

The complaint

Mrs S complains that the car she acquired financed through a hire purchase agreement with Black Horse Limited, trading as Land Rover Financial Services, wasn't of satisfactory quality.

What happened

A car was supplied to Mrs S financed through a hire purchase agreement with Black Horse, that she signed in May 2019. The car that was supplied to Mrs S was new with only 5 miles on the odometer and had a price of £37,274.62.

Mrs S said from September 2021 she began experiencing problems with the vehicle including:

- squeaking noise from the brakes
- burning smell
- fuel smell

Mrs S took the vehicle to the dealership on several occasions for repairs to be carried out. The dealership provided the following timeline of events:

- 1 April 2021 at 6,626 miles - the vehicle had its first service.
- 24 September 2021 at 10,501 miles - squeaking brakes - stripped and cleaned.
- 11 February 2022 at 12,587 miles - squeaking brakes, a reported burning smell, and a smell of fuel, vehicle was recovered - replacement of gasket between catalytic convertor and the turbo.
- 25 April 2022 at 12,875 – squeaking brakes, the burning smell and report of fumes in the cabin - exhaust system leak test, new cabin filter and bulkhead NVH panel. Brakes stripped and cleaned again. Upon driving away the noise returned so the vehicle was booked back in.
- 28 April 2022 - the brake pads and disks were replaced under good will.
- 16 May 2022 – video sent with squeaking brakes - diagnosed rear brakes at fault, the workshop controller advised the pads are too hard and cannot be repaired.

Mrs S said however that the issue with fuel smell inside the car is ongoing and so is the smoke from the engine. She said in June 2022 her family travelled across the country by car. She said the fuel smell was very strong and there was smoke from the engine. She said she contacted roadside assistance, who checked the car and advised of a "leaked turbo to the exhaust pipe". She said she was told the car wasn't road safe and the issue should have been identified a long time ago.

Mrs S brought a complaint to Black Horse. In its final response Black Horse concluded that it wasn't responsible for the concerns raised by Mrs S as the faults weren't developing at the point of sale. Unhappy with this response Mrs S brought her complaint to our service. Our investigator concluded that the brake squeak was a defect rather than a characteristic of the car. She thought it likely that the defect was present at the point of sale and so concluded the car was of unsatisfactory quality.

Mrs S said she had no confidence in the safety of the car so she sold it and settled the credit agreement on 24 July 2022. Our investigator recommended Black Horse:

- refund 10% of the rental payments made from September 2021 up until Mrs S settled the credit agreement to cover any loss of use or impaired use of the car
- pay 8% simple yearly interest or refunded amounts from the date of payment until the date of settlement
- pay a further amount of £150 for any distress or inconvenience that's been caused

Black Horse asked for clarity on the refund of rental payments but did not dispute the investigator's findings. Mrs S asked for a decision from an ombudsman. She wasn't satisfied with the level of compensation. She said she had entered into a new agreement with higher payments because Black Horse left her with no other choice. She said she is paying £200 more each month because Black Horse didn't repair the car when it said it would. Mrs S thought Black Horse should give her back her full monthly rentals from when she first reported the fault.

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 agree with the investigator and for the following reasons:

Black Horse, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mrs S – whether it was of satisfactory quality at that time will depend on several factors, including the age and mileage of the car and the price that was paid for it.

Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on several factors. Mrs S acquired a new car and as such I would expect it to be free from even minor defects.

Brakes

It's generally accepted there is a squealing sound with the brakes. I can see that the garage has looked at the brakes several times and despite doing three repairs it has been unable to eradicate the squealing sound. Black Horse has said that many things had been attempted in good will to improve the brakes however it is a characteristic of the vehicle. It said it contacted the manufacturer for further comment. It said:

“There is no evidence to suggest a manufacturing defect is the root cause of the brake noise. Sometimes, in certain environments/conditions, the brakes can make a noise - but this is normal and is not an indication of a manufacturing defect. All of the actions listed would be 'normal' repairs for the concern described and there are no further actions that we could recommend to the retailer. The braking systems are designed to achieve peak performance under a broad range of driving conditions. The manufacturer's priority is the safety of its braking systems, and they are designed to perform in all circumstances, however the brake may, depended on the environment and driving style, produce the occasional noise. This does not impair the operation or performance. Brake noise is an issue facing many vehicle manufacturers and it is constantly working in conjunction with the leading brake calliper and brake pad suppliers to develop design solutions which reduce brake squeal noises. However, some situations with low brake usage, or through the use of non-manufacturer approved cleaners, can lead to a build-up of surface

corrosion on the disc - this surface corrosion build-up does not adversely affect brake performance.”

