

The complaint

Mr O 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

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

In February 2019 Mr O acquired a used car through a hire purchase agreement with BHL. The car was registered in October 2016, which means it was about two years and four months old and had travelled around 35,245 miles at the time of supply. The purchase price of the car was £30,539. Mr O part exchanged a vehicle for the value of £6,200. So, the total amount financed on this agreement was £24,339 payable over 48 months.

Mr O says that soon after acquiring the car he experienced different issues with it. The issues included but were not limited to, chips to the paint work and alloys, a faulty bonnet latch, problems with the diesel particulate filter (DPF), fuel pump and a discrepancy with the car's service records. Mr O explained that there had been some confusion over when the car had last been serviced. When Mr O raised the issue about the service history the dealer was able to show that the car had been serviced at 21,399 miles and at 35,188 miles.

Mr O explained that for most of the issues the dealer was able to repair or fix them. In their file submission to us BHL confirmed that the issues reported by Mr O at that time, had been repaired or fixed between September 2019 and January 2020. They also confirmed the misunderstanding about the car's service history.

Mr O said that in April 2021, his car broke down and was recovered to a garage. The garage diagnosed that the timing chain had snapped which caused the engine to fail. This was confirmed by BHL in their file submission.

Mr O complained to BHL that the existing issues along with the discrepancies with the servicing contributed to the failure of the timing chain. Mr O also said that he hadn't had any use of the car since April 2021. In August 2021 BHL responded to Mr O's complaint. They upheld the issues with the bonnet catch, the paintwork and the DPF and advised that they were all rectified and felt this was a fair outcome for them. They also offered Mr O £250 in compensation.

However BHL didn't uphold the issue with the fuel filter, as they felt it was due to wear and tear; and as Mr O was able to drive around 19,000 miles and for 26 months in the car before the timing chain failed they didn't think they were liable for this also. BHL also explained that the service history was up to date but acknowledged there had been an initial system error.

Unhappy with BHL's response, Mr O brought his complaint to us. One of our investigators looked into Mr O's complaint and didn't think that the complaint should be upheld. The investigator felt that as Mr O hadn't serviced the car when it was due, it was likely to have contributed to the snapping of the timing chain and engine failure.

Unhappy with the investigator's view, Mr O asked that his complaint be referred to an ombudsman for a final decision.

In March 2022 I issued a provisional decision in which I said:

What I've provisionally 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.

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 Mr O with a used car that had travelled 35,245 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 due to its usage. Having said that, the car was priced at £30,539 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 be used free from any major issues for a reasonable period of time.

From the information provided by the dealership, detailing the repairs carried out on Mr O's car between September 2019 and January 2020, I'm satisfied that the following parts of Mr O's car required a repair:

- *Bonnet latch*
- *Software update on PCM*
- *Paintwork*
- *Software update for vehicle inControl system*
- *DPF regeneration*
- *Fuel pump replaced*

Mr O hasn't reported any failure of the repairs, nor have I seen anything which suggests the repairs haven't been successful, so I'm also satisfied that the above issues with the car has been successfully repaired.

Mr O's main concerns are in relation to the breakdown of his car as a result of a failed timing chain and engine. From the information provided I'm persuaded that there's a fault with the timing chain and engine. The dealership confirmed that in April 2021 they investigated a snapped timing chain and advised that a new engine was required. They also confirmed in an email dated 5 August 2021 that the engine failure was the consequential damage from the snapped timing chain. Having considered the engine damage was a result of the failed timing chain I've thought about whether the timing chain was of satisfactory quality at the time of supply.

I don't think any of the issues listed above, that were repaired between September 2019 and January 2020, are directly related to the failure of the timing chain. I've also seen no evidence that links any of the issues with its failure. However, as I'm satisfied that they've been repaired successfully I've focussed my decision on the failure of the timing chain and resultant engine damage.

Satisfactory quality

During a phone call with our investigator, Mr O said that his car has been undriveable since it broke down in April 2021. BHL confirmed that the car was recovered to the dealership in April 2021 due to a snapped timing chain. They also confirmed that the car had travelled around 55,000 miles at the point the timing chain had failed. This was also confirmed by the dealership. In consideration of the mileage, that the car was less than five years old when it broke down and had been owned by Mr O for around 26 months, I'm persuaded that the timing chain wasn't durable and so was not of satisfactory quality when it was supplied to him.

BHL confirmed that industry guidance advised the timing chain could be expected to last the lifetime of the engine, providing it's been maintained. The car was expected to be serviced every 21,000 miles or every two years. BHL records show the car was serviced at the following intervals:

First service: 13/12/2017 – 21,399 miles

Second service: 17/12/2018 - 35,188 miles

So, although the car was within the mileage guidance for its third service, by way of dates, it was due a third Service in December 2020. In their file submission to us, BHL have focused on the failure to carry out a third service as a reason for the snapped timing chain.

