

## The complaint

Mr S complained about the quality of a car he acquired under a hire purchase agreement with Black Horse Limited, trading as Land Rover Financial Services ('LRFS').

When I refer to what Mr S and LRFS have said or done, it should also be taken to include things said or done on their behalf.

## What happened

In March 2016, Mr S acquired a brand-new car through a hire purchase agreement with LRFS. The cash price of the car was £75,569.99. Mr S paid a deposit and/or part-exchange of £12,869. The total amount payable was £88,619.08, with 48 monthly payments of £918.96, followed by a final payment of £31,640. The original hire agreement was extended twice but the final payment was made in April 2023 at which point all finance was settled.

On 23 December 2023, the car lost all power and electrics while driving and broke down. The car displayed a variety of engine, electrical and gearbox faults on the instrument panel and could not be restarted. The car was recovered from the roadside and, after a brief delay for the Christmas holidays, was taken to the supplying dealership when they re-opened on 27 December 2023. At this point the car had a mileage of around 28,597.

When the supplying dealership inspected the car, they confirmed that it was not possible to start the car or manually turn the engine over. Mr S was informed that a replacement engine would be required. The dealership provided estimates for repair using either a new or reconditioned engine. The estimated costs were £24,140.87 for a new engine or £19,197.71 if using a reconditioned engine. As the car was outside of the 3-year manufacturer warranty period, Mr S asked the supplying dealership if LRFS would repair the car at their expense as a gesture of goodwill. The dealership contacted LRFS about this, but LRFS declined the request.

Mr S was not happy, so he wrote to LRFS on 23 January 2024, explaining what had happened and asking LRFS to repair the car at their expense because, he said:

- The cause of the engine failure was due to a known manufacturing defect with the type of engine in his car, relating to the crankshaft, and this was known to LRFS when Mr S acquired the car.
- At no point before, during or since acquiring the car did LRFS make Mr S aware of a manufacturing issue with this type of engine.
- Had Mr S been made aware of the existence of this underlying manufacturing issue with this type of engine, he would not have entered into the agreement to acquire the car.
- The underlying defect was present in the car when he acquired it from LRFS therefore the car was not of satisfactory quality when supplied.

LRFS investigated Mr S's concerns but rejected the complaint on 26 February 2024, stating:

- There is no evidence to confirm that the engine failure was caused by an issue that was present or developing from the point of sale.
- There is no evidence of engine problems developing during the period between March 2016 when Mr S acquired the car and December 2023 when the problem occurred.
- As the problem was notified to LRFS outside of the first six months of Mr S acquiring the car, the burden of proof is on Mr S to provide evidence that LRFS is responsible for the problem.
- The supplying dealership which inspected the car advised that:
  - They can't confirm if this is a known manufacturing fault.
  - An engine failure can occur at any time.
  - They do not have a cause of failure.
  - They are unable to comment if this was an issue present or developing from the point of sale.
- Whilst Mr S has stated that the engine failure is down to the crankshaft breaking, which he says is a known issue for this engine type, LRFS has not been provided with any mechanical evidence to confirm this for his car.
- Due to the length of time between the car being supplied to Mr S and the problem occurring, there is no evidence to suggest the car was not of satisfactory quality at the time Mr S acquired it. Despite receipt of some further information from Mr S following this response, LRFS declined to change their mind. Mr S was unhappy with this, so he referred his complaint to the Financial Ombudsman Service for investigation on 26 February 2024.

Mr S arranged for the car to be repaired at his own expense at a cost of £14,968.80, plus an additional £867.76 for replacement of the second rocker cover, which I will explain further, later in my decision.

Our investigator concluded that there was sufficient evidence to determine that the car was not reasonably durable and was not of satisfactory quality when supplied to Mr S, and therefore LRFS needs to do something to put things right for Mr S.

