

complaint

Mr W complained that Black Horse Limited, trading as Land Rover Financial Services, won't allow him to reject a car which is of unsatisfactory quality.

background

Mr W agreed to buy a new car for just over £40,000. He paid a deposit of £3,000 and a hire purchase agreement with Land Rover Financial Services (LRFS) covered the rest. The car was sold by a dealer, I'll call it J. It brokered the finance too.

Mr W says he first referred the diesel particulate filter (DPF) warning light to J within days of getting his car. J provided two 'job cards' dated within three weeks of delivery that don't mention the DPF. But I can see that Mr W had told J he was unhappy with the fuel consumption. And this could indicate a problem with DPF regeneration.

Mr W says he contacted J about the fuel consumption again in February 2017 and that the car was off the road for a day in March while the DPF warning light and high fuel consumption were investigated. There were no conclusive findings.

By 16 June 2017 Mr W had had enough. He complained to LRFS about the problems and inconvenience he'd had. He said he wanted to reject the car.

LRFS response notes the following:

- one week after delivery some internal trim around the door handle was replaced,
- five months after delivery a software update was applied to stop the car jumping out of gear,
- around the same time, the seat belts received attention to stop them creaking and to replace pre-tensioners that were part of a general recall at that time,
- there was no evidence on J's system to show the exhaust filter warning light / service light had been reported to them previously. J did confirm the service light had come on prematurely but couldn't say why. The oil and oil filter were changed as a precautionary measure. Further, an engineer's report suggested the service light could be linked to the DPF. If it didn't regenerate correctly the oil and filter would need to be changed more regularly.
- the Power Control Module was updated as a precautionary measure as no faults were identified during a road test to explain why the fuel consumption was falling below Mr W's expectations.

In conclusion, LRFS only agreed with part of Mr W's complaint. It felt the first three items had been repaired but no faults were found on the vehicle relating to the warning light and fuel consumption issues. So it didn't accept these were problems. J said the engineer's report suggested the warning light showed the DPF wasn't regenerating properly. This was probably because Mr W made a large number of short journeys. The owners' manual explains longer runs at higher speeds are needed for the regeneration process to work.

LRFS didn't agree that the car wasn't of suitable quality so it couldn't be returned. It did offer to pay Mr W compensation of £550 for his distress, inconvenience and loss of enjoyment while the car was off the road though.

The compensation was accepted by Mr W who says the car was off the road for two days while the oil was changed. (And, I believe the engineer's report for J was written.)

At this point the car had done 6,000 miles, against a service interval of 21,000 miles.

A week after the complaint response was issued Mr W had car trouble again. Roadside assistance was required to get the car to J.

Two months after that, roadside assistance were needed again. This time the car was off the road for six days. Mileage was now 8,500, as Mr W had started trying to do longer journeys to regenerate the DPF. Even to the extent of changing holiday plans so that he drove the family abroad rather than using the plane as originally planned. Regardless, the DPF 'full' light was coming on.

After the six days the car went to J where it remained. At the end of September J called to say the DPF would be replaced under warranty as it had clearly developed a fault. At the start of October it called again to say Mr W would actually have to pay for the DPF replacement. Mr W still wanted to reject the car and wasn't prepared to pay for it to be fixed.

In mid-October Mr W says J took back the courtesy car it had given him to use while his car was off the road. And he says he didn't use his car again, as the DPF wasn't replaced.

Over the next few weeks J agreed to buy the car back. It settled the outstanding finance and Mr W's deposit was refunded. LRFS agreed to contribute £5,000 towards this arrangement.

LRFS considered this an end of the matter but Mr W disagrees. He paid over £7,000 in monthly payments while he had the car. In his view it was never of satisfactory quality so he wants to have this money refunded too. Because of this, he asked the ombudsman service to look into his complaint.

Without a suitable engineer's report, the investigator couldn't say if the DPF was faulty when it was delivered. J said the fault developed later. To try and resolve things, the investigator asked LRFS to get the vehicle independently inspected. And he made it clear that if the report showed the DPF became faulty after delivery he wouldn't ask LRFS to do anything more.

