied the car he's had to have repairs carried out relating to the tailgate, battery warning light, AdBlue, knocking from the right-side wheel and an existing safety recall for the steering rack bolts. He also said further issues presented on the car included the boot struts needing replacement, the auto start stop not working and condensation in the drivers rear light.*

*Mr P said his car has been back to the dealership on around eight occasions and so doesn't believe the car was of satisfactory quality when it was supplied to him. Mr P also said had he known about the safety recall he wouldn't have acquired the car.*

*In January 2023 Mr P sent an email to the dealership requesting a rejection of the car, due to the problems he experienced. In the email Mr P said he wanted a full refund of his deposit.*

*On 30 January 2023 BHL issued their final response to Mr P's complaint which they upheld in part. BHL explained the issue with the steering rack was reported within two months of the car being supplied to him, and so was fair under the consumer rights act 2015 that it was repaired by the dealership. BHL accepted the issues with the steering rack, and offered to make a payment of £45 in compensation to Mr P.*

*BHL didn't uphold any of the other issues as they felt they were conducive of the age and mileage of the car and were likely to be related to wear and tear. They also concluded there was no evidence that the issues were present or developing at the point of supply.*

*Unhappy with their decision, Mr P brought his complaint to our service for investigation. One of our investigator's recommended that Mr P's complaint should not be upheld. The investigator concluded that under the Consumer Rights Act 2015, BHL had acted fairly as the dealership has a right to repair the steering rack. The investigator also concluded there was no evidence that the other faults identified were present or developing when the car was supplied.*

*Mr P didn't accept the investigator's view. He believed BHL were obliged to ensure any recall on the car was fixed prior to supplying the car to him, and as they hadn't done this or advised him about it, they had misrepresented the vehicle to him.*

*The investigator's view remained unchanged, so Mr P asked that his complaint be referred to an ombudsman for a final decision.*

I sent Mr P and BHL my provisional decision on 21 December 2023. I explained why I thought the complaint should be upheld. The key parts of my provisional findings are copied below:

*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.*

*Mr P complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr P's complaint about BHL. 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.*

*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 Mr P with a used car that was over six years old, and had travelled around 43,000 miles. With this in mind, I think it's fair to say that 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 due to its usage which may impact its overall quality and reliability, so there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle.*

*From the information provided I'm satisfied there were faults with the car, which included its steering rack. This is apparent from what Mr P has told us, from the timeline provided by BHL, as well as in their final response where they've confirmed the dealership repaired some of the issues raised which included the fault with the steering rack. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.*

*In their final response BHL confirmed that the following problems with the car were repaired:*

- Loud knocking from drivers' side front wheel*
- Recall issue. Issues with sheering bolts on the steering rack*
- AdBlue warning light*
- Diesel Particulate Filter faulty*

*These are consistent with what Mr P has said and is not in dispute. BHL in their final response have also confirmed that the issue with the steering rack would have been developing at the point of supply which was their main reason for upholding that part of Mr P's complaint. So, I also don't think it's disputed that the car wasn't of satisfactory quality when it was supplied to Mr P.*

*Having said that, according to the timeline of events provided by BHL, the issue with the steering rack was reported in October 2022, two months after supply, and repaired the same month, under warranty. Under the CRA, the supplier has a right to repair, which in the circumstances of this complaint was reasonable for them to do.*

*The timeline shows that the car had further repairs in November 2022 for other issues, which by that point the car had travelled around 8,000 miles. I'm satisfied that the other components were repaired as a result of wear and tear rather than being inherently faulty. I say this because the components are subject wear and tear and having considered the age and mileage of the car at that point, I don't think it's unreasonable that they would fail when they did. In addition, unlike with the steering rack, I've seen no evidence to say that any of the components repaired were inherently faulty.*

*However, what appears to be Mr P's main issue, is that the car shouldn't have been supplied to him with an outstanding safety recall. In an email to BHL in January 2023, Mr P said: 'If I had been made aware of this recall I would never of purchased this vehicle'.*

