

## **The complaint**

Miss C complains about the quality of car she acquired under a hire purchase agreement (“agreement”) with Black Horse Limited trading as Land Rover Financial Services (“LRFS”).

## **What happened**

In June 2021 Miss C entered into an agreement with LRFS for a new car costing £56,603.96. Under the terms of the agreement, everything else being equal, a deposit of £13,500 was to be paid followed by 48 monthly payments of £502.20 plus 1 monthly payment of £25,783 making a total repayable of £63,388.60 at an APR of 4.9%.

In October 2021 Miss C experienced two faults with the car (display screen and internal light) and had these repaired by the original supplying dealership at no cost, a dealership that I will call “G”. The car’s mileage in October 2021 was noted as being 5,362.

In December 2021 Miss C says she experienced a further and new issue with the car (parking brake fault light) but ultimately didn’t need to seek a repair.

In December 2022 Miss C had the car serviced by a garage that I will call “M”. This service included an oil change using oil Miss C says she had herself purchased a month earlier. The car’s mileage in December 2022 was noted as being 21,360.

In June 2023 the car broke down and was uplifted to a manufacture’s dealership, a dealership that I will call T. T ultimately identified a new engine was required which Miss C’s warranty company refused to pay for. The car’s mileage in June 2023 was noted as being 27,586.

In July 2023 Miss C complained to LRFS about the display screen and internal light faults, a steering wheel fault and the engine failure fault.

In August 2023 LRFS issued Miss C with a final response letter (“FRL”). Under cover of this FRL LRFS said it was prepared to pay Miss C £280.49 in compensation, but nothing further.

Unhappy with LRFS’ FRL Miss C complained to our service.

Miss C stopped making monthly repayments towards her agreement in November 2023.

Miss C’s complaint was considered by one of our investigators who came to the view that it should be upheld. She then went in to explain what LRFS should have do to fairly and reasonably compensate Miss C.

LRFS didn’t agree with the investigator’s view, so Miss C’s complaint was passed to me for review and decision.

In April 2024 I issued my first provisional decision on this case. In summary I said:

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

*My role here is to resolve disputes informally – so I won't be commenting on everything put forward by the parties – I will focus on the matters I consider central to this complaint.*

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

*The Consumer Rights Act 2015 ("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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle'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 can be aspects of the quality of goods.*

*My starting point is LRFS supplied Miss C a brand new car with a purchase price well over £50,000. With this in mind I think it's fair to say that a reasonable person would expect the level of quality to be not only higher than a cheaper used car, but also to be of a high standard compared to similarly specified but more inexpensive new cars.*

*The investigator concluded that LRFS offer of £280.49 in respect of the display screen and internal light faults and LRFS' decision to offer nothing in respect of the steering wheel fault (on the grounds it was never made aware of such a fault) was fair and reasonable and I agree. Therefore, what I'm required to decide is what, if anything, LRFS should have to do to fairly and reasonably compensate Miss C for the engine failure fault.*

*LRFS states that it shouldn't be held liable for the engine failure fault because more likely than not this fault wasn't as a result of the car being of unsatisfactory quality when supplied but because of the type and quality of oil added to the car in December 2022 by M.*

*It also added that:*

- there is no evidence to show that the oil purchased by Miss C was the oil used by M*
- although the oil purchased by Miss C met standard STJLR.03.5006 it was "EDGE OW 20 C5" not "EDGE Professional EC OW-20" as recommended by the manufacturer*
- M's invoice doesn't state the oil used was oil supplied by Miss C*
- M's invoice could be read as the oil used by it was from its own stock/supply*

- *there is no evidence, regardless of the oil used by M, that the oil was filled to the correct level rather than under filled or over filled*
- *had Miss C used a manufacturer's garage rather than M, there would be no dispute as to what oil was used and to what level the oil was filled to*
- *Miss C has breached the terms of the agreement in having the car serviced when she did rather than in line with the manufacturer's recommended mileage and timescales*
- *Miss C has breached the terms of the agreement in having the car serviced by M rather than at G or approved repairer*

*As I'm sure Miss C is aware when she signed the agreement she agreed:*

- *"to keep the vehicle serviced according to the manufacturer's recommendations and any warranty*
- *keep the servicing record and registration document up to date and in her possession"*