Conversely, if it was faulty from the start, he'd ask LRFS to refund one monthly payment to compensate Mr W for the enjoyment he lost when the car was off the road. The investigator said it wouldn't be fair to refund all of the payments because Mr W had benefited from the use of the car while he had it.

Mr W disagreed with this opinion. He remained firmly of the view the car wasn't of satisfactory quality from the outset and wanted to reject it accordingly. He wants all of the repayments he made returned.

As the car had been sold (back to J), LRFS said it couldn't ask for an independent report.

The complaint has been referred for an ombudsman decision.

Two other pieces of evidence emerged while Mr W's complaint has been with this service.

Firstly, an internal document was released by J to its service network. It set out that there was a batch of faulty DPFs and provided a range of vehicle identification numbers that they might have been fitted to. And it said that the specific parts could be identified by reference to the last two digits of their batch numbers. Mr W's was in the range but he doesn't know the batch number on the DPF on his car.

Secondly, Mr W tried to get the batch number from J. Apparently the part was replaced at the end of January 2018 and there wasn't an audit trail of the (old) part being returned so there was no way to tell what the batch number was.

As part of the ombudsman service's process a provisional decision was issued. It upheld the complaint and suggested a form of redress. Mr W accepted this outcome but LRFS disagreed and asked the ombudsman for a final decision.

my findings

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

To start it is helpful to consider the legal framework that governs this complaint. The Consumer Rights Act says that goods supplied under a hire purchase agreement must be of satisfactory quality. The hire purchase business owns the car so it is responsible if the car wasn't satisfactory when provided or hasn't proven to be of suitable durability.

In this case, Mr W took out a hire purchase agreement with LRFS so I can ask it to sort out what's wrong if there's evidence to show any faults were present when Mr W got the car. We review cars differently dependent on their age, condition and mileage. In Mr W's case, his car was brand new when it was delivered in September 2016. And this brings us to the key question.

Was the DPF faulty, and if so, how did it come about?

Soon after delivery Mr W raised concerns about his car. J fixed many of them. One important issue remained though; fuel consumption was higher than expected. J initially believed this was down to Mr W's driving style. It later conceded the DPF had developed a fault and agreed to replace it under warranty. By this time there were DPF warning lights and multiple visits to the garage to try and establish and fix the underlying issue.

There isn't conclusive evidence to say one way or another when the DPF fault occurred. But, on the balance of probability I think it was there from the outset. Let me explain why.

Within days of delivery Mr W complained about poor fuel consumption. As I understand it, this can be a symptom of repeated attempts to regenerate the DPF. J said this was down to driving style (largely local journeys). This may be true but I think it is unlikely to be the actual cause. In August, Mr W started driving longer journeys, with stretches of motorway, so the DPF could regenerate regularly. And the problems got worse instead of going away.

Besides, LRFS haven't provided anything to suggest the DPF wasn't faulty from the outset.

I am also mindful that Mr W's previous car was another, older, diesel model made by the same manufacturer. He says he was getting consistently better mileage from that despite doing similar journeys to those he did in his new car, prior to changing his driving pattern. To

me this seems to indicate a fault with the new car that existed when it was delivered. More so because he didn't experience DPF regeneration issues with his previous, older, car on similar journeys.

Finally I can't ignore the fact there is a known problem with some of the manufacturer's DPFs. The evidence suggests to me, this makes it more likely that Mr W's car was fitted with a faulty part than if the manufacturer only had occasional DPF faults which couldn't be considered part of a wider problem.

To summarise, Mr W spent £40,000 to get a brand new, premium, car. I think it would be reasonable for him to expect it to be trouble free. For the reasons stated above I don't consider that the car supplied to be of acceptable quality. And J didn't fix it despite repeated attempts.

J has already gone a long way towards providing appropriate redress. It brought the car off Mr W for enough to clear his outstanding finance. It also paid to replace the DPF (but it unclear when it happened and LRFS didn't provide a date when I asked). This meant he could walk away without any further cost. And LRFS contributed £5,000 to the arrangement.