I understand that the first time Mrs S complained of the brakes was 27 months after acquiring the car and having driven 10,500 miles. Mrs S has provided a video recording of the brake sound which I've listened to. I found it very loud, high pitched, unpleasant, and uncomfortable and I don't think a reasonable person would consider such a noise to be normal or a characteristic of a fairly new vehicle. I'm not disputing the technical response from the manufacturer that the brakes are safe irrespective of the noise. I've no reason to doubt this. But Mrs S had the squeaking brakes for over a year and was concerned enough for her to return the car to the garage three times and at each point a repair was attempted and failed.

The manufacturer has said there's no evidence to suggest a manufacturing defect is the root cause of the brake noise. It's suggested that low brake usage or using non-manufacturer approved cleaners may contribute to the problem. But Mrs S has had the brakes serviced. They were squeaking before and after being stripped and cleaned twice and squeaking again after the pads and discs were replaced.

Where evidence is missing, disputed or unclear my role is to decide based on the balance of probability, that is what I believe is likely to have happened. Given that the garage has tried several times to stop the squeak and failed I think it likely that there is a manufacturing defect within the vehicle. And having heard the squeak myself I don't consider it reasonable that Mrs S and her family had to tolerate it as a characteristic of the car. So I don't consider the vehicle was of satisfactory quality.

Burning smell and fuel smell

Mrs S said the issues with the fuel and burning smells continued. Black Horse said the burning smell may have happened due to low mileage being covered and a build-up on the diesel particulate filter (DPF) can cause more pressure and cause a sudden failure.

It said the manufacturer advised this would not have been present or developing at the time of sale due to elapsed time. It said DPF build-up can be impacted by low usage of the vehicle

Regarding the fuel smell Black Horse said this was caused by exhaust leaking which required a new cabin filter. It said this is a part that wears over time and something that would not have been present or developing at the time of sale.

I'm not disputing Mrs S or doubting her experience with the burning and fuel smells. Nor do I dispute Black Horse's comments explaining them. If the car was still available I would recommend an independent inspection to determine the cause and whether the faults were present at the point of sale or as a result of a manufacturing defect. As Mrs S has sold the car this isn't possible. And I don't think I have enough evidence to say with any degree of certainty if these faults contribute to my finding that the car was likely of unsatisfactory quality because of the brakes.

In such circumstances I would allow Mrs S to reject the car. As she has sold it this is no longer possible. Mrs S sold the car for £26,950. She used £24,597.84 from that to settle her finance agreement with Black Horse, leaving her with a surplus of £2,352.16 which is more than the deposit she paid when she entered the agreement. So, I'm not instructing Black Horse to refund the deposit.

Our investigator recommended a 10% refund of payments made from September 2021 to

the date of settlement to reflect the impaired use caused by the car not being of satisfactory quality. Mrs S has asked for full payments to be refunded. She said she was assured by the dealer that the vehicle was in driving condition even with the issues noted and that the noise from the car is part of the vehicle characteristics. She said on several occasions she told them she didn't feel safe driving the car with her child in it. But she had no other option as she had no alternative car.

I do understand Mrs S's concerns and she has my sympathies. But as I don't have enough evidence to conclude that the fuel and burning smells contributed to the car being of unsatisfactory quality and I'm not disputing that the brakes were safe I can only make an award for impaired use for the brakes squeaking. And as Mrs S did use the car I think 10% of the payments from September 2021 to be fair and reasonable.

Mrs S said as a result of selling the car she entered into an agreement with higher payments because Black Horse left her with no other choice. While I do understand why Mrs S felt she had to sell the car this was her choice to make. As was buying a more expensive car and entering into a more expensive finance agreement. This isn't something I can hold Black Horse responsible for.

I can see that this situation has caused Mrs S some distress so I will be instructing Black Horse to pay her £150 for the distress and inconvenience caused.

Putting things right

In order to put things right Black Horse Limited, trading as Land Rover Financial Services must:

1. refund 10% of the instalments Mrs S paid from September 2021 up to 29 July 2022
2. pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement
3. pay a further amount of £150 for any distress or inconvenience caused to Mrs S.

My final decision

My final decision is that I uphold this complaint and Black Horse Limited, trading as Land Rover Financial Services must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 May 2023.

Maxine Sutton
Ombudsman