*And that the manufacturer's recommendations state:*

- *"to make sure the vehicle remains in first class order, visits to a retailer/authorised repairer are required for routine servicing*
- *[she should] make sure that the retailer provide[s] a copy of the latest OSH printout when the vehicle is returned [post service or] for markets where an OSH is unavailable, [she should] make sure the appropriate pages of the service record are correctly completed"*

*And that the warranty states there is no cover (for repairs) where there has been a:*

- *"failure to maintain the vehicle, part, or accessory, in accordance with [manufacturer] maintenance schedules and service instructions*
- *failure to use oils, lubricants, or fluids of the correct specification..."*

*Now I don't necessarily agree, when considered alone and in isolation, with all the points made by LRFS in support of its view as to why Miss C's complaint shouldn't be upheld. But I'm satisfied that when taken together, and in the round, they do constitute grounds for not upholding Miss C's complaint.*

*Miss C has provided our service with the following evidence in support of her submission that she had the car serviced.*

- *an invoice dated 29 November 2022 for the purchase (by her) of 7 litres of Castrol EDGE OW-20 C5 engine oil*
- *an invoice from M dated 21 December 2022 stating "carried out engine oil service...oil (Castrol) O/W20...+ original filter from stock"*

- a statement from M dated 22 March 2023 stating “in reference to the vehicle above, we do not have a digital invoicing system regarding the work carried out to the vehicle [and] we can confirm that the oil and filter change was carried out as per the details within the invoice provided”

*I can understand why Miss C might find it difficult to understand that having her car serviced by M (and serviced in the manner that it was when it was) could result in the car’s engine failure. And why having her car serviced by M (and serviced in the manner that it was when it was) are valid grounds for the warranty company and LRFS to refuse to assist her. But taking everything into account I’m not persuaded that the engine failure is as a result of a fault present or developing at the point of supply. In coming to this view I’ve considered, amongst other things, that:*

- *Miss C was required to have the car serviced at 20,000 miles but didn’t have it serviced until 21,360 miles*
- *Miss C was required to have the car serviced by the original supplying dealership or an authorised garage but she instead opted to have it serviced by M*
- *the warranty states “failure to use oils, lubricants, or fluids of the correct specification may result in mechanical failure...” suggesting that where incorrect oil (or incorrect filling) occurs engine failure is a reasonable and foreseeable consequence of the same*
- *it appears, although a minor point, that Miss C purchased and M used oil that wasn’t of the precise specification*
- *it’s not clear how much oil was used by M making it difficult to conclude that the ‘new’ oil was added to the correct level, rather than being underfilled or over filled*
- *had Miss C had the car serviced by the original supplying dealership or an authorised garage then there would be no dispute over the oil used and to what level the oil was filled to*

*Furthermore, and unfortunately for Miss C, I find the warranty company’s findings that the reason for the engine failure wasn’t as a result of a fault present or developing at the point of supply, but rather due to how and when the car was serviced (and by whom), to be both plausible and very persuasive, in particular with regards to the oil used when the car was serviced.*

*What this means for Miss C, and I appreciate she will be very disappointed, I’m simply not persuaded that she was supplied with a car that was of unsatisfactory quality.*

LRFS responded to my first provisional decision to say that it had nothing further to add.

Miss C responded to my first provisional decision to say that she disagreed with it. She said that a brand new car costing nearly £60,000 shouldn’t suffer engine failure after just 2 years regardless of when and by whom it had been serviced. She also said that:

- the oil used by M was the oil supplied by her
- the oil supplied by her, and used by M, is acceptable to the manufacturer
- the breakdown report, dated 7 June 2023, confirmed the oil level was ok

- she is entitled to use a garage of her own choice for servicing and the manufacturer, LRFS or the warranty company can't insist otherwise
- M is reputable and has the required knowledge and expertise to carry out servicing to the car
- the car required its first service at 21,000 miles or 24 months whichever came first
- having the car serviced at 21,360 miles should be acceptable to the manufacturer, LRFS and the warranty company

In June 2024 and following both parties responses to my first provisional decision I issued my second provisional decision on this case. In summary I said:

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

*In my first provisional decision I said that Miss C was required to have the car serviced at 20,000 miles. But based on what Miss C has now provided I'm satisfied that she was required to have it serviced at 21,000 miles. So with this in mind and given, amongst other things, that the warranty company allows a period of grace of 1,000 miles for servicing I'm now of the view that Miss C had the car serviced at the correct time.*