I don't think it's reasonable to say that the reason for the snapped timing chain was due to the car not being serviced within four months of its due date, particularly when Mr O hadn't driven in excess of 21,000 miles since the last service. In addition, in their final response to Mr O, BHL said that the dealership hadn't been able to advise of the cause of the failure.

I've also taken into account the fact that a major component has failed in a relatively short time after supply and with a mileage that also wasn't significantly high. I've also considered that this wasn't a very old or particularly cheap car. In fact, it cost Mr O in excess of thirty thousand pounds. In the absence of misuse of the car (or some other factor like accident damage) I think a reasonable person would consider this to be unacceptable.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods. From the evidence provided I think it's fair to conclude that Mr O's car was not suitably durable because it suffered catastrophic engine failure, having travelled less than 55,000 miles as the result of a part

failing that should not reasonably have failed at that mileage. And considering what I've said about the servicing of the car, I don't think a reasonable person would expect to have to replace the engine on a car of this age and mileage so soon, so I do not consider the car was of satisfactory quality at the point it was supplied.

Putting things right

As I've concluded that the car wasn't of satisfactory quality when it was supplied to Mr O, I'll be instructing BHL to put things right.

Mr O has said that he wants to reject the car given all the problems he's experienced with it. The CRA allows the business the right to repair as a remedy if the goods supplied are not of satisfactory quality. However, the CRA also says that the business must do so within a reasonable time and without significant inconvenience to the consumer.

Considering Mr O has been without a car since April 2021 and has said he's had to rely on family to get him around, alongside the mental and emotional stress it's placed on him, I think it's fair to say he's experienced significant inconvenience.

So, in the circumstances I'll be instructing BHL to allow Mr O to reject the car and refund his deposit along with all monthly repayments he's made since April 2021 when the car broke down.

Mr O has also said he's been paying for the insurance while the car has been in the garage. He's provided a schedule of payments showing he maintained his monthly insurance payments of £47.98 up to and including September 2021. As Mr O hasn't had use of his car from April 2021, I think it's reasonable that BHL reimburse Mr O for the payments he's made after April 2021.

Mr O has also advised that he's had to pay for road tax for the year. I've thought about this carefully, but I won't be asking BHL to reimburse Mr O for the road tax. Mr O said he only had two months of use, however, I think Mr O would have had the opportunity to declare the car SORN when it became clear the repairs were in dispute and request a prorated refund. For example, according to the payment schedule, Mr O continued his insurance for a further five months. In addition, I think any inconvenience around the road tax would be included within the compensation awarded.

Mr O has also described the distress and inconvenience that the whole situation has caused him and his family. Mr O said the greatest impact has been the mental and emotional stress. Considering the distress and inconvenience experienced by Mr O, I'll be instructing BHL to pay him £250 in compensation.

I invited both parties to make any further comments.

Mr O responded to say he accepted my provisional decision.

BHL responded to say that they didn't accept my provisional decision. BHL made 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.

Within their response BHL made the following point:

- 1. oil changes are critical to the durability and functioning of the timing chain so on the balance of probabilities the missed oil change was the cause of failure to the timing chain*

The above is not exhaustive, but a summary of what I considered to be the main point raised in BHL's response to my provisional decision. To be clear, I've considered all the information provided by both parties 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 issue here.

Having reviewed BHL's response, I acknowledge that oil changes are an important part of the car's maintenance. However, I remain persuaded that the failure of the timing chain shouldn't have occurred just four months out of a service date. Particularly considering the car had only travelled 55,000 miles and was still within the mileage allowance from the most recent service. In addition, I'm aware that timing chains tend to have a general life span of around of 100,000 miles. I'm persuaded the failure premature and so wasn't durable and therefore not of satisfactory quality.

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 not of satisfactory quality when it was supplied to Mr O. So, my final decision is the same.

I recognise that this decision is likely to be disappointing for BHL, however I can assure them that I've considered all the evidence provided and believe on balance that my provisional findings are fair in the circumstances.

My final decision

My final decision is that I uphold Mr O's complaint about Black Horse Limited trading as Land Rover Financial Services and instruct them to:

- collect the car at no additional cost to Mr O
- end the hire purchase agreement entered into by Mr O and remove it from Mr O's credit file
- pay Mr O £250 in compensation for the distress and inconvenience caused
- refund all repayments made towards the agreement by Mr O after April 2021
- reimburse the car insurance payments made by Mr O after April 2021, as described in my decision

Black Horse Limited trading as Land Rover should pay 8% yearly simple interest on all refunds and reimbursements calculated from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 May 2022.

Benjamin John
Ombudsman