

The complaint

Miss G complains that a used car she acquired via a hire purchase agreement with Billing Finance Limited ("BF") wasn't of satisfactory quality.

What happened

In April 2022 Miss G acquired a used car via a four-year hire purchase agreement with BF. The car was around 10 years old and had a mileage of over 49,000. Around two months after taking the car Miss G raised a complaint with BF about issues with the tyres, a brake light, the exhaust flexi pipe, parts of the suspension system and a missing spare key.

BF arranged for the car to be independently inspected. This was carried out in July 2022 and the independent engineer said they considered the car did have faults that had been developing at the point of sale. At first, due to the cost of the repairs and the value of the car, the offer was for Miss G to return the car and agreement to be unwound. However, Miss G was keen, for personal reasons, to keep the car. The repairs were later agreed and carried out at no cost to Miss G.

BF upheld Miss G's complaint about the car and also reimbursed her the £180.54 out of pocket expenses she had requested together with £150 compensation. It sent Miss G's its final response letter in September 2022 noting that the repairs had been successful, and the complaint was closed.

Miss G says that the car then developed further problems and she made a further complaint to BF in March 2023. She said that the car had an electrical fault with its roof, that the boot no longer opened, and the demister wouldn't work.

BF again requested that the car be independently inspected. The car was inspected in May 2023 and the independent engineer said that although the car's condition was good there was a fault with the way the roof closed, that the heated screen/demister was inoperable, and they were unable to open the tailgate. They also reported that the clutch pedal rubber was missing. However, the independent engineer said that taking into account the amount of time that had passed since the inception of the financial agreement and that Miss G had driven over 16,500 in the car in that time, that these faults arose from wear and tear and would not have been developing at the point of supply of the vehicle to Miss G. BF did not uphold Miss G's complaint.

Miss G was unhappy at BF's response and complained to this service. She said that because of the problems with the car's boot she had not been able to have the car MOT'd and therefore couldn't get it taxed and so it was off the road. She said dealing with the faulty car had caused her financial hardship as she hadn't been able to use the car due to the faulty boot. She explained that the boot was essential due to her personal circumstances. She asked that the agreement be cancelled, and her payments reimbursed but that she be able to keep the car.

During our investigator's investigation of Miss G's complaint, Miss G arranged for the car's boot latch to be repaired. The car, having failed an MOT in April 2023, then passed its MOT

in July 2023. Miss G confirmed it had been SORN between April and July 2023.

Miss G also provided a job sheet dated July 2021 that had been left in the car by the previous owner which raised that there was a fault with the boot. Miss G explained this issue had been intermittent but had caused an issue for her every day.

Our investigator partially upheld Miss G's complaint in that she agreed the car had had a fault with the boot latch when it had been supplied to Miss G. She said there was no evidence to support that either the faulty electric roof nor the demister had been developing when Miss G acquired the car and that it was more likely than not that these faults had arisen through wear and tear.

Our investigator said that she thought repair was a reasonable remedy for the boot and as Miss G had had that successfully carried out then BF should now reimburse her that cost. She also said that due to having to deal with the faulty boot that Miss G should be refunded 10% of the monthly payments made under the agreement from March 2023 to July 2023 together with £100 compensation.

BF has agreed with our investigator's view save that it says it should refund Miss G the cost of the repairs to the boot latch only and not the full invoice cost as that also included the cost of the new MOT. Miss G has disagreed. She says that the investigator didn't consider all the applicable law and industry practice. Miss G says that BF was aware that due to her personal circumstances she required a safe and reliable car with a functioning boot but had failed to provide this. She says the issue here is one of durability. Miss G also says that the car was overpriced and misrepresented to her due to its condition.

Miss G asks that the financial agreement is rescinded, and all payments made by her under this contract are now returned.

I issued a provisional decision along the following lines. I said I was sorry to disappoint Miss G, but I wasn't intending to uphold all of her complaint either though I did appreciate the distress she had experienced dealing with this matter particularly when looking at her personal circumstances.

