

The complaint

Mr P complains about the quality of a car supplied on finance by Billing Finance Limited ('BF').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

BF supplied Mr P with a car on hire purchase in April 2023. However, Mr P is unhappy with its quality and says it has had problems with several things including the air conditioning, start stop system and DPF.

Mr P complained to BF but it says it is not liable for the repairs as they are due to reasonably expected wear and tear.

Our investigator did not uphold the complaint and Mr P asked for an ombudsman to look at things 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I note that BF dealt with two complaints from Mr P in respect of the car and issued two final response letters. From what I can see the issues with the first complaint (around the MOT/V5 and spare key) have been resolved. And nothing Mr P has said in response to our investigator's view makes me think otherwise. Furthermore, there is no persuasive evidence that the car was sold without a valid MOT, the issue appears to be the length of time that was remaining on said MOT. As a result I have focused my decision on the quality issues raised by Mr P later on and dealt with in the second final response letter from BF.

In considering what is fair and reasonable, I need to have regard to 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.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from here') says 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 goods.

BF supplied Mr P with a second-hand car that was 10 years old and had done around 44,000 miles at the point of supply. The dealer priced it at less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances (particularly noting the age of the car) a reasonable person would consider that it had already suffered significant wear and tear – and was likely to require more maintenance and potentially costly repairs much sooner than you might see on a newer, less road worn model. And I can't see evidence that the dealer described the car in such a way that would notably alter those expectations.

I know that Mr P contacted BF about several issues he was experiencing with the car. And he wants BF to be responsible for this. And while it appears that Mr P reported a lot of the problems just over two months after the point of supply I also have to factor in the following:

- Mr P's car is around ten years old and some parts would have deteriorated to the point of expected replacement;
- Mr P appeared to have travelled over 2,000 miles in the car himself leading up to some of the problems occurring; and
- there is an expert report that was unable to replicate certain issues Mr P had complained about (such as those with the clutch and gearbox) and confirmed that other issues are likely a result of expected wear and tear in a car of this age and mileage.

The expert report I have seen appears reasonably detailed and credible and includes a statement of truth to the court and the expert's credentials – so I have given it appropriate weight here. It is difficult for me to make a finding that the car is not of satisfactory quality in light of said report which finds otherwise.

I note that the expert did identify a broken coil spring and noted this had visibly corroded. However, the conclusion was this was down to generally expected wear in a car of this age and mileage.

I note that the report suggests that the issues with the DPF are caused by short journeys and incomplete regeneration – which would be more of a usage issue than an inherent fault.

In regard to the air conditioning the report suggests that the issue with cold air not being blown out could be a leak or a re-gassing issue – but once again the conclusion is that this is general deterioration/maintenance rather than an inherent fault.

In respect of these issues with the suspension, DPF and air conditioning they are commonly associated with wear and tear and/or the need for renewal through regeneration/re-gassing respectively. So it does not seem unusual that the expert has concluded these are not inherent faults with the car or unexpected at this age and mileage.

I have thought carefully about the issues Mr P has complained about including problems with the start stop functionality, handbrake gearbox and clutch. However, the expert was unable to recreate these and said that issues with intermittent start stop function could be related to the DPF and A/C. So even if there were an issue with the start/stop function this appears to be a result of other wear and tear issues, so would not fairly be considered an inherent defect either.

I know that Mr P has emphasised that BF is responsible for issues if they occur within 6 months of buying the car. That isn't quite what the CRA says about this. While there is an expectation that the onus will be on BF act to show problems with a car are not inherent faults – considering the circumstances here and the expert report it commissioned there is sufficient information as it stands to show the car was unlikely of unsatisfactory quality at the point of sale. So I think this takes the onus off of BF in the particular circumstances here.

I also know Mr P has said he reported some of the faults before completing 2,000 miles in the car. And while this may be the case – ultimately there is still not sufficiently persuasive information (in light of the expert report and overall age of the car) for me to say that BF needs to take the car back or pay for all the repairs.

I have also considered that Mr P says he got his own report but BF refused to consider this. While I appreciate Mr P paid for this it does appear to be more of a diagnostic as to identifying what is wrong with the car and the cost to fix all the issues (around £900) rather than commenting on the causes of said issues. I also don't think the issues identified in the diagnostic clearly contradict the findings of BF's expert – and appear to recreate the same issues. So in light of the report from BF I don't find it persuasive in showing the car was unsatisfactory quality at the point of sale.

I know it seems the dealer agreed to do some repairs and then changed its mind. While that is frustrating I don't consider it means I can fairly direct BF to do the repairs. Although from what I understand as a gesture of goodwill BF has offered to contribute to the cost of repairs regardless of its liability. Mr P can check what BF is prepared to offer. But I do not consider it fair to uphold this complaint in the particular circumstances.

I am very sorry to hear about the financial and logistical issues the problems with the car have caused Mr P and his family. I know this decision is likely to disappoint him. However, my role here is to resolve matters informally – so Mr P may wish to reject my decision and pursue his case by alternative means such as court. If he is thinking of doing this he may wish to consider getting appropriate legal guidance.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 July 2024.

Mark Lancod
Ombudsman