

The complaint

Mr W is unhappy that a car supplied to him under a hire purchase agreement with Black Horse Limited trading as Land Rover Financial Services was misrepresented to him and was of an unsatisfactory quality.

Mr W has been represented in the complaint process by Mr H. However, for ease of reference, I'll refer to any comments made, or actions taken, by either Mr W or Mr H as being made by 'Mr W' throughout my decision.

What happened

In November 2020, Mr W was supplied with a used car through a hire purchase agreement with Black Horse. He paid a £6,500 deposit and the agreement was for £27,890 over 49 months, with 48 monthly payments of £453.51 and a final payment of £12,522. At the time of supply, the car was around two years and eight months old and had done 56,800 miles.

In June 2023 the engine management light came on, then it went off again about a day later. Following this, Mr W says the engine sounded louder. So, on 16 June 2023, he took the car to a local garage for a service and diagnostic check. However, the garage didn't have the necessary equipment to conduct a diagnostic check available on the day, so only the service was completed.

Around ten days later, the engine cut out, and Mr W had it recovered back to the garage. They inspected the car on 3 July 2023 and said there had been a warning message for critically low oil before the engine cut out. Because of the damage done due to the lack of oil, the garage said the engine needed replacing. At this point the car had done 80,170 miles. It was around this time that Mr W also became aware the engine had been replaced in the car around four months before it had been supplied to him.

Mr W complained about the situation to Black Horse, also raising issues about the rear passenger door latch failing, and that the reversing camera wasn't working. Black Horse said that the issues with the car weren't present or developing when it was supplied to Mr W, and they thought Mr W had caused additional damage due to driving the car while a warning message had come on. So they didn't uphold his complaint.

Mr W wasn't happy with Black Horse's response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, under section 56 of the Consumer Credit Act 1974, we were able to consider any potential misrepresentation of the car by the supplying dealership against Black Horse. However, he said that the dealership was under no obligation to automatically disclose any repairs that had been undertaken on the car before it was supplied to Mr W, nor did Mr W ask the dealership about the car's service history. As such, he didn't think the sale had been misrepresented to Mr W.

The investigator also didn't think there was anything to indicate there was an underlying fault with the car that was present or developing when the car was supplied to Mr W – the engine

had been replaced in 2020 due to a compression issue, and there was nothing to suggest this was anything to do with the subsequent engine failure in 2023. With regards to the other faults, the investigator said that the door latch had been fixed; there was nothing to show the reversing camera was faulty when the car had been supplied; and that a new issue Mr W had raised about a failed turbocharger hadn't been raised with Black Horse, so we were unable to investigate this.

Given this, the investigator didn't think Black Horse needed to do anything.

Mr W didn't agree with the investigator's opinion. He said that the dealership should've disclosed that the engine had been replaced before the car was supplied, and he didn't think it was fair he should have to budget for a replacement engine every 20,000 to 30,000 miles. He said he'd been told that the car came with a full service history and was a "*fine example*" of this make and model, so he feels the information about the replacement engine was deliberately withheld from him. He also said that, had this information been disclosed, it would've influenced his decision on whether to choose that specific car.

The investigator didn't think Mr W's comments changed his mind about the outcome of the complaint, so Mr W asked for an ombudsman to make a 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Black Horse are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Black Horse can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr W to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr W took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Black Horse to put this right.

Before I address the issues with the car, I need to address the potential misrepresentation. When considering misrepresentation, I'm looking to see if there was any false statement of fact and, if there was, whether (in this instance) it was that false statement of fact that induced Mr W to choose this specific car.

Mr W has said that the supplying dealership failed to advise him that the engine had been replaced on the car around four months before it was supplied to him. And he thinks this information was deliberately withheld from him.

I've seen a copy of the service history for the car. This shows that, before the car was supplied to Mr W, it was serviced in December 2017, December 2018, April 2019, February 2020, and October 2020. From what I can see the car was serviced generally in-line with the manufacturer's recommendations. As such, I'm satisfied the dealership were reasonable in referring to the car as having a full-service history.