*So, I've also considered whether the car was misrepresented to Mr P.*

*Misrepresentation is typically when a false statement of fact is made that induces a consumer to purchase goods. In this case however, it's what the dealership failed to tell Mr P which is alleged to have misled Mr P. So, I've considered whether the circumstances of this complaint fall under misrepresentation by omission. This means I've thought about whether the dealership's failure to disclose something to Mr P impacted his ability to make an informed choice about whether he wanted to acquire the car.*

*Section 56 of the Consumer Credit Act 1974 explains that in certain situations the negotiations that take place between a consumer and supplier, prior to the finance agreement being taken out, are taken as if the finance provider (in this case BHL) told Mr P the same.*

*So, if the dealership failed to disclose key information about the car, as the agent of the finance company (BHL) it's taken as BHL failed to disclose it also.*

*The General Product Safety Regulations 2005 (GPSR) is relevant in this case, it provides a framework to ensure consumers are protected from unsafe products and sets out responsibilities for suppliers of cars.*

*The GPSR says that used cars shouldn't be sold if they have outstanding recalls that haven't been addressed. It also says that consumers should be informed of any safety recalls that affect the vehicle they're purchasing.*

*In their final response BHL said the dealership confirmed that the steering rack had a safety recall on it. They described it as a 'fix on fail' recall, meaning that it was only to be replaced if it showed signs of failing. I acknowledge that common types of safety recalls do allow for the continued driving of a car until the problem can be fixed, however in consideration of the GPSR, I'm satisfied Mr P should have been made aware of the outstanding safety recall prior to being supplied it. Particularly as BHL have confirmed in their response that the dealership was aware of the safety recall when they supplied the car to Mr P.*

*Mr P said he wasn't aware of the safety recall when he was supplied the car; neither party have disputed this, and I've seen no evidence that contradicts what Mr P has said. So, I'm persuaded by what Mr P has described.*

*Having considered the car shouldn't have been supplied with the outstanding recall, or that Mr P should have been made aware of it, I've also considered whether Mr P would have acquired it if he'd known about the recall, and that it was being treated as 'fix on fail'. Having thought about what Mr P has said, that he wouldn't have gone ahead with the purchase if he'd known about it, and that he told us he asked to reject the car once he became aware of the recall, and having seen correspondence where Mr P requested the rejection at that point, I think it's reasonable to say Mr P wouldn't have acquired the car had he known about it.*

*I think a reasonable person would want a car to be in a safe condition prior to acquiring it or to know about any potential or pending safety issues. I acknowledge BHL told us the dealership had carried out a pre delivery inspection checklist which hadn't picked up the issue; however, I don't think it was reasonable in the circumstances to expect Mr P to acquire a car without the knowledge that a key component was likely to fail prematurely. So, all things considered; I don't think Mr P would have gone ahead with the purchase had he known there was an outstanding safety recall.*

### **putting things right**

*As I'm persuaded Mr P wouldn't have acquired the car had he known about the unattended safety recall, BHL will need to put things right for him.*

*In his complaint to BHL Mr P said he wanted to reject the car. However, Mr P told our investigator in December 2023 that he'd sold the car and settled the agreement.*

*As the agreement no longer exists and Mr P no longer has the car, I'm not able to instruct BHL to facilitate a rejection of it. However, I think it's fair to say Mr P has experienced a degree of inconvenience throughout this situation, particularly as Mr P described that his family were in the car when the steering rack failed and he lost control of it. I acknowledge the issue was repaired at no cost to Mr P, however, I think it's fair to say that particular issue wouldn't have occurred, had Mr P not acquired the car or if he'd been made aware of the safety recall relating to it. So, I think compensation is reasonable in the circumstances.*

*I'll be instructing BHL to pay Mr P £250 in compensation for the distress and inconvenience caused as result of misrepresenting the car to him. I think this fairly recognises the frustration and inconvenience caused.*

*In a phone call to the investigator in December 2023 Mr P said he believed BHL should face some legal recourse as a result of their misrepresentation and that our service should be active in this.*

*The primary role of our service is to resolve disputes between consumers and financial*

*businesses. We aim to reach fair resolutions. While we focus on resolving complaints, reporting business activity falls under the jurisdiction of certain regulatory bodies.*

*My decision has focussed on the quality of the vehicle supplied to Mr P and whether I believe on balance it was misrepresented to him. My role isn't to investigate or make a finding on the legalities of any business practices. So, I haven't done so in this decision.*

I invited both parties to make any further comments. BHL didn't respond, however, Mr P responded with some further comments which I'll address below.

