

The complaint

Mr L complains about the quality of a van he has been financing through an agreement with Billing Finance Ltd (“Billing Finance”).

What happened

I issued my provisional decision on this complaint in July this year. An extract from that provisional decision is set out below.

I know it will disappoint Billing Finance, but I don't currently agree with the investigator's opinion and I'm expecting to uphold this complaint. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr L acquired his van under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says, amongst other things, that the van should have been of satisfactory quality when supplied. If it wasn't then Billing Finance, who are also the supplier of the van, are responsible. The relevant law also says the quality of goods is 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 like this which involves a van the other relevant circumstances would include things like the age and mileage at the time the van was supplied to Mr L. The van here was nearly six years old and had already covered about 106,000 miles when supplied so I think a reasonable person would expect quite a bit of wear and tear to be present.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply when Billing Finance were responsible for the van's quality unless they can demonstrate otherwise.

I think there is evidence there was a fault with this van when it was supplied to Mr L. I say that because Mr L has explained that on the day he took receipt of the van the brake service warning message had illuminated. He's explained that the dealership suggested it may simply be a sensor and to come back to them if it reoccurred.

When the fault did reoccur after Mr L had driven the van for about 3,000 miles Billing Finance and Mr L have explained that the van was returned to the dealership. Billing Finance have explained that the brakes, discs and calipers were replaced.

Whilst some brake issues can reasonably be attributed to wear and tear I don't think it would be fair to say that was the case here. The van was MOT'd shortly before collection. No advisories were reported and yet Mr L has explained the brake service light was illuminated. Billing Finance haven't disputed that, and I think the dealership wouldn't have repaired the van if it had been a wear and tear issue. So, I don't think this van was supplied in a satisfactory condition.

In those circumstances the relevant legislation gives the business one opportunity to repair the goods. I think Billing Finance had that opportunity when they replaced the discs and calipers.

Mr L returned the van to the dealership again in July 2021 because he said the fault hadn't gone away. He's provided date stamped photographs of the dashboard that demonstrate the same warning message was being displayed before (in May 2021) and after (in July 2021) the first repair was completed.

So, I don't accept Billing Finance's suggestion this was a new fault. I think it's more likely the initial fault hadn't been resolved.

At that point the business replaced the master cylinder but the report from the third-party garage and the independent inspection report both suggest this repair wasn't completed properly. The independent engineer said he would "consider the faults to be related to unsuccessful repairs" and "requires the vehicle being returned to the selling agent, in order to have the failed repairs amended".

The relevant legislation explains that if the business fails in its one attempt to repair the goods they can be rejected by the consumer.

So, I think Billing Finance should have allowed Mr L to reject them when the initial repair failed in July 2021.

I note that the van has subsequently been sold back to the dealership and that Mr L is being held responsible for the balance on the account. I don't think that's reasonable. I think it's only fair that Mr L pays for the use he had from the van. He'd travelled about 5,500 miles in it by the time the independent inspector looked at the van in July 2021 and I think that's reasonable usage for the 5 months he'd had it. But, thereafter, Mr L had no use of the van and as I've found it was of unsatisfactory quality Billing Finance should refund, or waive, any finance instalments he paid or that were due under the agreement.

If that means there's a refund of instalments then Billing Finance will need to add interest to that refund.

The finance agreement suggests a deposit was paid and this will also need to be refunded to Mr L with interest as he's been deprived of that money.

Mr L has clearly experienced distress and inconvenience as a result of this issue. He's explained the really negative impact this has had on his life and has provided a medical note to explain he was under great stress even before Billing Finance rejected his claim. I can see that he also explained to Billing Finance that he'd lost his business and his home and whilst it would be unfair to suggest it was this issue that led to that situation, it clearly wouldn't have helped Mr L to find he now owed over £10,000 as a result of the problems with his van. Mr L has also had to take the van back for repairs on several occasions and he's had to arrange his own diagnostic. He's had to escalate his complaint to this service when I think it could have been resolved earlier. Taking all of those circumstances into account a think there is

evidence of significant distress and inconvenience over quite a prolonged period and I'm therefore expecting to tell Billing Finance to pay Mr L £500 in compensation.

Mr L paid £96.60 to have the fault diagnosed at a third-party garage. I've seen the receipt for that work and it's clear the cost was incurred as a consequence of the van being of unsatisfactory quality. So, Billing Finance should refund that, adding interest.

They'll also need to remove any adverse reports they may have made to Mr L's credit file in relation to this matter.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Billing Finance Ltd to:

- Refund, or waive, any finance instalments paid, or due, from 19 July 2021. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Refund any deposit that Mr L paid and add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Pay Mr L £500 compensation in respect of the distress and inconvenience caused.
- Refund the £96.60 Mr L paid to have the fault diagnosed at a third-party garage. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to his credit file in relation to this issue.

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.

Billing Finance had nothing further to add but Mr L did provide some additional comments.

He said he was upset with the garage who sold the van as they'd sold him an "*unroadworthy vehicle*" and had "*bodged repairs*" on it. He said the garage should have noticed those issues as the car had an MOT and a service on the day he picked it up. He was also upset at the way he'd been treated by Billing Finance. He said the fact they'd sold the van back to the supplying garage suggested there was something "*dodgy*" and he was upset he'd paid so much for a van only to experience these problems and to have it taken off the road.

I understand Mr L's concerns and I think I've tried to put those issues right for him. Whilst I think he should pay for the use he had from the van I've explained that he shouldn't be responsible for instalments after the inspector looked at it as I think at that point a rejection of the vehicle should have been approved. I've also tried to refund any costs Mr L incurred as a consequence of the failure and I've ensured he gets his deposit back as he'll need that to fund a replacement vehicle. I understand Mr L has concerns about business practices, but I don't think I have evidence of any "*dodgy*" dealings. It was for Billing Finance to decide what to do with the car and they were free to sell it to the dealership if they chose.

Putting things right

I've not seen any evidence that has led me to change my provisional decision and that provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Billing Finance Ltd to:

- Refund, or waive, any finance instalments paid, or due, from 19 July 2021. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Refund any deposit that Mr L paid and add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Pay Mr L £500 compensation in respect of the distress and inconvenience caused.
- Refund the £96.60 Mr L paid to have the fault diagnosed at a third-party garage. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to his credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 September 2022.

Phillip McMahon
Ombudsman