LRFS did not agree with the investigator and said:

- The customer had owned the car for nearly 8 years when the engine failed and most of that had been trouble free motoring. The fact the customer had used the car for such a prolonged period shows that the car was of a satisfactory quality at supply. Also, the manufacturer warranty only guarantees the car for 3 years from the point of manufacture and the fact that the car failed nearly 5 years after the warranty had expired shows that the car was sufficiently durable and not beyond what a reasonable person would expect.
- The car has passed multiple MOT tests and had services completed with no previous faults or concerns raised to suggest there was a concern with the engine at each point of contact. Had there been a quality issue with the car at the time of supply in March 2016, there would have been symptoms or concerns experienced by the customer shortly after supply or identified in previous service visits.
- Whilst the mileage is relatively low for its age, mileage is not the only thing that impacts on a car's wear and tear. Time is a factor that must also be considered and due to the length of time the customer owned the car, the burden of proof falls to the customer to prove the car was unsatisfactory at supply, as per the Consumer Rights Act 2015 (CRA).
- There is no evidence to prove what has caused the engine to fail, including from the supplying dealer. Engine failure can happen due to a multitude of different factors,

including, but not limited to, damage from improper use, use of incorrect fluids or fuel, modifications, normal wear and tear failure of an internal component, for example pumps, split pipes or seals, or other components that degrade over time. It is the customer's responsibility to prove what has caused the engine failure so it can be established if the failure was the result of the car not being of satisfactory quality at the time of supply.

Because LRFS did not agree, this matter has been passed to me to make a final decision.

After reviewing the case I issued a provisional decision on 16 August 2024, where I explained my intention to uphold the complaint. In that decision I said:

***“What I’ve provisionally decided – and why***

*In reaching my decision I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.*

*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 S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we can investigate complaints about it.*

*The CRA covers agreements such as the one Mr S entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory, taking into account the description of the goods, the price paid, and other relevant circumstances. In this case I believe that the relevant circumstances include, but are not limited to, the age and mileage of the car, the maintenance of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*So, if I thought the car was faulty when Mr S 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 LRFS to put this right.*

*In this case I think most likely the car was not sufficiently durable and therefore was not of a satisfactory quality when LRFS supplied it to Mr S. My reasons for this are broadly the same as our investigator’s but I will summarise them briefly below.*

*The cash price of the car was £75,569.99 and the car was brand-new with no mileage covered when it was supplied to Mr S. So, I think a reasonable person would expect it to be of a higher quality than a cheaper and/or a previously used car. I think it would also be reasonable to expect the car to last a considerable period of time before any problems occurred.*

*LRFS said that there is no evidence to prove what has caused the engine to fail and that engine failure can happen due to a multitude of different factors, including but not limited to: damage from improper use, use of incorrect fluids or fuel, modifications and normal wear and tear failure of an internal component. From the evidence provided by the supplying dealership and the garage that replaced the engine, we know that the engine failed due to the crankshaft snapping. So there clearly was a fault with the car but, just because there are or were faults found with the car, doesn't automatically mean that the car wasn't of satisfactory quality at the point of supply. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr S.*

*LRFS' main argument is that Mr S owned the car for nearly eight years when the engine failed and most of that had been trouble free motoring, so they say that due to the length of time, he should be the one proving that the car was unsatisfactory at supply. I have considered this but looking at all the circumstances of this specific case, I do not think that it would be fair and reasonable to ask Mr S to provide any further evidence. I think the circumstances of this case have demonstrated that the car was not of satisfactory quality when supplied and LRFS have not provided anything persuasive to suggest otherwise. I will explain why.*

*I acknowledge that Mr S was able to drive the car without any problems between March 2016 and the end of 2023 but, for reasons I will explain, I think it is reasonable to expect a car of this price and mileage, and which has been well-maintained, to last longer than it has done.*

*The car was 7 years and 9 months old when the engine failed, but it is important to consider that the mileage at that point was only 28,597 miles. I have also taken into account that the supplying dealer says that the low mileage is unlikely to be a factor which contributed to the failure of the engine and that the car has been serviced regularly in accordance with the manufacturer's standards.*