Now both sides have had an opportunity to comment, I can go ahead with my 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.

Mr P has made a submission in response to my provisional decision. I have considered all of what it has said. I'll address what I consider to be the main points Mr P has raised and explain why these don't change the outcome I've reached.

Within his response Mr P made the following points:

- 1. That his concerns mainly relate to the internal parts of the car*
- 2. The design life of the car should be greater than the mileage it was supplied with*
- 3. The compensation should be greater based on BHL's misrepresentation*

The above is not exhaustive, but a summary of what I considered to be the main points raised in Mr P's response to my provisional decision. To be clear, I've considered all the information provided in relation to this complaint, however to maintain the informal approach of this service I've focussed on what I've considered to be the main issues here.

#### ***Point 1***

I think it's reasonable to say that wear and tear on a vehicle would include visual and non-visual deterioration, as well as internal and external. Mr P said his primary concerns were with the internal parts of the car, he also said 53,000 miles was low in consideration for the faults it experienced. However, having reviewed the circumstances of this case, I'm satisfied that these components would also be subject to wear and tear and require maintenance after the total mileage accrued in the car. I've seen no expert evidence that points to the contrary.

#### ***Point 2***

I've seen no evidence of a specific design life expectancy for the various components that have failed on Mr P's car, however I think it's fair to say that each component will have a lifespan which is likely to vary dependent on its usage and care.

In his complaint to BHL, Mr P reported issues with the following:

- Tail gate
- Battery warning light
- AdBlue
- knocking from the right-hand side wheel
- Recall N-613 for the steering rack bolts
- Boot struts
- Auto stop start
- Condensation in lamp

Both parties agreed that the knocking sound was related to the safety recall which had been repaired. However, in consideration of the other issues, I don't think it would be reasonably possible to give a specific life span of each component as I'm satisfied that each can be impacted by usage and can start to fail overtime.

In the circumstances of Mr P's case, I hadn't been provided with expert evidence that any of the components were inherently faulty. So, in consideration that the car was supplied with 43,000 miles, which Mr P increased through his own usage, I'm persuaded on balance that they were likely to be failing due to in life wear and tear rather than being subject to inherent faults.

### ***Point 3***

Mr P said he believed the compensation of £250 I recommended in my provisional decision was inadequate. He said it should be in the region of £5,000 to reflect the value of the finance agreement. In consideration that Mr P had use of the car for over a year and chose to sell it on, I think it's fair that he pays for his usage. Although I think a rejection of the car would have been a fair solution, I'm not able to instruct BHL to do so as neither party has possession of it. I've not been made aware of the details of the sale of the car; however, I think it's likely Mr P would have reached an agreed value for it, which is not unusual when selling a vehicle. As such it wouldn't be fair or reasonable to instruct BHL to compensate Mr P for the value of the car as Mr P has already taken the decision to be compensated for it through its sale. In the circumstances I think it's fair however, that Mr P is compensated for the inconvenience caused as a result of the misrepresentation, and for the reasons explained in my provisional decision I'm satisfied that £250 is fair and reasonable.

I still consider my provisional decision to be fair and reasonable in the circumstances.

Neither party has added anything which gives me cause to change these. Therefore, for the reasons as set out above and in my provisional decision, I'm satisfied that the car was misrepresented to Mr P. So, my final decision is the same.

### **My final decision**

Having thought about everything above along with what is fair and reasonable in the circumstances, my final decision is that I uphold this complaint and instruct Black Horse Limited trading as Land Rover Financial Services to:

- Pay Mr P £250 in compensation for the distress and inconvenience caused
- Remove any adverse information from Mr P's credit file relating to this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 6 February 2024.

Benjamin John  
**Ombudsman**