While I appreciated Miss G's view that her complaint about the car went beyond the Consumer Rights Act 2015 this service's remit is subject to certain rules. And this meant I couldn't look at everything she had raised. For this service to consider a complaint, it must have first been raised with the business by the consumer to allow the business an opportunity to investigate it and provide a response. Miss G hadn't raised with BF that the car had been misrepresented to her and that untrue statements had been made about it.

If Miss G wished to pursue that point, then she would need to make a complaint about the car's cost and anything that had been said that had induced her to enter into the contract with BF first. So, I wasn't able to deal with that part of her complaint.

As the hire purchase agreement entered into by Miss G is a regulated consumer credit agreement, then as set out above, this service is able to consider complaints relating to it. BF is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 the goods.

Here the car was over 10 years old and had a mileage of over 49,000 so wear and tear would have been suffered by its components making it reasonably likely that repair and maintenance issues would be expected to arise after a reasonable period of time.

I'd seen that Miss G had first raised a complaint around two months after acquiring the car and various repairs had been carried out at no cost to her together with compensation and some out-of-pocket expenses. I hadn't seen that Miss G had raised any issues about either the settlement or the repairs and that this complaint had been closed. There is a time-limit for a consumer to bring a complaint to this service after a business has issued a final response letter which is generally six months. There are some exceptions to that, but again Miss G would need to raise a complaint about BF's handling of that original matter with it first.

As Miss G's complaint to this service had concerned the faults she had raised with BF in April 2023, namely the electrical fault with the roof, the demister and the boot, then I thought it was fair and reasonable for me to deal with only with those matters. I thought it was fair I considered the issues with the car that had been subject of the repairs in 2022 as resolved.

Miss G had said that the car had developed further faults and there had also been the ongoing and intermittent issue with the boot lock. She said that the car couldn't be considered as durable as would be expected given those faults. But when looking at durability, the issue is what a reasonable person would expect of this car taking into account its age and mileage. And I thought a reasonable person would expect a car that was over 10 years with a mileage of about 49,000 to need maintenance and repair after a period of time. I had seen that Miss G had been able to drive over 16,000 miles in it since she'd acquired it around one year before. And so didn't think a reasonable person would say repairs had been unexpected.

I accepted the independent engineer's assessment as to the demister and the electrical fault with the roof. I think it was more likely than not that these had arisen from wear and tear and hadn't been developing at the point of supply of the car to Miss G.

Looking then at the boot latch, Miss G had provided a job sheet that set out this had been a problem from before she had bought the car. She also said that this had been an intermittent problem and I'd seen she had raised it with BF in March 2023 when she said the boot latch had stopped working and couldn't be opened with either the key or the latch. Miss G informed BF as part of her complaint that the car would fail its MOT due to the faults.

As there was evidence there had been a fault with the boot from before Miss G had acquired the car, I thought it was more likely than not that this problem had been developing when she took possession of the vehicle. However, I didn't agree that a boot latch issue where the boot was secured was necessarily an MOT failure. If the boot had been insecure then I accepted it would be, but that wasn't the case here. And looking at the reason cited on the MOT failure certificate dated April 2023 I could see this had been due to an issue with the brakes. The boot latch hadn't been raised as either a major defect needing immediate repair nor as a minor repair. I therefore didn't think the boot latch had been the cause of the MOT failure. I'd also seen that the car passed its MOT without any advisories in March 2022 and as the issue with the boot had been as present from around July 2021 this fault hadn't had an impact on the car passing its MOT at that time either.

So, while I accepted this fault had been present from the point of sale and therefore the car

wasn't of satisfactory quality this didn't mean that I thought it would be fair and proportionate for the contract to be ended. Instead, I thought a fair resolution would be for the latch to be repaired at no cost to Miss G but since she had already paid for that to be done, then I thought those repair costs should be reimbursed to her.

