

Complaint

Mrs N has complained about the quality of a car that Black Horse Limited (trading as Land Rover Financial Services ("LRFS")) supplied to her through a hire-purchase agreement.

Background

In June 2022, LRFS provided Mrs N with finance for a used car. The car was around four years old and it is my understanding that it had completed 50,328 miles at the time of purchase. The cash price of the vehicle was £26,680.00. Mrs N paid a deposit of £1,044.00 and applied for finance to cover the remaining £25,636.00 she needed to complete her purchase. LRFS accepted Mrs N's application and entered into a 48-month 'personal contract purchase' hire-purchase agreement with her.

The loan had an APR of 8.9%, interest, fees and total charges of £6,676.51 (made up of interest of £6,666.51 and a £10 purchase fee) and the balance to be repaid of £20,888.51 (not including Mrs N's deposit) was due to be repaid in 47 monthly instalments of £415.85 and then an optional final payment of £12,768.00 which Mrs N needed to pay if she wished to keep the vehicle.

I understand that the vehicle broke down in April 2023. The car was taken to a manufacturer garage which confirmed that the Diesel Particulate Filter ("DPF") required regeneration. The garage completed this and I understand that the repair was covered under the warranty for the car.

I understand that this error continued to happen. But for later repairs, Mrs N was told that any work wouldn't be covered by the warranty. Mrs N was unhappy at this and complained to LRFS, amongst other things, saying that the car wasn't of satisfactory quality.

LRFS rejected Mrs N's complaint. It said that there wasn't a fault with the car and that Mrs N needed to drive the car for longer journeys in order for the DPF to regenerate and the soot and other residue to clear from the system. Mrs N was dissatisfied at LRFS' response and referred her complaint to our service.

Mrs N's complaint was reviewed by one of our investigators. He didn't think that there was a fault with the car or that it was fair and reasonable for Mrs N to reject the vehicle. So he didn't think that Mrs N's complaint should be upheld.

Mrs N didn't accept the investigator's assessment and asked for an ombudsman to consider her complaint. So the complaint has been passed to me to decide.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied that what I need to decide in this case is whether the car supplied to Mrs N was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for LRFS to do put things right.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, LRFS purchased the vehicle from the dealership Mrs N visited. Mrs N then hired the vehicle from LRFS and paid a monthly amount to it in return. LRFS remained the legal owner of the vehicle under the agreement until Mrs N's loan was repaid.

This arrangement resulted in LRFS being the supplier of Mrs N's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Mrs N's agreement with LRFS. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Was the vehicle that Mrs N was supplied with of satisfactory quality?

It is not in dispute that Mrs N has had issues with the DPF on the car. Mrs N says that this means that car was not of satisfactory quality and LRFS should allow her to reject it. But just because things might have gone wrong with the vehicle, it doesn't automatically follow that it wasn't of satisfactory quality when it was initially supplied to her.

I've considered the parties' submissions on this matter and I've formed my own conclusions.

LRFS, in its final response, has said that there is no fault with the DPF. It says that the problems Mrs N has had are down to the fact that she hasn't driven the car for long enough at the required speed in order for automatic regeneration of the DPF to take place. As a result of this soot and other residue built up in the DPF causing it to clog up.

LRFS has provided an extract from the vehicle manufacturer's website in support of its position. I've not quoted LRFS' extract as although Mrs N has supplied this in support of her contention that there isn't anything to support what LRFS has said, Mrs N has provided a copy of the owner's manual for the car which has similar information.

The maintenance section of the handbook Mrs N has provided starts on page 195. On page 196 there is a section entitled **DIESEL PARTICULATE FILTER (DPF)**. It states:

"DIESEL PARTICULATE FILTER (DPF)

Diesel vehicles equipped with a particle filter have more efficient emission control. The particles in the exhaust gases are collected in the filter during normal driving.

When a DPF message is displayed, accompanied by an amber warning lamp, the filter requires a regeneration cycle to clean itself. This requires the engine to have reached normal operating temperature. Regeneration takes place automatically at an interval of approximately 300-900 km (190-560 miles) depending on driving conditions. Regeneration normally takes 10-20 minutes and is automatically requested by the engine control module if

the vehicle is driven steadily at vehicle speeds between 60 km/h to 112 km/h (40 mph to 70 mph). It is possible that the regeneration process will occur at lower vehicle speeds, but the events may take a little longer at a 50 km/h (30 mph) average speed.

Note: *If regeneration is not successfully carried out, the amber warning lamp will eventually be replaced by a red warning lamp."*

On the same page of the manual there is a section entitled **DRIVING SHORT DISTANCES OR IN COLD WEATHER**. It states:

"DRIVING SHORT DISTANCES OR IN COLD WEATHER

*If the vehicle is frequently driven short distances or in cold weather conditions then the engine may not reach normal operating temperature. This means that regeneration of the diesel particle filter does not take place and the filter is not efficiently cleaned. When the filter reaches a condition when a filter regeneration is appropriate and the current drive style is not appropriate, a warning triangle on the Instrument panel illuminates and the message **DPF Full. See manual** is displayed in the Message centre. This is not indicating a fault condition with the vehicle and no dealership support should be required. Start regeneration of the filter by driving the vehicle, preferably on a main road or motorway. The vehicle should then be driven for approximately 20 minutes or more.*

When regeneration is complete the warning text is cleared automatically."

