

## **complaint**

Mr and Mrs G complain about a car that was supplied to them through a hire purchase agreement with Billing Finance Ltd (Billing Finance). They say that the car has a much higher mileage than advertised and that they wouldn't have agreed to take the car had they known its true mileage.

## **background**

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 5 February 2014; a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mr and Mrs G's complaint should be upheld and the redress I thought would be appropriate. I invited further comments from the parties here and both parties responded to my provisional findings.

Mr and Mrs G said that they had not been using the car since they found out about the mileage issue. The mileage amount discussed with the adjudicator was the mileage that they believe should be showing on the odometer, had it not been altered. They confirmed the mileage showing on the odometer is now approximately 36,000. Mr and Mrs G also said that they had just renewed the road fund licence and asked whether this could be included in the amounts to be refunded.

Billing Finance raised a number of points in response to my provisional decision. Each of these points has now been addressed and I explained that having considered the points raised, I was not minded to alter my overall provisional findings. I did however explain that as Mr and Mrs G had not been using the car since they were aware of the problem, I didn't think it was reasonable for them to make the payments to the finance agreement. In addition to the redress set out in my provisional decision I explained that Mr and Mrs G should receive a refund of the repayments made to the finance agreement with interest. The first three months' repayments would not however need to be refunded as Mr and Mrs G had use of the car over this time.

Billing Finance then responded to say that although it remained disappointed with my findings it does, reluctantly, now accept my conclusions.

It says that when collecting the car it expects it to be in a similar condition to when Mr and Mrs G took possession of it and in working order. It also expects to receive the various registration papers, any MOT certificates and spare key that were provided with the car.

## **my findings**

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. As both parties have accepted my provisional findings I see no reason to depart from them here. I still believe the evidence presented in this complaint demonstrates that it is more likely than not that the odometer was altered before the car was supplied to Mr and Mrs G. I also still believe that they would not have agreed to buy the car had they known about the change to the mileage.

Billing Finance has said that it expects the car to be in similar condition to what it was when supplied to Mr and Mrs G, i.e., in working order and with the documents and spare key that were provided at outset. As Mr and Mrs G have not been using the car I do not think this to be unreasonable. As the car has not been used I would suggest that Mr and Mrs G ensure the car is working correctly prior to agreeing a collection date with Billing Finance.

Mr and Mrs G have recently said that they have just renewed the road fund licence on the car. As the car will be returned to Billing Finance, who will have the benefit of the road fund licence, I think it is reasonable for Mr and Mrs G to be refunded the cost of the licence. This is providing the licence remains with the car when it is collected by Billing Finance, or its agent.

Once Mr and Mrs G accept my final decision the parties should agree a mutually acceptable date where the car can be collected and settlement can be concluded.

### **my final decision**

My final decision is that I uphold this complaint and I direct Billing Finance Ltd to:

- take back the car, at no cost to Mr and Mrs G;
- cancel the hire purchase agreement and write off any amount due;
- refund the advance payment of £1,160.19 with interest at 8% simple per year being added from the date of payment to the date of settlement;
- refund all but the first three repayments made under the hire purchase agreement, with interest at 8% simple per year being added from the date of payment to the date of settlement;
- reimburse the cost of the current road fund licence that is to be included on the car when it's collected;
- ensure no adverse entries are on Mr and Mrs G's credit file; and,
- pay Mr and Mrs G £150 for the distress and inconvenience they have been caused.

Should settlement not be made within 28 days of Mr and Mrs G accepting this decision, interest at the same rate above should be added to the £150 payment.

Mark Hollands  
**ombudsman**

## ***COPY - PROVISIONAL DECISION***

### **complaint**

Mr and Mrs G complain about a car that was supplied to them through a hire purchase agreement with Billing Finance Ltd (Billing Finance). They say that the car has a much higher mileage than advertised and that they wouldn't have agreed to take the car had they known its true mileage.

### **background**

Mr and Mrs G contacted Billing Finance in November 2012 to see if it would offer finance for a car they had seen on the forecourt of a dealership. Billing Finance agreed to offer finance under a hire purchase agreement which included Mr and Mrs G part-exchanging an existing car already held on finance with it.

According to Mr and Mrs G, they gave Billing Finance the make and model of the car but not its mileage, which Billing Finance obtained directly from the dealership. Mr and Mrs G drove the car from the dealership on the understanding that it had previously covered approximately 32,000 miles.

