

## **The complaint**

Mr S has complained about the quality of a car provided on finance by Black Horse Limited trading as Land Rover Financial Services (BH).

## **What happened**

The parties are familiar with the background of this complaint so I will only summarise what happened briefly here. BH supplied Mr S with a used car on a hire purchase agreement in February 2024. The cash price of the car was around £35,000 and it had covered around 21,000 miles since first registration in December 2021. The hire purchase agreement required payments of around £540 for 48 months followed by a final payment of around £14,500. Mr S paid a deposit of £5,000.

Between February and June 2024, the car broke down and went into the garage for repairs on three occasions. The reported faults were:

- Electrics and front sensors
- Recall and software updates
- Electric drive unit

Mr S complained to BH in June 2024. He said the car was unreliable and he couldn't trust it. He asked BH to reject the car or repair with an extended warranty.

Mr S referred his complaint to our service. He said he was frustrated that he hadn't had a full response from BH within the required eight weeks and he thought the complaint wasn't being taken seriously.

In September 2024 the car developed another fault relating to a defective anti-roll bar link. A further repair was made, and the car was returned to Mr S in October 2024.

Mr S said that there had been three faults in the first six months. Although these had been repaired under warranty, he was concerned he would likely have to pay for further repairs once the warranty expired. He had spent a significant amount of time trying to resolve issues with the car, including getting a courtesy car, and asking an acquaintance to expedite looking into what was wrong with the car. Mr S said that the inconvenience of having a faulty car had led to issues with work and worry about when the car would break down next.

BH made an initial offer after the complaint was with our service, and then changed its position. BH agreed that it was liable for the replacement electric drive unit and parking sensor, it also accepted that the anti-roll bar link had failed prematurely. But it didn't agree that software updates or recalls were inherent faults. It said that as the car had been repaired and was now of satisfactory quality rejection wasn't appropriate. It offered compensation and other financial settlements to cover consequential losses.

Mr S rejected the initial offer as he wanted to reject the car, he said he didn't want to risk it failing again.

An investigator here looked into the complaint. She said that the car wasn't of satisfactory quality and there had been more than one repair. She said that Mr S should be able to reject the car. She set out compensation and other consequential losses that should be awarded.

Mr S agreed with our investigator, but BH disagreed. It said that all the repairs had been agreed with Mr S and he had been provided a courtesy car. It said as the car had now been repaired rejection wasn't a suitable remedy. In summary it said:

- Mr S was not acting in a manner of rejection or making it clear that he wanted to reject instead of repairs
- Mr S asked for repairs or rejection – and asked the dealer to repair on more than one occasion
- Mr S arranged repairs and expedited some repairs through a friend at the dealer, these were completed in a reasonable timeframe
- Mr S was kept mobile in a courtesy car, and it didn't agree that pursuing repairs was in an effort to be kept mobile
- The complaint took longer to investigate as it included a new fault rather than starting a new complaint
- The anti-roll bar link failed earlier than the maximum lifespan, but harsher driving conditions might cause them to wear more quickly. It said as Mr S lives in a rural area the harsher driving conditions are likely to have had an impact on how long the anti-roll bar link would last.
- Mr S had driven more than the mileage allowed in the agreement.
- The car is now of satisfactory quality and rejection isn't a fair and reasonable outcome

The complaint has been passed to me 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.

I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BH is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

BH issued its final response after Mr S referred the complaint to our service. It appears to agree that it included the later fault so that everything could be wrapped up in one complaint, and in any case its time to consider all the complaint points has now passed. I'm proceeding on this basis.

The CRA is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory."

The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other

relevant circumstances might include things like the age and mileage at the time of supply and the car's history.

The CRA says 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.

As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months, beginning with the day on which the goods were delivered to the consumer, must be taken not to have conformed to it on that day, unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

It doesn't seem to be in dispute that there were faults with the car. And all parties have now broadly reached an understanding that the car was not of satisfactory quality when it was supplied. In Mr S's case the car was used when it was supplied, but it was around two years old and had covered around 21,000 miles. I'm conscious the cash price of the car was around £35,000 so I don't think a reasonable person would have expected it to have any significant issues for quite some time.

I'm not going to go into great detail about each of the faults. But there are a few points I'd like to address. I have to reach a decision on the available evidence and sometimes the issues aren't clear cut. I note that BH have contacted the garage that dealt with the car in the first instance, but it hasn't provided me with evidence that supports its assertion that the issue wasn't a fault.

In this case I think that on the balance of probabilities the initial problems Mr S experienced were relating to a fault. I don't have a job card as Mr S wasn't given one, but he was without the car for around two weeks. Mr S described the issues as a power failure. He said the electrics were on and couldn't be turned off, but lights and indicators weren't working. Even though a software update may have fixed things I don't think it can be said a problem of this nature isn't a fault given how quickly it developed after supply, and that the car wasn't driveable. Mr S accepted a repair, but the car still didn't conform to the contract as the front sensor didn't work.

Mr S took the car to the selling dealer at the end of May for a security update. He pre-warned them that the front sensor didn't work. But he got the car back without the front sensor being repaired. So, by this point the car has had at least one, arguably two, attempted repairs. But in June 2024 the car experienced another issue with the electric drive unit. It's at this point that Mr S tried to exercise his right to reject.