However, as the boot latch hadn't been the reason the car had failed an MOT then I didn't think it was fair for BF to reimburse that cost to her as well. It was Miss G's responsibility under the agreement to keep the car maintained and have MOTs carried out. So, I intended to ask BF to reimburse Miss G the amount of £251 which had been the cost of boot latch repair.

I appreciated Miss G had been inconvenienced by the faulty boot, but I didn't accept this had been the reason for the car to be SORN. Looking at the required repairs and advisories these had concerned the brakes and suspension. And given the age and mileage of the car and the length of time that has passed since the finance agreement's inception then I thought it was reasonable to say these, like the demister and electric roof were matters of wear and tear. They wouldn't have been present when Miss G acquired the car.

However, it was clear Miss G had struggled with an unreliable boot, and this would have spoilt her usage of the car and I thought some reimbursement of part of her monthly instalments would be fair. I couldn't see that Miss G had raised the issue with the boot when she had originally complained about the car to BF in May 2022 so I couldn't fairly say she had been struggling with the boot from the point she had the car. I thought it was fair to use the date of her second complaint as the date the boot had ceased to work which would be March 2023 until the date it was repaired in July 2023. I agreed that a 10% reimbursement of the monthly payments made between March and July 2023 would be fair.

Miss G had also raised that she didn't consider the finance agreement as valid as it was unsigned by BF. Whether a contract is valid would be a matter for a court to decide rather than myself, but as Miss G had the car, used it and paid the monthly instalments to BF as per the agreement's terms and conditions I didn't think I could reasonably conclude that this agreement was void.

I also thought that Miss G had been distressed and inconvenienced dealing with the faulty car boot and so I agreed with our investigator that £100 compensation was fair here.

Miss G had recently raised that she was unable to use the car currently due to a fault that had been causing petrol to leak. But as set out above, this was a new issue that she would need to raise with BF first. Given the length of time Miss G had now had the car in her possession, then I thought it was likely BF would request her to provide proof as to the cause of the leak to ascertain whether it had any liability or if it was a repair that had arisen through wear and tear.

For the reasons given above, I intended to partially uphold Miss G's complaint in that I accepted the car had a faulty boot latch that had been intermittent in nature until it became unusable in March 2023. I thought the other issues she had complained about to BF in March 2023 had been issues of wear and tear and had not raised a question of durability of the vehicle. I thought repair of the boot latch at no cost to Miss G together with compensation and a reduction of some of her monthly payments was a fair outcome.

So, I asked BF to do the following:

- Reimburse Miss G the cost of repairing the boot latch amounting to £251 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.

- Pay a refund of 10% of each of the monthly rentals paid by Miss G between March and July 2023 to cover any loss of use, or impaired use, of the car because of the inherent quality issues. Yearly interest at the rate of 8% simple is to be added from the date of payment until the date of settlement.
- Pay Miss G a further amount of £100 for any distress or inconvenience that had been caused due to the faulty boot.
- If applicable, remove any adverse information from Miss G's credit file in respect of this agreement.

BF has agreed with my provisional view, but Miss G has disagreed. She says she did complain about the car being misrepresented to BF in writing and on the telephone when she acquired the car. She says the car was misrepresented as to its condition and having two keys. Miss G also disagrees that the car failed its MOT due to its brakes and not the boot latch.

Miss G says that under the law the car must be of satisfactory quality at its point of sale and this car had faults. She says she told the dealership and BF about her need for a working boot.

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 looked again at the evidence I have been provided with and the conclusions I reached on that evidence, and while I'm sorry to disappoint Miss G, I haven't changed my mind.

As well as taking into consideration the law, regulations and good practice, where evidence is contradictory or missing then I must decide what I think is the most likely thing to have happened.