While I appreciate what Mrs N has said, the information from the owner's handbook, which she's provided, does suggest that the car has to be driven in a certain way to ensure that the DPF regenerates. Furthermore, Mrs N has said that she has mainly been completing shorter journeys in the time that she's had the car.

I'm also mindful that the job sheet for the first repair that the manufacturer garage carried out in April 2023, says that a road test was carried out in order to carry out a DPF regeneration. This was successful and at that stage no further faults occurred. So it seems to me that the issues Mrs N is having with the DPF do not mean that the car is faulty. It's just a case that she is not driving it in a way that allows the DPF to regenerate and stop it from clogging up with soot and other residue in the way that LRFS has said.

In reaching my conclusions, I've also considered the possibility that the car might have been supplied to Mrs N with a DPF that was already experiencing problems.

In doing so, I have to keep in mind that Mrs N was supplied with a car that was not only used, but it was around four years old when it was sold and it had completed around 50,000 miles. And there are clearly different expectations regarding the expectations of quality when comparing a vehicle which has had some use, to a new car. I think it's fair to expect an older car will require repair or maintenance work sooner than a newer or less used model.

Mrs N had the car for around ten months and she was able to cover over 11,500 miles before she began experiencing issues. I would have expected any issues with the DPF to have manifested much sooner than this had they been present at the time of supply. So the fact that Mrs N was able to get as much use out of the car as she was able to, and before she began experiencing any problems, leads me to consider that any issues developed after Mrs N was supplied the car and more likely than not because the car wasn't driven in a way that would allow the DPF to regenerate normally.

For the sake of completeness, as Mrs N has argued that the car wasn't fit for purpose, I've also briefly considered whether this was the case. However, I've not seen anything to

indicate that she made the supplying dealer aware that she only required a car for short journeys.

So I don't think that the supplying dealer was in a position to know that the car had to be fit for a specific, rather than more general, purpose – in other words, that it knew Mrs N required a car that would only be driven over short journeys. Therefore, I'm satisfied that the car was fit for its general purpose and I've not been persuaded to uphold the complaint for this reason either.

Overall and having considered everything, I'm satisfied that the car was of satisfactory quality when LRFS supplied it to Mrs N.

Misrepresentation

I've also considered Mrs N's argument that the car was misrepresented to her.

Under s56 of the Consumer Credit Act 1974 ("CCA"), LRFS, as Mrs N's credit provider, is responsible for any *"antecedent negotiations"* that took place at the time of the sale of the car. These antecedent negotiations include any negotiations *"conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement."*

Therefore, LRFS could be responsible for any misrepresentations the supplying dealer made to Mrs N during the course of negotiations. Mrs N alleges that the supplying dealer's failure to tell her that the car needed to be driven in a particular way for the DPF to regenerate constitutes a misrepresentation.

Generally speaking a misrepresentation requires a false statement of fact, or law, to have been made and Mrs N hasn't argued that she was told something that she's later found to be untrue. However, there are some, admittedly far more limited, circumstances where an omission to disclose a material fact can constitute a misrepresentation by omission.

The examples quoted in the information Mrs N has provided include failing to disclose the true mileage of a car being different from the records provided, or failing to disclose that a car was involved in an accident. In other words, there was a failure to disclose information that was unique to the particular vehicle concerned and which the customer couldn't reasonably be expected to know about unless they were told about it.

I appreciate that Mrs N has said that that she wouldn't have bought the car if she was told she needed to drive it over longer journeys. However, the car needing to be driven in a particular way for the DPF to regenerate isn't unique to the vehicle Mrs N was supplied with. In fact, driving the car over longer distances and reaching a certain speed is how the regeneration process is started in the vast majority of cars with a DPF. This information wasn't concealed from Mrs N either as it was readily available in, amongst other places, the copy of the owner's handbook she's supplied to us and on the manufacturer's website.

In these circumstances while I've thought about what Mrs N has said, I've not been persuaded that the supplying dealer omitted to disclose a material fact about the vehicle sold. And it follows that I've not been persuaded that the supplying dealer made a misrepresentation by omission.

Overall and having considered everything and while I sympathise with Mrs N's position, I've not been persuaded to uphold her complaint. I appreciate that this is likely to be very disappointing for Mrs N – particularly as she will be left in a position where she is being expected to pay for a car which she says she's unable to use unless and until it is repaired.

But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 6 January 2025.

Jeshen Narayanan
Ombudsman