*In my first provisional decision I said that the oil supplied by Miss C wasn't of the precise specification. But based on what Miss C has now provided, including extracts from the manufacturer's and Castrol's websites, I'm now of the view that the oil supplied by Miss C was of the required specification.*

*In my first provisional decision I said that it wasn't clear how much oil was used by M making it difficult to conclude that the 'new' oil was added to the correct level. But based on what M has now confirmed to our service and given that the breakdown company that attended on 7 June 2023 stated "Engine Oil Level OK" I'm now of the view that in all probability the oil was added to the correct level.*

*Miss C says that the oil she supplied to M was used by it and the filter supplied and fitted by M was a genuine part. Now I accept I can't say for certain this is the case, but on the balance of probabilities I'm satisfied that this is what happened. I say this because:*

- *I find Miss C's submissions on this point to be both plausible and persuasive*
- *I find M's submissions on this point to be both plausible and persuasive*
- *I see no reason why M would have asked Miss C to purchase the oil that she did to then go ahead and not use it*
- *LRFS has never suggested that the oil filter supplied and fitted by M wasn't a genuine part*

Miss C says that she is entitled to use a garage of her own choice for servicing and the manufacturer, LRFS and the warranty company can't insist otherwise. I've considered Miss C's submission in this respect and I can confirm that I agree with her. Furthermore, based on what Miss C has now provided, I can see that the warranty company states that:

"...if it is more convenient you can have your vehicle serviced by any garage. However, to ensure that this does not invalidate your warranty the work carried out must meet the manufacture's specified requirements and genuine manufacturer parts must be used."

With all of the above in mind, I'm now of the view that although Miss C didn't have the car serviced by the original supplying dealership or an approved repairer she had it appropriately serviced by a reputable garage, using genuine parts and in good time and Miss C's actions in this respect aren't grounds for me to conclude her complaint shouldn't be upheld.

Given that I'm satisfied that Miss C had the car appropriately serviced the only conclusion I can reasonably reach now is that LRFS supplied Miss C with a car that was of unsatisfactory quality due to a fault with the engine that was present or developing at the point of sale. But even if I'm wrong on this point I also have to consider the expectations around durability of the car.

In this case Miss C purchased a car that was new and cost her over £55,000 with an engine failure occurring after only about 2 years and after about 27,500 miles. Now in my view a reasonable person wouldn't consider it acceptable that a major component like the engine would need replacing so soon, regardless of when and how it was serviced, and therefore I'm satisfied that the car wasn't sufficiently durable.

Having decided that Miss C was provided with a car that was of unsatisfactory quality what I now need to decide is what LRFS should have to do to compensate her.

Given when the engine failed, Miss C's reluctance to have a repair to the engine undertaken, what is probably required for a satisfactory engine repair and given that the car has been subject to previous repairs I like the investigator am satisfied that Miss C should now be able to reject the car and have her deposit returned to her together with interest.

I'm also of the view that given Miss C hasn't used the car since 7 June 2023 she should have any agreement payments she has made since this date refunded to her by LRFS together with interest and that it should pay her £200 for any distress and inconvenience being supplied with a car of unsatisfactory quality has caused her.

Finally and for the avoidance of doubt I can confirm that I'm also satisfied, like the investigator and for the same reasons, that LRFS should pay Miss C £280.49 for the previous faults with the car and refund, on evidence being provided, any recovery and storage fees Miss C has incurred and paid.

I accept that in my first provisional decision I said that I found the warranty company's findings that the reason for the engine failure wasn't as a result of a fault present or developing at the point of supply, but rather due to how and when the car was serviced (and by whom), to be both plausible and very persuasive. But for the avoidance of doubt I can confirm that in the light of Miss C's further submissions I no longer hold this view.

I note that Miss C hasn't kept the service book up to date but I'm satisfied that this isn't grounds for not upholding her complaint especially as M has confirmed it would have updated it had Miss C presented it to it and given that I've seen no reason why this can't be updated by M retrospectively.

Miss C responded to my second provisional decision to say that she had nothing further to add.

