

## The complaint

Mr H complains that the car he acquired through Black Horse Limited (“BHL”), trading as Land Rover Financial Services wasn’t of satisfactory quality. He wants to be placed in the position he would’ve been in when he bought the car in good faith. And he says he should be suitably compensated.

## What happened

Mr H entered a hire purchase agreement in September 2022 to acquire a new car. After paying a deposit of £500, Mr H entered an agreement providing him with credit over four years and his monthly payments were £629.30.

Mr H says he’s had repeated faults with the car’s EV functionality, and he’s lost all confidence in it. He told us that the car has been sent for repair on several occasions, without full resolution, and that the fault is still present. Mr H says:

- the fault with the EV functionality has been present from the time he acquired the car in September 2022, and he’s been unable to drive it, as intended, from day one;
- despite having the car looked at on several separate occasions, the problems he’s experienced range from the EV mode working intermittently to it not working at all and Mr H having to arrange a full recovery of himself and the vehicle;
- BHL have reviewed things and accepted the return of the car, but he’s unhappy that this resolution requires him to hand the car back and then be without a replacement vehicle for some time; so, although BHL have offered him compensation, it requires the return of the faulty car immediately;
- he’s made a number of counter proposals to BHL including the provision of a replacement vehicle; accepting the compensation but being permitted to retain the faulty car until he can source a replacement; and keeping the car and rejecting it at a later date to align its rejection with the supply of a new car; but BHL hasn’t accepted any of these proposals;
- he wants to be provided with a *“fully functioning car of exactly the same specification...without paying more than was agreed and without having to go without a car for 6 months+”*.

BHL upheld Mr H’s original complaint; it acknowledged that it was unreasonable for so many issues to have occurred on a new car in such a short period of time and it apologised for what had happened. BHL said it would collect the faulty car and end Mr H’s credit agreement and update his credit file. BHL also said it would refund Mr H’s monthly rentals together with the deposit he’d paid, but it would make a deduction for Mr H’s usage of the car – around 4,500 miles. And it agreed to pay him statutory interest and an amount for his distress and inconvenience.

BHL told this Service that it accepted liability for the faults, and it had offered to put Mr H back in the position he was in at the outset, taking into account his usage of the car. It explained that in exercising his rights under the Consumer Rights Act, Mr H needed to understand that as the finance agreement was being cancelled, he’d need to return the car. It said it would be unreasonable for Mr H to claim the vehicle was not of satisfactory quality

and accept compensation, but simultaneously expect to continue using the car for a further six months. And BHL said it was not its responsibility to ensure Mr H was kept mobile whilst he waited to buy another car.

Our investigator looked at this complaint and said he didn't think it should be upheld; he thought BHL's offer to settle this complaint was both fair and reasonable and was in line with the approach that our Service would expect.

He explained that the Consumer Rights Act 2015 applied in this case and that the counter proposals put forward by Mr H were not options that were available under the law. He also explained that this Service couldn't consider potential future impacts; only the impact of what had happened when something went wrong.

Finally, he explained that although he'd entered into a Hire Purchase agreement, Mr H was not the car's owner. BHL remained the owner of the car until all monthly payments together with any final payment, had been made. As the owner of the faulty car, BHL can insist on collecting their asset within a reasonable time.

Mr H disagrees so the complaint comes to me to decide. He says that a replacement vehicle would soon be available to him but at a much higher monthly cost and, as a result, he doesn't consider BHL's offer to be fair and reasonable.

### **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 our investigator – I don't think this complaint should be upheld – and I'll explain why.

As the hire purchase agreement entered into by Mr H is a regulated consumer credit agreement this Service is able to consider complaints relating to it. BHL is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 ("CRA") there is an implied term that when goods are supplied "the quality of the goods is satisfactory". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 the goods.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BHL can show otherwise. But, if the fault is identified after the first six months, as is the case here, then it's for Mr H to show the fault was present or developing when he first acquired the car.

In this particular case, both parties agree there's a fault with the car, and although there's been several attempts to repair the fault, the attempts have not been successful. So, it's understandable that Mr H would want to reject the car, and it's right that BHL is, in this case, accepting rejection of the car. Because of this, I don't need to make any findings about whether the car was of satisfactory quality when supplied.

The parties do not agree entirely on the redress that should be paid – how the matter of the faulty car should be concluded.

Mr H says that he wants a *“fully functioning car of exactly the same specification...without paying more than was agreed...”* but I have to tell him that this isn't how this Service operates. When a complaint such as this is upheld, we set out and expect redress that places the consumer in the position they would've been in if they hadn't been sold the faulty car. What this means in practice is the unwinding of the finance agreement and the return of the car – so that to all intents and purposes, it's as if the contract was never entered into.

In this particular case, BHL has made an offer to settle this complaint. It said it would:

- Cancel the finance agreement with nothing further to pay
- Update Mr H's credit file
- Refund Mr H his £500 deposit
- Refund Mr H his monthly rentals made under this hire purchase agreement, with a deduction in respect of fair usage
- pay 8% simple interest on all refunded amounts from the date of payment until the date of settlement
- Pay £250 compensation to Mr K in respect of the distress and inconvenience he's suffered in the circumstances of the complaint.

I've considered this very carefully, and I'm satisfied it's both fair and reasonable, and in line with the approach that this Service expects for these types of complaints. So, I'm not going to ask BHL to do anything more. It's now for Mr H to decide if he wishes to accept BHL's offer, and if he does, he should get in touch with it directly.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 March 2024.

Andrew Macnamara  
**Ombudsman**