

The complaint

Mr C complains that a car acquired with finance from Billing Finance Ltd (“BF”) wasn’t of satisfactory quality.

What happened

In October 2022 Mr C was supplied with a car and entered into a hire purchase agreement with BF. At the point of supply the car was around 6 years old and had covered 46,085 miles.

In March 2023 Mr C experienced issues with the engine making a noise and the car struggling to get up the hill. A breakdown organisation was called and diagnosed a fault with the turbo.

Mr C reported the issue to BF who arranged an independent inspection of the car. The inspection report concluded that the car was suffering from in service wear and tear to the turbo. It said that because the car had covered 9,243 miles since the point of supply, the fault would not have been present or developing at the point of supply.

Based on the findings of the inspection report, BF didn’t uphold Mr C’s complaint. Mr C remained unhappy and brought his complaint to this service.

Following referral of the complaint to this service, Mr C arranged for the turbo to be repaired. He also obtained a report from the repairing garage, which refuted the findings of the independent inspection report.

Our investigator upheld the complaint. She said she was persuaded by the findings of the repairing garages report that the turbo had been faulty for some time. The investigator said there was sufficient evidence to conclude that the car wasn’t of satisfactory quality at the point of supply and said that BF should refund the cost of repairs, refund three monthly rentals and pay compensation.

BF didn’t agree. It asked the independent inspection engineer to review the repairing garages report and provided the engineers further comments.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general state and condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr C was around 6 years old and had covered around 46,085 miles. So

its reasonable to expect that parts of the car had already suffered some wear and tear and that the car would require repairs and maintenance sooner than a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs within the first six months of the point of supply, its assumed that the fault was present or developing at the point of supply and its generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car.

I've reviewed the available evidence about the issues which Mr C experienced with the car. Based on what I've seen, I'm satisfied that the car has a fault. I say this because the independent inspection report identifies turbo failure, as does the third party garage report.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

BF rely on the independent inspection report, which concluded that the fault would not have been present at the point of supply because the car had covered over 9000 miles over a 5-month period with no signs of the fault. The report states that the service history meets the recommended service intervals of every 12 months or 18,000 miles (whichever comes first) and states that the turbo failure is at the stage of turbo whistle and hasn't yet developed into the bypassing of oil causing an oil leak or lack of performance or the engine management light illuminating.

Mr C replies on a report from the third party garage who replaced the turbo. This states that the turbo was "completely shot" and that when the oil was drained to change the turbo it was very murky. The report states that although the turbo only started to make noise around 5 months after the point of supply, the condition of the turbo suggests that it had been failing for a long time and that it was not in the early stages of failure as suggested in the independent inspection report.

I've reviewed both reports and I've taken account of the independent inspection engineer's further comments. I've also reviewed the service history of the car.

Generally, a turbo should last the lifetime of the vehicle, or around 150,000 miles. So if a turbo fails prematurely, as is the case here, I need to consider whether the turbo was sufficiently durable, or whether there was an external factor which caused the failure. Most turbo failures are caused by oil starvation or oil contamination.

The service history is important because it shows how often the oil has been changed. If the oil hasn't been changed regularly enough, this can result in oil contamination.

The independent inspection report states that the service history meets the recommended service intervals. However, on reviewing the service history I don't agree. The service history of the car shows that on two occasions prior to the point of supply, the service had gone over by 5 months and 4 months respectively. This means that its possible that the oil could have become contaminated due to not being changed regularly, which could have caused damage to the turbo prior to the point of supply.

The independent engineer has acknowledged this and has commented that damage can develop very rapidly of the contamination being present. The engineer goes on to comment that he doesn't think the turbo was in a damaged condition at the point of supply because the car covered 9000 miles between the point of supply and the point of failure.

I've thought about this. But the independent engineer's comments don't explain why the turbo failed prematurely. And in circumstances where it's acknowledged that the cars service history hasn't been maintained in accordance with the manufacturer's recommendations, this

makes it more likely that there was damage to the turbo at the point of supply, as opposed to turbo failure due to general wear and tear.

Based on what I've seen, I'm persuaded that then turbo was failing at the point of supply. This means that the car wasn't of satisfactory quality. This conclusion is supported by the report of the repairing garage. Even if I'm wrong about that and the turbo failed due to wear and tear as stated in the independent report, I'm of the view that such a premature failure wouldn't be due to wear and tear but rather that the turbo wasn't sufficiently durable, which means that the car wasn't of satisfactory quality when it was supplied.

Putting things right

I've already explained why I don't think the car was of satisfactory quality.

Mr C has paid £1330.02 for a replacement turbo. I think it was reasonable for Mr C to arrange the repairs. There's no evidence to suggest that the repair costs are unreasonable. BF should refund the costs of these repairs.

Mr C has told this service that he wasn't able to use the car for 3 months from the time it was independently inspected to the time when repairs were carried out by the third party garage. Given that the independent report diagnosed turbo failure, I think it was reasonable for Mr C to stop using the car to avoid causing further damage to the engine. BF should refund three monthly rental payments in recognition of the fact that Mr C was without the use of the car during this time.

It's clear that Mr C has been caused a significant degree of distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. I think it's fair to ask BF to compensate Mr C for this.

My final decision

My final decision is that I uphold the complaint. Billing Finance Ltd must:

Refund the cost of repairs together with 8% simple interest per annum calculated from the date of payment to the date of settlement

Refund three monthly payments to reflect the time that Mr C was without use of the car

Pay £100 compensation for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 December 2023.

Emma Davy
Ombudsman