BH's position on the later fault seems somewhat contradictory. It initially said that the anti-roll bar link wasn't an inherent fault, then changed its position when it made an increased offer. After our investigator issued her view it then seemed to change its position again. It said:

*Whilst the anti-roll bar link has failed earlier than the maximum lifespan, harsher driving conditions can cause them to wear more quickly. Mr S has confirmed he lives in a rural area, and as he had been able to cover 15,000 miles in the vehicle before the failure occurred, the harsher driving conditions are likely to have had an impact on how long the anti-roll bar link would last.*

I have to point out that I've seen no evidence at all that Mr S' use of the car has led to the latest fault developing. The garage confirmed the fault with the anti-roll bar link was a defect,

and BH has not provided any further evidence to support its statement. I'm therefore not persuaded that Mr S' driving style was a contributory factor in the premature failure of the part. Given the multiple faults and repairs I'm satisfied that the car wasn't of satisfactory quality when it was supplied.

The main point in dispute appears to relate to whether Mr S has the right to reject the car. So, what's left for me to decide is what BH need to do to put things right.

I've thought about the right to repair or replacement. In this case, as the goods, to my mind, did not conform to the implied term of satisfactory quality, Mr S had the right to ask BH to repair them. The CRA sets out that if the consumer requires the trader to repair or replace the goods, the trader must do so within a reasonable time and without significant inconvenience to the consumer. And the trader must bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

BH said that repairs had been made under the warranty at no cost to Mr S, and the retailer had taken reasonable steps to minimise inconvenience by supplying a courtesy car. It said that rejection of the car wouldn't be an appropriate remedy. It said that Mr S hadn't been acting in a manner of someone who wanted to reject the car as he had expedited repairs despite being kept mobile, and had told it that he wanted to reject or repair the car with an extended warranty.

I can understand BH's position, but I have to say that I disagree. The CRA sets out that (outside the first 30 days) if the car isn't of satisfactory quality, there's been a repair attempt, and the car still doesn't conform to the contract, Mr S should be able to reject it. Mr S tried to reject the car, and I wouldn't have expected him to have detailed knowledge of his rights.

He was paying a significant amount of money each month for a car so I think it is reasonable that he would want the car he is paying for, rather than a courtesy car while he was waiting for BH to give him an answer. Mr S has had three courtesy cars and none of them have been on a like for like basis. His main reason for choosing his car was for size and comfort for commuting, school drop offs and holidays. I can understand why he would want the car back, in particular for wanting to go on holiday with his family, instead of making do with another car.

Mr S made a complaint to BH in June 2024, but he didn't get a final response and instead turned to our service. It seems he was waiting to find out what his rights were in the situation he found himself in, through no fault of his own. I can't see that BH explained to him that he shouldn't use the car if he intended to reject it. Mr S has tried to take matters further by resolving matters himself despite a lack of information from BH. I don't think Mr S was intentionally trying to take an action that might affect his rights under the CRA. I think he acted reasonably in an attempt to mitigate further losses and inconvenience.

It seems a repair was carried out anyway while the car remained with the retailer, and the car was returned to him before BH had reached any conclusion on the complaint. I think it would be unfair to force Mr S to accept the repair just because it has already happened. So, I agree with our investigator's assessment that Mr S should have been and should now be able to exercise his final right to reject.

BH has noted that Mr S has driven more than the permitted mileage in the time he has had the car. This didn't form part of the original complaint. But I need to be clear in my direction here. I've looked at the terms of the agreement and while it has an overall mileage it doesn't specify how much that is per year. If Mr S accepts my decision, then BH should end the agreement with nothing further to pay. It shouldn't attempt to pass on any further charges

relating to mileage, not least because I don't think the terms allow it. But also because the decision will be binding on both parties (if Mr S accepts).

Our investigator set out some consequential losses in her view, which were also included in BH's offer. These relate to impaired use, loss of use and the cost of repairs. As both parties seem broadly in agreement, I'm also going to direct BH to pay these.

It would be hard to imagine it hasn't been inconvenient for Mr S to try to resolve this. I appreciate that he has had access to courtesy cars, but he's also had to go out of his way to arrange these himself. Mr S has had some major faults to deal with, several repairs and poor service from BH. I think he has made more than a reasonable effort to sort things out and problems with the car were an additional worry which impacted his family and working life. But I can see that Mr S agreed with the investigator's opinion and I need to decide matters quickly and with minimum formality. So, I agree that the compensation of £300, and other items set out, seems broadly fair.

### **My final decision**

My final decision is that I uphold this complaint and direct Black Horse Limited trading as Land Rover Financial Services to do the following:

- Collect the car at no cost to Mr S
- End the agreement with nothing further to pay.
- Remove any adverse information about the agreement which has been reported to the credit reference agencies.
- Refund Mr S his deposit of £5,000
- Refund £125.59 for impaired use
- Refund Mr S for four days loss of use in February 2024 as no courtesy car was provided
- Refund the cost of wheel alignment £198
- Pay 8% simple annual interest\* from the date of each payment above until the date of settlement.
- Pay £300 compensation.

\* If Black Horse Limited trading as Land Rover Financial Services considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much tax it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 May 2025.

Caroline Kirby  
**Ombudsman**