

## **The complaint**

Mr S complains that Billing Finance Ltd ("Billing Finance") supplied him a minibus that wasn't of satisfactory quality.

## **What happened**

Mr S acquired a used minibus in September 2019 by taking out a Hire Purchase Agreement with Billing Finance. The age of the minibus at the time it was acquired was around 11 years old and had travelled around 82,600 miles. The agreement said the cash price of the minibus was £4,794 and an advance payment of £799 was to be paid. The amount of credit was £3,995.

Upon collecting the minibus, Mr S noticed some issues with it, such as with its interior lights. The supplying dealership offered to reduce the price of the minibus and an invoice for it said it was discounted to £4,594 and a receipt showed an advance payment of £599 was made.

Mr S complained to Billing Finance as he remained unhappy with the condition of the minibus.

Mr S also said the supplying dealership promised him the minibus would come with 12-month parts and labour warranty, alongside other things such as a full service prior to collection and a new MOT.

Billing Finance gave Mr S their final response on the matter in a letter dated 13 December 2019. Within their final response, Billing Finance said they contacted Mr S and gave him two options. One of those options was that Mr S was able to reject the minibus under the Consumer Rights Act 2015 ("CRA"). Alternatively, Billing Finance said they could have one opportunity to investigate and repair any faults present or developing at the point of sale.

The final response said Mr S wanted the minibus to be repaired and given back in the condition it was advertised in. He provided Billing Finance with a health check completed on the minibus by a third-party company. The vehicle health check highlighted several items that needed immediate attention, and it was completed approximately 200 miles after the point of supply. Billing Finance also said that Mr S wanted the minibus repaired at a third-party garage.

Mr S also provided Billing Finance with a quote for the repairs which he received from a third-party garage. The quote for repairs totalled £855.02. Later, Mr S provided a further summary of costs for repairs to Billing Finance, which totalled around £2,300 plus VAT.

Following Billing Finance upholding the complaint, Mr S said they have failed to repair the minibus to a state where it was both safe and roadworthy. He said they were not willing to send him the finance needed to repair the minibus locally. He said he hasn't had the benefit of any use of the vehicle and said it was put in storage.

The MOT on the minibus expired on 4 September 2020.

Billing Finance said the offers that were made to Mr S were fair and proportionate given the perceived condition of the minibus. They said they appreciated Mr S wished to have the minibus repaired by a third-party, however, the cost of repairs against the value of the minibus would have made this offer uneconomical. They said it appeared the most appropriate option was to remove Mr S from the agreement to free him up to find a more suitable minibus, but that in December 2019, Mr S confirmed by email that he didn't want to unwind the agreement.

Billing Finance have said that Mr S went on to repay the agreement in full.

Mr S referred his complaint to our service in January 2020 and contacted us again in March 2023. Our service initially considered whether this complaint was one we could look at. A decision has been issued on this matter, so I will not make any further findings in this decision about our jurisdiction. But in summary, our service concluded it was a complaint we could look into.

Mr S provided our service with photos of the current condition of the minibus, alongside invoices to show the costs incurred in storing it. The minibus has been SORN and has been stored, outside, unused.

Mr S complained, amongst other things, that he felt the minibus wasn't of satisfactory quality when he acquired it. He also complained that Billing Finance misled him into taking out the agreement by suggesting an extended warranty was provided by a reputable third-party, as well as other checks being completed on the minibus before it was acquired.

Our investigator explained that she would only consider whether the minibus was of satisfactory quality when Mr S acquired it, as his other complaint points had been referred to other organisations to investigate, such as Trading Standards.

Our investigator found that Billing Finance needed to do more in this instance. She concluded that it wouldn't be fair for Billing Finance to honour their original offer made in December 2019, given the amount of time that has passed. But she also felt that Billing Finance should do more, considering they supplied Mr S with a minibus, which they agreed was of unsatisfactory quality.

She found that Mr S was able to evidence costs for repairs that had totalled £855.02, from a quote from a garage who looked at the minibus around the time of the complaint. She said it was likely these repairs would've been needed to put the minibus back to satisfactory quality. And so, she concluded it would be fair for Billing Finance to pay Mr S the equivalent of the original quote for repairs that were needed to make the minibus roadworthy at the time.

Billing Finance disagreed with the investigator's view. They said that this sum of money is for repairs that have not been carried out and so are costs that Mr S hasn't incurred. They asked for the case to be referred to an ombudsman.

Mr S responded and provided a large amount of documents and files. In summary, the documents are Mr S's records of all the correspondence he has held with Billing Finance and/or third-party companies in relation to this complaint as well as correspondence leading up to him acquiring the minibus. Mr S also provided copies of call recordings of conversations he held around the time the minibus was acquired as well as during his complaint.

The complaint has now passed to me to decide.

## **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.

Having done so, I'm upholding this complaint and I'll explain why below.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

A significant amount of documents Mr S has provided our service are in relation to complaints he has with other third-party companies and agencies. These are mainly in relation to Mr S believing the dealer falsely advertised aspects of the minibus. To be clear, while I have reviewed these documents, I am only considering Billing Finance's role in this complaint.

Mr S complains about a minibus, supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr S's complaint about Billing Finance.

When considering what's fair and reasonable, I take into account relevant law and regulations. Mr S has told our service he was in search of a larger vehicle to transport his growing family and to make it possible for extended family members to join them on journeys or everyday activities. So, I'm satisfied the minibus Mr S was supplied wasn't used or predominantly used for business purposes and the CRA is relevant to this complaint.