*Whilst it is true that this period had passed without a serious issue emerging, I do not accept LRFS's view that this in itself is sufficient evidence that the car was of satisfactory quality when supplied. I think that the car was not durable taking into account the high cash price, the mileage, and Mr S's compliance with the manufacturer's service and maintenance standards. As I have already said above: the cash price of the car was £75,569.99, which is a substantial amount of money, and the car had not travelled a lot of miles, so I think it is reasonable to take these into account when assessing durability. The car was brand-new when supplied and I think it's fair to say that a reasonable person would expect the level of quality and durability of a new car costing this amount to be higher than a second-hand, cheaper car with higher mileage. Therefore, I think a reasonable person would not expect a car of this price and standard to need an expensive engine replacement only after travelling around 28,597 miles.*

*LRFS said that the car was sufficiently durable and of satisfactory quality because it passed multiple MOT tests and had services completed with no previous faults or concerns raised or found. I have taken this into consideration along with what they said about it being fault free for almost eight years and only breaking down three years after the manufacturer's warranty expired.*

*However, I don't accept that the fact the problem with the engine did not present itself during a previous MOT or service is evidence that the car was sufficiently durable or was of satisfactory quality at the point of supply. I also understand LRFS' points that mileage is not the only thing that impacts on a car's wear and tear and time is a factor that must also be considered. And, generally speaking, I accept that older cars are more likely to exhibit evidence of wear and tear than newer cars. However, this is not always true – for example, a*

*newer car with a higher mileage could suffer more wear and tear than an older car with a lower mileage. So, whilst the age of car can be a factor in certain circumstances, I believe that in this particular case the low mileage of the car and the high standard of maintenance means that most likely the problem with this car is not related to wear and tear, and I also think that most likely the low mileage of the car is the reason it took so long for this fault to manifest itself.*

*I have also considered what the repairing garage has said. They have told us that they believe that the failure was due to a known design fault with these engines, of which they said they see a lot, and that the mileage and age of this car was not a factor in the engine failing. They also said that the bottom end of the engine as a whole is weak, not just the crankshaft.*

*Based on the price of the car when new, its low mileage at the point the engine failed, and the fact that the car has been well maintained, I find it reasonable to conclude that there is sufficient evidence to show that the car was not sufficiently durable or of satisfactory quality at the point it was supplied. In other words, I find that there is sufficient proof to support a decision to uphold Mr S's complaint.*

*LRFS cited many possible causes of engine failure, all of which are noted. I think it is reasonable to conclude that if any of these possible causes of engine failure existed in Mr S' car, it is more likely than not that they would have been picked up during one of the car's regular maintenance inspections. Sufficient evidence has been provided to show that the actual cause of the car's engine was a broken crankshaft, and the car was not driveable without the repairs which have now been done. There is no evidence to show that the failure was due to wear and tear of internal components, that the car was not well maintained or improperly used, or that incorrect fuel or fluids have been used, nor is there any evidence of modifications having been done to the car.*

*Furthermore, in relation to the actual cause of the engine failure in this case, when LRFS asked the supplying dealership what the likely cause was, they stated 'a failure can occur at any time depending on circumstances, but well looked after cars tend to have less issues of this nature'. It is not disputed that the car has been well cared for and properly maintained by Mr S, so that is another reason why most likely it took so long for this fault to manifest itself.*

*I don't accept LRFS's claim that cause of the engine failure has not yet been confirmed. Both the job cards from the supplying dealer and the invoiced work from the independent garage which replaced the engine record that the engine failed due to a snapped crankshaft. Therefore, I'm satisfied that the engine failed because the crankshaft failed. Having considered the relatively low mileage of the car when the failure occurred, as well as the high cash price of the car and the fact that it was well-maintained, I think a reasonable person would expect it to have lasted longer than 28,597 miles. And taking everything into consideration, I think most likely the car was not sufficiently durable and therefore was not of a satisfactory quality when LRFS supplied it to Mr S.*

*I agree with our investigator's conclusion that this complaint should be upheld, and that Mr S should be reimbursed for the cost of repairing the car. I believe that Mr S acted appropriately and reasonably in having the car repaired at his own expense when LRFS refused to do it.*