LRFS responded to my second provisional decision to say it was disappointed with it and disagreed with it. In summary it said:

- it would normally agree that an engine shouldn't fail on a car that is only two years old, but if faulty oil is used it's wholly reasonable that an engine could fail
- it's only responsible to ensure that a car is supplied in a satisfactory condition at the time of supply and no evidence has been provided which proves or suggests the engine failed due to a quality issue that was present (or developing) on the car at the time of supply
- T, completely independent of G, has confirmed that the engine failure is down to the oil that was added to the engine in December 2022 and not down to a manufacturing concern with the car itself
- the oil that has caused the engine failure isn't the oil supplied with the car at the outset and it isn't the oil that it financed
- had there been an issue with the quality of the car it follows that the engine would have failed when the car still had the original oil in the engine not after 'new' oil was added
- whilst Miss C says the correct specification of oil was used T, having sent an oil sample away for testing, found that it was the oil that was added to the engine in December 2022 that has caused the engine failure rather than a fault that was present (or developing) on the car at the time of supply
- the independent evidence supplied clearly shows the oil that was added to the engine in December 2022 is the cause of the engine failure and Miss C should take up her complaint with the supplier of the oil or M.

### **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 accept that the car was inspected by T, completely independent of G, and the oil was sent away by T for testing. I also accept that the oil added to the engine in December 2022 had become sludge like by June 2023. But this doesn't mean the oil added to the engine in December 2022 has caused the engine failure. In my view what is more likely than not is that it was a fault with the engine, present (or developing) at the time of supply, that has caused the oil to become sludge like.

In coming to the above view I would point out that:

- I'm simply not persuaded, on the balance of probabilities, that the oil Miss C purchased (and which was used by M) was faulty or contaminated especially given the oil manufacturer's standing and reputation and the price paid by Miss C for this oil
- the evidence supplied by LRFS simply points to the oil being sludge like in June 2023 not that it was faulty or contaminated when purchased by Miss C
- had the oil been contaminated I might have expected this to be apparent to M and for M not to have used it
- I find it difficult to accept that even had the oil Miss C purchased (and which was used by M) been faulty or contaminated this would result in the engine damage that has occurred in this case

I would also add that I disagree with LRFS' submission (in response to my second provisional decision) that had there been an issue with the quality of the car it follows that the engine would have failed when the car still had the original oil in the engine not after 'new' oil was added. In my view if there is a fault present (or developing) on a car at the time of supply this can manifest itself at any time, not in just the first eighteen months or first 20,000 miles.

LRFS (in response to my second provisional decision) submits that at the time of the engine failure the oil in the engine wasn't the oil supplied with the car at the outset. But I wouldn't expect a car that fails two or more years after being supplied to have the original oil present, or indeed a number of other original parts (especially those parts that are deemed serviceable items such as oil, filters and fluids).

So taking everything into account, including LRFS's response to my second provisional decision, I can confirm that I remain satisfied that the engine failure was, more likely than not, as a result of the car being of unsatisfactory quality when supplied rather than as a result of the quality of the oil added to the car in December 2022 by M (and which was purchased by Miss C a month earlier) or as a result of anything else that Miss C might or might not have done.

### **Putting things right**

To fairly and reasonably compensate Miss C Black Horse Limited trading as Land Rover Financial Services must:

- end the agreement with nothing further for Miss C to pay
- collect the car from Miss C at no cost to her
- refund to Miss C the deposit she paid for the car, my understanding being that this was £10,000 and not £13,500 as previously referenced, together with interest at 8% simple a year from the date of payment to the date of settlement\*
- refund to Miss C all payments she has made against the agreement since 7 June 2023, given she reasonably stopped using the car on this date, together with interest at 8% simple a year from the date of each payment to the date of settlement\*



- pay Miss C the sum of £280.49 in respect of other faults with the car as offered under its FRL
- refund to Miss C, on evidence being provided, any additional expenses she has incurred as a result of faults with the car together with interest at 8% simple a year from the date of payment to the date of settlement\*
- pay Miss C £200 for the distress and inconvenience this whole matter has caused her
- remove from Miss C's credit file any adverse information it has reported since 7 June 2023

*\* HMRC requires Black Horse Limited trading as Land Rover Financial Services to take off tax from this interest. If Miss C asks for a certificate showing how much tax has been taken off this should be provided*

### **My final decision**

My final decision is that I uphold this complaint and direct Black Horse Limited trading as Land Rover Financial Services to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 2 August 2024.

Peter Cook  
**Ombudsman**