In respect of Miss G's complaint about the car having been misrepresented, while I don't argue that she may have raised something about this at some point with BF, I haven't seen enough evidence that I can reasonably say she has made a formal complaint to it and that BF has had an opportunity to investigate and respond to that issue. So I am still of the view that it is not within my remit to consider a complaint that the car was misrepresented to Miss G. I therefore haven't looked at this part of her complaint when considering my final decision. As set out above, if Miss G wishes to pursue a complaint about the car being misrepresented and/or that other faults have now arisen then she will need to make contact with BF.

So, I'm still satisfied that Miss G's complaint to this service and which was passed to me concerns the faults found with the car in April 2023, that is the electric sunroof, the boot and the demister. And, on reviewing the evidence, I haven't changed my mind that the sunroof and demister issues were due to wear and tear and weren't the responsibility of BF.

I appreciate Miss G's frustration over the intermittent fault with the boot latch which ceased to work at all from March 2023. And I also accept this would have had an impact on her using the car, but I don't agree with Miss G that this fault was the reason the car failed its MOT in April 2023. As set out above, the MOT fail lists the reasons the car didn't pass when inspected, and the boot latch wasn't among the faults that have been recorded. While Miss G disputes that there were issues with the brakes and says the evidence doesn't support them being faulty, I don't think it's likely that if the boot latch had been found to be a major

defect that it wouldn't have been included at all on that MOT failure. Nor do I think it likely that the MOT would record a major defect as being present and requiring immediate repair if that finding had not been made by the garage inspecting the car. I am satisfied that it's more likely than not that the fault with the boot latch didn't result in the car failing its MOT in April 2023.

I accept that the car has had faults and that the issue with the boot latch had been developing at the point of supply of the car to Miss G. I've seen that earlier faults were repaired at no cost to Miss G and that these repairs were successful, so I still don't think that Miss G is entitled to cancel the agreement due to the condition of the car. And as set out, some of the faults are due to wear and tear. I think a fair and proportionate settlement for the fault with the boot latch is for it to be repaired at no cost to Miss G.

I also think that as the issue with the boot was an intermittent problem and not raised by Miss G with BF until March 2023, when she reported it had failed completely, that Miss G should receive a refund of 10% of her monthly rentals for the period March to July 2023, when the car was repaired. This reflects the period during which she couldn't use the boot.

I also still think that £100 compensation for the distress and inconvenience caused to Miss G having to deal with the faulty boot is fair and reasonable. I understand the boot space was important for her, but I've seen she was able to make use of the car and that the boot, although it could be problematic, stopped working in March 2023. I think this amount of compensation reflects the impact this fault had on Miss G.

For the reasons given, I'm partially upholding Miss G's complaint as I agree the car was faulty but don't agree this means it is fair for the agreement to be cancelled and for Miss G to be reimbursed the amount of the monthly rentals she has requested.

Putting things right

I'm asking BF to do the following:

- Reimburse Miss G the cost of repairing the boot latch amounting to £251 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Pay a refund of 10% of each of the monthly rentals paid by Miss G between March and July 2023 to cover any loss of use, or impaired use, of the car because of the inherent quality issues. Yearly interest at the rate of 8% simple is to be added from the date of payment until the date of settlement.
- Pay Miss G a further amount of £100 for any distress or inconvenience that had been caused due to the faulty boot.
- If applicable, remove any adverse information from Miss G's credit file in respect of this agreement.

My final decision

For the reasons given above, I'm asking Billing Finance Limited to do the following:

- Reimburse Miss G the cost of repairing the boot latch amounting to £251 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.

- Pay a refund of 10% of each of the monthly rentals paid by Miss G between March and July 2023 to cover any loss of use, or impaired use, of the car because of the inherent quality issues. Yearly interest at the rate of 8% simple is to be added from the date of payment until the date of settlement.
- Pay Miss G a further amount of £100 for any distress or inconvenience that had been caused due to the faulty boot.
- If applicable, remove any adverse information from Miss G's credit file in respect of this agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 01 March 2024.

Jocelyn Griffith
Ombudsman