*Mr S opted to have a reconditioned engine installed at a total cost of £14,968, plus £867.76 for the second rocker cover, which I will explain further below. This is considerably less than the estimates provided by the supplying dealer.*

*Mr S stated that as part of the maintenance for the replacement engine he will need to arrange for additional services/oil changes at 500 miles and 1,000 miles after installation. He*

*has requested the cost of this work be paid by LRFS, and he has provided estimates showing this is likely to cost around £521.04 (2 x £260.52).*

*I have considered this, and I agree that these are a requirement of the 12-month warranty provided by the garage which replaced the engine. However, Mr S said that the car's annual service was due anyway around the same time as one of these additional oil changes, and it would be reasonable to expect the oil to be changed as part of that routine service, so I think it is fair and reasonable that the cost of only one of these additional services/oil changes should be covered by LRFS.*

*Mr S has described the impact all of this has had on him.*

*As well as the financial costs Mr S has incurred, he has found the whole experience stressful. He was particularly upset because his parents were driving the car when the engine failed, shortly after the supplying dealer had told Mr S that it was fine to keep driving the car. But in this decision, I can only consider the impact this situation had on Mr S, so I can't consider the impact this had on his parents. But I have considered that this matter has caused him a lot of distress and inconvenience while trying to resolve it.*

*Mr S feels that he has lost the peace-of-mind he thought he would have from buying what he expected would be a reliable and well-built car. I believe dealing with the car's issues has caused additional distress to Mr S which add to the inconvenience he has suffered as a result of the car not being of satisfactory quality.*

*Mr S has had to spend time taking the car to the supplying dealership on a couple of occasions and also to the independent garage for assessment and repair. He will need to undertake at least one additional visit to the independent garage to ensure the car receives the services which are a condition of the warranty for the replacement engine. In addition, time was taken up with correspondence and communication between Mr S and LRFS, the supplying dealership and the independent garage, as part of the process in trying to resolve the problem.*

*Overall, having considered the impact of this situation on Mr S, I think it would be fair for LRFS to pay him £250 compensation to reflect this.*

*Mr S was without the car from 23<sup>rd</sup> December 2023 until it was repaired at the end of March 2024, which was inconvenient for Mr S, especially as it covered the Christmas and New Year period. However, this is a relatively short period and Mr S did have access to another car.*

*I note that Mr S raised further issues after our investigator issued his initial findings:*

- A request for reimbursement of £867.76 for further repair work needed to the car, which was not originally discovered when the engine replacement took place. This is to replace the second inlet manifold (rocker cover). The nearside rocker cover was replaced during the previous work to replace the engine, as it was visibly damaged. The garage, to try to keep costs down, felt that the offside rocker looked acceptable, but subsequently it had been discovered that this one has also become warped leading to a slight oil leak, which the garage advises will quickly deteriorate if left unattended. The garage says that the damage to this second rocker is directly linked to the original engine failure.*
- Further reimbursement in the form of a price reduction to the original cash price of the car to reflect the fact that as the failed engine has been repaired through replacement with a reconditioned engine, it cannot be considered now to conform to*

*the contract - Mr S bases this on the fact that the replacement engine is the same design as the original engine and therefore the latent defects associated with that engine design are still present.*

*I have considered both of these points. Regarding the first point, I think there is sufficient evidence to show that most likely the damage to the second rocker cover has arisen as a result of the engine failure and therefore I think it is reasonable that LRFS should pay for this.*

*Regarding the second point, I am not satisfied that the car does not conform to the original contract, because it has been repaired and this was Mr S's chosen remedy.*

### **My provisional decision**

*For the reasons explained, I intend to uphold Mr S's complaint and direct Black Horse Limited, trading as Land Rover Financial Services to:*

- *Reimburse Mr S £14,968.80 for the cost he incurred to replace the engine.*
- *Pay £867.76 for the cost of replacing the second rocker cover.*
- *Pay Mr S £260.52 for the cost of one of the additional services/oil changes required to maintain the 12-month warranty for the replacement engine.*
- *Pay 8% simple yearly interest on all reimbursed amounts from the date of payment until the date of settlement.*
- *Pay Mr S a further amount of £250 for the distress or inconvenience that's been caused to him.*

*If Black Horse Limited, trading as Land Rover Financial Services considers that tax should be deducted from the interest element of my award, it should provide Mr S with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so."*

I asked both parties to provide me with any additional comments or information they would like me to consider by 13 September 2024. Both parties responded.