While I've noted the investigator asked for a copy of the original advert, this hasn't been supplied. As such, I can't confirm that the car was advertised as being a fine example of the make and model. However, I don't doubt Mr W's testimony on this. But I think it's important to say that a phrase like 'fine example' would refer to the car holistically, so the use of this wouldn't exclude that a failed part had had to be replaced in the past, even if that part was the engine.

I appreciate that the engine is a major, and expensive, part of the car, but it is still one component. Whilst the costs involved are different, in essence replacing the engine due to a cylinder issue is no different to, for example, replacing a headlight unit due to a failed bulb, or replacing a wheel due to a cracked alloy. As such, I'd consider any disclosure obligation to be the same. And I agree with the investigator that the dealership didn't have any obligation to provide a full breakdown of everything that's happened to the car while it was in the possession of any previous owners – not only would this be an onerous obligation to impose, it's also the case that the dealership may not have this information.

Mr W has also confirmed that he didn't ask about the car's previous mechanical history, only asking general questions about safety and reliability. So, and while I would expect the dealership to answer any specific questions truthfully and to the best of their knowledge, for the reasons already given, I wouldn't expect them to provide Mr W with a full set of answers to questions he's not asked, on all aspects of the car.

Given this, and while I know this will come as a disappointment to Mr W, I'm satisfied there was no false statement of fact and, as such, the sale wasn't misrepresented.

Turning now to the current faults with the car. The car was serviced generally in-line with the manufacturer's recommendations before it was supplied to Mr W. This included changing the oil and oil filter in April 2019 and February 2020. Mr W also had the car serviced in June 2021, when it had done 64,686 miles, a service that also included replacement of both the oil and oil filter. However, the car was not serviced again until June 2023, at 79,959 miles, when the oil and oil filter were changed.

Based on what I've seen, I'm satisfied the engine failed in June 2023 due to the oil being critically low. And the warning message for this appeared before the engine failed. The lack of oil would have caused unlubricated parts to rub against each other, which is the most likely explanation for the metal found in the remaining oil after the engine failed. It's not disputed this is the reason the engine needs to be replaced.

Even though Mr W missed a service in 2022, had there been something wrong with the engine when it was supplied, that resulted in a critical loss of oil causing engine failure, I'm

satisfied this would've manifested itself within the first two and a half years, and almost 24,000 miles, that Mr W was using the car. What's more, had there been metal fragments in the oil when the service took place in June 2023, I'm satisfied the presence of metal in the removed oil filter and oil would've been noticed.

In addition to this I haven't seen anything, for example a report by an independent engineer, that says the engine failed due to a fault with the car that was present or developing at the point of supply. And the original engine was replaced due to a lack of compression on one cylinder, not a critical loss of oil. As such, I think it's more likely than not that the engine failure in 2023 was caused by a lack of oil that wasn't related to something that was present or developing when Mr W took possession of the car.

Given the age and mileage of the car, and the amount of time it was in Mr W's possession, I would again have expected the failure of the door latch and rear camera to have happened sooner than two and a half years and 24,000 miles had these faults been present or developing at the point of supply. And I haven't seen any evidence to show me this was the case. As such, I'm satisfied it's more likely than not that these failures were due to normal in-service wear and tear.

With regards to Mr W's comments about the diagnostics not being done with the garage in June 2023, which he feels may have alerted him to a potential engine failure, this is a complaint about the garage, not Black Horse. And the garage wasn't acting as the representative of Black Horse in this matter. As such, this is something Mr W will need to pursue with the garage directly.

So, taking everything into consideration, I'm satisfied the car was of a satisfactory quality when it was supplied. And I won't be asking Black Horse to take any further action.

My final decision

For the reasons explained, I don't uphold Mr W's complaint about Black Horse Limited trading as Land Rover Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 May 2024.

Andrew Burford
Ombudsman