A couple of months later, Mr and Mrs G decided that the car was too compact for their needs so they visited another dealership as they were interested in trading in the car for another. At this point, the dealership informed Mr and Mrs G that the car had in fact covered over 100,000 miles at the time they took possession of it.

Mr and Mrs G then complained to Billing Finance who said in response that the car had not been misdescribed. It also said that Mr and Mrs G had not suffered any financial loss as the agreed sale price of the car was lower than the value shown by a well known car trade valuer for the same make and model that had covered in the region of 32,000 miles.

The case was considered by two of our adjudicators, both of whom came to different conclusions. The first adjudicator upheld the case as he was not satisfied that Billing Finance had adequately addressed Mr and Mrs G's concerns about the mileage discrepancy. The second adjudicator did not uphold the case as he was satisfied that Mr and Mrs G had not been financially disadvantaged.

Mr and Mrs G did not accept the second adjudicator's conclusions and the matter has been referred to me for review and determination as a result.

### **my provisional findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Subject to any further submissions from the parties, I am minded to uphold this complaint.

Hire purchase agreements are covered by the Supply of Goods (Implied Terms) Act 1973. This says that, amongst other things, there are implied conditions that the car would meet any description applied to it. This will include the mileage of the car which is the crux of Mr and Mrs G's dispute with Billing Finance.

Mr and Mrs G have provided a VOSA report which shows that two MOT's were carried out on the car in September 2012 and November 2012 showing respective mileage of 101,157 and 32,359. So the mileage of the car was recorded as being over 100,000 two months before Mr and Mrs G saw the car on the dealership's forecourt. It had however reduced by the time they drove it away from the dealership.

Mr and Mrs G have also provided a photograph of the odometer (which I believe they took since taking possession of the car) showing the mileage to be 36,038. Furthermore, they have provided us with a copy of the car's service history (which I gather they obtained when they tried to trade in the car in January 2013) which shows the following mileages:

- 13,498 at 21 April 2010
- 32,702 at 1 October 2010
- 39,452 at 20 December 2010
- 55,136 at 4 June 2011
- 84,842 at 20 March 2012

It seems clear to me that Mr and Mrs G have been able to provide compelling evidence that the mileage of the car was significantly reduced by the time they took possession of it in November 2012. There seems no obvious reason why the mileage shows such significant differences other than the mileage being digitally altered prior to Mr and Mrs G taking possession of the car.

I am provisionally minded to think that Mr and Mrs G were given the clear impression that the car's mileage was significantly less than was in fact the case. I do not believe that the finance agreement they signed altered that impression or that it was designed to do so. I also think it most unlikely that Mr and Mrs G would have taken the car at all had they known the true position.

Billing Finance has said that Mr and Mrs G have not suffered financially as a result of this matter. Even if I were to agree with this, which I do not, this is rather missing the point.

Mr and Mrs G were given a car that was not as described and I am persuaded at this stage that they would not have entered into the financial arrangement had the true position been explained.

Mr and Mrs G now have a car with a very questionable history and it is very likely that they will have great difficulty selling the car, as is likely to have been the case when they tried to trade it in. Any prospective buyer is unlikely to want to buy a car that has had its mileage altered and Mr and Mrs G are likely to suffer financially in the future through either not being able to sell the car, or selling it at a much reduced price.

My provisional conclusion is that Mr and Mrs G should be allowed to cancel the hire purchase agreement, return the car and receive a refund of the advance payment of £1,160.19, with interest. I also consider that Mr and Mrs G have been caused distress and inconvenience as a result of this matter and my provisional award will reflect this.

Mr and Mrs G have said they have been using the car since the dispute arose and that the current mileage showing on the odometer is in the region of 106,000 miles. It is only fair that Mr and Mrs G should pay for the use of the car so I do not propose at this stage to direct Billing Finance to refund the monthly payments they have made under the hire purchase agreement.

#### **my provisional decision**

Subject to any further submissions from Mr and Mrs G or Billing Finance received by 5 March 2014, my provisional decision is that I uphold this complaint and I propose to direct Billing Finance Ltd to:

- take back the car, at no cost to Mr and Mrs G;
- cancel the hire purchase agreement and write off any amount due;

- refund the advance payment of £1,160.19 with interest of 8% simple per year being added from the date of payment to the date of settlement; and,
- pay Mr and Mrs G £150 for the distress and inconvenience they have been caused.

I now invite both parties to submit any final submissions before I issue my final decision.

Mark Hollands  
**ombudsman**