LRFS said they do not agree with my decision but, they didn't provide any further comments, and said they are happy to accept the provisional decision and proceed as recommended to resolve Mr S's complaint.

Mr S has made some further comments and I will address these below.

### **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.

Following my provisional decision, Mr S made some additional comments and I have given these my consideration.

Mr S is in general agreement with the decision, apart from in relation to conformity of the goods to the contract. He feels that the decision to reimburse the costs of the replacement engine does not fully address his rights under the CRA and he would like to receive a price reduction on the original cost of the car, in addition to reimbursement of the cost of repairs. Although repairs have been carried out, Mr S believes that the remedy does not fully address the underlying issue, which he believes to be a defective engine design. Mr S believes that the type of engine used in this car – so both the original and the replacement

engine - has an underlying design fault, and this will continue to affect the market value of the car, the maintenance liability for the car and his confidence in it.

Mr S says he chose repair as the remedy because it appeared to be the most expeditious and appropriate course of action, bearing in mind the amount spent buying the car and the additional cost and upheaval which would have arisen from buying a new car. Mr S says that the right to repair and the right to reduction in the purchase price are not mutually exclusive under the CRA, and that it is reasonable for the right to a price reduction to only apply after one repair has been carried out.

Therefore, Mr S believes he should receive a price reduction to reflect all of this, in addition to the reimbursement for the cost of repairs.

I have considered all of the circumstances, including Mr S's additional comments, however, I do not think it is reasonable to ask LRFS to offer an additional amount to Mr S as a price reduction.

As I mentioned in my provisional decision, I think the car was not durable taking into account the high cash price, the mileage, and Mr S's compliance with the manufacturer's service and maintenance standards. I also said that I think a reasonable person would not expect a car of this price and standard to need an expensive engine replacement after only travelling around 28,597 miles. That is why I proposed, and what I still believe is, a fair and reasonable outcome taking into consideration all the circumstances of this case.

I have taken into consideration what has been said about other similar engines. However, all complaints to our service are considered on their individual facts and merits. Therefore, here I am making my decision based on what I think is fair and reasonable considering all the circumstances of this complaint and, more specifically, by looking at things that LRFS is responsible for. I have not seen enough to be able to say that, most likely, the original engine was faulty and not of satisfactory quality, due to a defect in the overall design of the engine itself.

I know that Mr S would like a price reduction, as he believes that his replacement engine also has a defect in the overall design, but I have not seen enough to say that this is most likely to be true either. The evidence provided does not demonstrate that the repair has failed or that the issues Mr S has experienced previously have occurred again. It seems that, most likely, the fault with this car has now been fixed and I have not seen anything to support that most likely it has not. Therefore, I do not think it would be fair or reasonable for Mr S to get a price reduction.

### **My final decision**

For the reasons explained above and in my provisional decision, I uphold Mr S's complaint and direct Black Horse Limited trading as Land Rover Financial Services to:

- Reimburse Mr S £14,968.80 for the cost he incurred to replace the engine.
- Pay Mr S £867.76 for the cost of replacing the second rocker cover.
- Pay Mr S £260.52 for the cost of one of the additional services/oil changes required to maintain the 12-month warranty for the replacement engine.
- Pay 8% simple yearly interest on all reimbursed amounts from the date of payment until the date of settlement.
- Pay Mr S a further amount of £250 for the distress or inconvenience that's been caused to him.

If Black Horse Limited, trading as Land Rover Financial Services considers that tax should be deducted from the interest element of my award, it should provide Mr S with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 October 2024.

Liz Feeney  
**Ombudsman**