J says CRC also paid to replace the DPF. (I assume this is LRFS as it was mentioned that the £5,000 contribution came from the same source).

Given these facts I'm inclined to think LRFS accepted there was a fault with Mr W's car from the outset because, on balance, it seems unlikely to me that they would pay such substantial sums if there is no case to answer.

Mr W has asked for all of his repayments to be refunded but I don't think this would be fair to LRFS as he'd covered 8,500 miles in the car while he had it. And LRFS had paid him £550 of compensation in July. But I do think it should do more for the following reasons.

It is clear that the frequency and severity of problems increased after July so it is reasonable to say he was enjoying the car even less than previously.

Undoubtedly the inconvenience he experienced was much higher after July too. He needed roadside assistance twice, changed his driving habit (to include regular motorway journeys), changed his holiday plans (to drive abroad rather than fly), lost use of the car for a prolonged period and had to resort to using two cars for family trips. And there was a period when he didn't have use of a courtesy car because it had been taken back despite the fact his car wasn't fixed.

He also had to deal with the complaint he was trying to get heard and the frustrations associated with it. Even when the DPF fault was diagnosed he was given inconsistent advice (firstly it would be replaced under warranty and then it wasn't covered).

Further there is the question of the higher driving costs he has had because (I believe) the faulty DPF was increasing his fuel consumption since taking delivery of the car.

In response to my provisional decision, LRFS presented some analysis of Mr W's driving record to show he did a large number of short journeys at a low average speed. They maintain there is no fault and the problems are due to driving style. But, this data appears to have been gathered over 93 miles (or around 1% of the miles covered by Mr W while he had the car). LRFS didn't correct my interpretation, or provide me with more extensive records to

consider when I asked. I don't find such a small sample to be compelling evidence so it hasn't made me change my mind.

For the reasons stated, my provisional decision was different from the investigator's view. In it I said I was inclined to ask LRFS to refund some of Mr W's repayments under this agreement.

LRFS didn't agree this was fair. It sent further representations that I have considered. These representations largely repeated the arguments discussed above. And they didn't offer any new insights, so my view is unchanged.

On balance, I think a reasonable person who bought one of these cars would consider it unsatisfactory quality if their fuel consumption was poor, service intervals reduced dramatically and they needed to replace the DPF within 10,000 miles. After all, this is a new car, with a 21,000 mile service interval, that cost £40,000. In summary, I agree with Mr W that his car wasn't of satisfactory quality.

When this happens, the ombudsman service tries to put things right by allowing consumers to reject the vehicle (as one of the potential redress options). In this case, the rejection's already happened but Mr W doesn't think this goes far enough, which is why I'm looking at the complaint against LRFS.

Mr W wants to unwind the agreement and have all of his payments refunded. I don't think this would be fair as he has driven the car for 8,500 miles. But, I can ask finance providers to refund some monthly payments in cases where the customer hasn't had use of the car or something else has gone wrong and I think that is a fair outcome in this case.

The additional information provided by LRFS hasn't persuaded me that the redress I proposed in my provisional decision was inappropriate for the circumstances of this case; in particular I considered:

- Mr W's car was off the road between it being returned, unrepaired, and J buying it back. During this period he couldn't use it,
- between taking delivery of the car and it being returned, Mr W had use of the car for 13 months. But he hasn't enjoyed the car because of the fault. Further he has suffered the distress and inconvenience of dealing with complaints that flow from it.

So, for the reasons stated above, my final decision remains unchanged.

my final decision

I require Black Horse Limited trading as Land Rover Financial Services to make the following refund to Mr W:

- 100% of the payments he made in respect of the period 13 October 2017 to 21 November 2018,
- 25% of the payments made from the car's delivery date to 13 October 2017,
- simple interest, at a rate of 8%, should be paid on these amounts from the date payments were received to the date the refund is issued.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 July 2018.

Richard Houlbrook
ombudsman