

The complaint

Mrs H complains about the quality of a used car that was supplied through a hire purchase agreement with Billing Finance Limited (BFL).

What happened

Around August 2023, Mrs H took a hire purchase agreement with BFL to acquire a used car. The total price of the goods is listed on the agreement as £7,300. An advanced payment is listed as £220. The mileage of the car on the agreement is listed as 103,001, and MOT information confirms car was around nine years old at the point of supply.

Mrs H was due to make 59 instalments of £223.91, with a final payment of £224.91.

Mrs H said the car broke down in December 2023 and was recovered to a local garage who diagnosed a fault with the fuel rail pressure sensor. Mrs H said she arranged for a local mechanic to fix the sensor, but it didn't resolve the issue; so, she raised it with the dealership, but they didn't assist her. Mrs H then contacted BFL who arranged for an independent inspection to be carried out.

The independent inspection report had an inspection date of 31 January 2024, and a recorded mileage, at the point of inspection, as 111,263. The report concluded that the issue wasn't present or developing at the point of sale and that Mrs H's usage of the car was the likely cause of the issues. So BFL didn't uphold the complaint.

Mrs H said the issue is causing her mental and financial stress as she's paying for a car she can't get fixed. Mrs H believes it's unfair that she has paid £7,300 for a car that has failed within six months. She said she would like to reject the car and hand it back.

In February 2024 BFL issued their final response to Mrs H's complaint. In summary, BFL didn't uphold the complaint based on the conclusion of the inspection report, which advised the issues weren't developing at the point of supply due to the successful usage Mrs H has had since then.

Unhappy with their decision, Mrs H brought her complaint to our service for investigation.

Having reviewed all the information on file, one of our investigators recommended that Mrs H's complaint should not be upheld. In their assessment the investigator concluded that based on the evidence provided, they couldn't say the car was of unsatisfactory quality, and so didn't recommend that BFL take any action in relation to the complaint.

Mrs H didn't accept the investigators assessment. Mrs H made a lengthy submission which in summary said she was unhappy with the durability of the car. She said the breakdown was not a normal occurrence and so BFL should be liable to resolve the issue. She believed the car should have been able to do the mileage she used before catastrophically failing. Mrs H also raised issues with the independent inspection of the car, with it not being done satisfactorily, for example, being carried out whilst it was dark, and without an in depth enough investigation into the components.

However, as the investigator's assessment remained unchanged the case was referred to an ombudsman for a final decision.

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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

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.

Mrs H complains about a Hire Purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mrs H's complaint about BFL. BFL is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that BFL supplied Mrs H with a used vehicle that had travelled around 103,000 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage which may impact its overall quality and reliability, so there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle.

In addition, the car was priced at £7,300, considerably less than it would have been brand new. So, I think it's reasonable to keep in mind that the car was likely valued accordingly to reflect its usage and condition.

From the information provided I'm satisfied there was a fault with the car. This is apparent from the breakdown recovery report, dated 7 December 2023, which noted a possible fuel rail pressure issue, and that further investigation was needed. The independent inspection report dated 31 January 2024 confirmed the engine would not run. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

satisfactory quality

Mrs H acquired a car that failed around four months after supply, this is confirmed on the recovery report. The CRA says:

'goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day'

So as the goods, (in this case the car) had failed within the first six months from supply, I think it's reasonable that BFL looked into whether the goods had conformed to the contract, which, in the circumstances of this complaint, under the CRA means identifying whether it was of satisfactory quality when it was supplied.

When they were informed of the car's failure BFL instructed an independent vehicle inspection agency, whom I'll refer to as 'B', to provide a report on the presence of a fault, overall quality and if any defects would have been present or developing at the point of sale.

I've considered that B is a professionally registered vehicle inspection agency with considerable experience in the industry. So, I've no reason to doubt their expertise or advice in this field.

B inspected the car around five months after supply and advised:

"Taking into consideration the substantial amount of time and mileage successfully elapsed since inception, we do not consider the defect to have been developing at that point."

Mrs H was able to have some considerable use of the car since being supplied it. The inspection report confirmed the mileage had increased by around 8,000, which I think is reasonable to consider as above average usage.

In her submission to us, Mrs H says she feels she should have been able to have more use from the car, given it failed after around four months. However, I'm not persuaded this is the case here.

I've taken into consideration that the car was nine years old, which isn't insignificant. It also had a mileage reading in excess of 100,000, which means components and parts are likely to require maintenance sooner than if it was newer. I don't think there is a reasonable expectation that acquiring a used car means you can use it fault free for a minimum or specified period of time, regardless of the amount of usage had. It's fair to say the durability of components on a car is dependent on their condition.

I'm satisfied, from the information provided, that at the point of supply the car was of a satisfactory condition. I'm satisfied of this because Mrs H was able to have considerable use of it prior to any issues presenting itself, and from what the independent inspection report concluded.

I recognise Mrs H had less than six months of use without issue, however had this been the situation with a car that had less mileage and was considerably younger, I think this may have presented a different outcome. When acquiring a used vehicle, it's upon the buyer to ensure a reasonable level of due diligence is carried out based on the vehicles condition, age and mileage. This may for example involve having an inspection or health check carried out soon after supply and may result in certain components being replaced as a safeguard.

I recognise Mrs H questions the validity of the inspection that was carried out, however I've seen no expert evidence that contradicts what B has said. So, I'm satisfied with its conclusions.

I acknowledge the difficult situation Mrs H has found herself in at present, and this may be something she decides to discuss with BFL to see if any further support or forbearance can be offered. However, as I've concluded that the car was of satisfactory quality at the point it was supplied, I don't require BFL to take any action in respect of this complaint.

My final decision

Having thought about everything above, along with what is fair and reasonable in the circumstances, I don't uphold Mrs H's complaint about Billing Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 4 November 2024.

Benjamin John
Ombudsman