The CRA explains under a contract to supply goods, the supplier – Billing Finance here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the age of the minibus, price, mileage and description. It's important to note here that the minibus Mr S acquired was around 11 years old, had travelled over 82,000 miles and cost under £5,000. I would expect a used minibus of this age to have significant wear and tear and to require more repairs and maintenance than a brand-new minibus. I also think £5,000 is very likely a large reduction of what the cost would've been new.

In this instance, I don't need to make a finding on whether the minibus had a fault and whether it was of unsatisfactory quality. I say this because it isn't in dispute that it was of unsatisfactory quality. Billing Finance accepted it was at the point of supply and offered Mr S remedies to put things right. So, what I need to consider is whether the offers made were fair at the time, and whether they are still fair given what's happened.

Mr S wanted the minibus repaired, but on the basis that it was completed by a third-party garage. Billing Finance said, due to the perceived cost of repairs, the value of the repairs would have made it uneconomical to complete – and so they offered to allow Mr S to reject the car. I think it was fair of Billing Finance to say this at the time. I say this as this would have met Billing Finance's obligations under the CRA.

However, I don't think it would be fair and reasonable to now allow Mr S to reject the minibus.

I say this because I'm mindful of the time that has passed since Billing Finance provided their final response and presented their option for remedy to Mr S.

Over that time, the minibus was left in storage, unused. I have seen recent photos of the minibus and its current condition. I'm satisfied the minibus is very likely in more disrepair than it was when it was acquired. It has been idle for years with no servicing or ongoing maintenance completed on it. I'm also mindful that the asset of the minibus has likely lost value over the years when it could have been returned to Billing Finance earlier on, and possibly sold. So, I don't think a rejection, like Billing Finance initially offered, is still a viable option.

I also don't think repairs are still a viable option. I say this because it is likely further faults have developed. And I suspect if some repairs were to be completed, it still would not place the minibus into a road worthy condition.

So, this means Billing Finance's original offer, while fair at the time, isn't now fair and reasonable to carry out. I've considered whether Mr S mitigated his losses here.

Over four years has now passed since Billing Finance gave Mr S its final response and he contacted us, and it is unclear why Mr S waited such a significant amount of time before proceeding with his complaint.

In Mr S's testimony, he has said he didn't get in touch again due to the Covid pandemic. I appreciate the pandemic may have been a worrying time for Mr S, but our service remained open and available to be contacted. And, more importantly, a significant amount of time had passed since the height of the pandemic up until when Mr S got back in touch with our service.

I've also considered that, while I understand he was unhappy with the offer, Mr S could have given the minibus back to Billing Finance a significant amount of time ago, which as above would have met his rights under the CRA.

I've also considered that Mr S chose to store the minibus rather than arrange any repairs himself. And he left it unused and carried out no maintenance.

Considering everything here, I don't think Mr S has mitigated the circumstances by not pursuing his complaint with our service sooner or maintaining the minibus's condition.

That being said, I have considered if there is any other option that would still be reasonable to put things right. While I don't think the remedies Billing Finance originally offered to still be appropriate, the CRA does give the option of a price reduction as a remedy. Given the circumstances, this still seems a fair and reasonable way to put things right. So, I've carefully considered what amount would be a fair way to resolve things for both parties.

Mr S initially provided Billing Finance with a quote for repairs totalling £855.02. Mr S believed this was to put the minibus back into a roadworthy condition. I've also noted this quote was provided shortly after acquiring the minibus. And it appears to cover issues identified as dangerous.

Mr S later showed repair costs totalling over £2,000. But I can't see that this is a quote from a genuine garage. In addition, I think it's likely the repairs totalling over £2,000 would have led to the minibus being put into a better condition, rather than resolving issues that made it of unsatisfactory quality.

I think a fair and reasonable way to resolve things is for Billing Finance to pay Mr S the amount of the initial quote totalling £855.02.

Mr S has provided a summary of the costs he's incurred by insuring the minibus over the years. I don't think it is fair for Billing Finance to reimburse these costs. It was a requirement under the agreement to insure the minibus while it was under Mr S's possession. And Mr S has had the benefit of the insurance in protecting him from the risk of theft or other risks while it was stored.

Mr S also says he incurred storage costs over the years the minibus couldn't be used. Again, I don't think it is fair for Billing Finance to reimburse these costs. As I said before, I don't think the remedies Billing Finance to have initially offered Mr S to be unfair. Had Mr S not waited for several years to progress his complaint, or kept the minibus elsewhere, then he wouldn't have incurred storage costs.

In summary, I don't think it is fair for Mr S to now reject the minibus or for Billing Finance to now repair it, due to the length of time that has passed. But I think Billing Finance should pay Mr S how much it would have likely cost to originally repair the issues which meant it was of unsatisfactory quality.

I've considered whether I should award any payment for distress and inconvenience. I think it is likely Mr S did suffer some distress and/or inconvenience here. But as I've explained above, most of this is due to Mr S delaying things by not proceeding with his complaint sooner and for also not maintaining the minibus. So, I don't think a payment for distress and inconvenience by Billing Finance to Mr S is warranted here.

### **My final decision**

For the reasons I've explained, I uphold this complaint and I direct Billing Finance Ltd to pay Mr S £855.02 to reflect a price reduction in the cash price of the minibus.

This amount should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Billing Finance Ltd considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 March 2024.

Ronesh Amin  
**Ombudsman**