

The complaint

Ms M complains about the quality of a car she acquired under a Hire Purchase Agreement with Billing Finance Limited (BFL).

When I refer to what Ms M has said and what BFL have said, it should also be taken to include things said on their behalf.

What happened

In June 2022, Ms M entered into a Hire Purchase Agreement with BFL to acquire a used car. The car was first registered in November 2016. At the time of acquisition, the car had travelled approximately 80,367 miles. The cash price of the car was approximately £6,597 when Ms M acquired it. The total amount payable under the finance agreement was approximately £11,407. The period of the agreement was 60 months. This consisted of 59 consecutive monthly repayments of about £190, starting approximately one month after the date of the agreement, and followed by one final repayment of about £191 (which includes the option to purchase fee).

Ms M said she was unhappy with the condition of the car when it was delivered. She said that the clutch needed to be repaired, the brakes needed replacing and she noticed cosmetic damage that was not described or communicated to her previously. She said that the wheel arches were coming away from the main body of the car and she had to fix this herself. Ms M also said that the inside of the car had smashed mirrors and holes in the floor/carpets which she also had to fix herself. She also said that, when the supplying dealership went to fix the clutch, they did not do it properly. It seems that, the mount had been either inadequately or excessively tightened after the clutch replacement, and Ms M's mechanic said that they needed to rectify all three threads and install new bolts. Ms M also said that, when the car was picked up from the supplying dealership the reverse lights no longer worked. And she said the car was missing the locking wheel nuts, which caused the MOT fail. Ms M said that she was promised that the car would come with a new MOT, but this was not the case. And after seven months, the entire engine had failed. Ms M said that all of the issues took a huge toll on her and her partner's health.

In May 2023, BFL wrote to Ms M. In this correspondence they said that, as the supplying dealership were disputing liability for the raised faults, they agreed to complete an independent inspection. Following this they said that, at finance inception, the car was six years old and had completed 80,367 miles, and as such the price of the car reflects this, and it was considerably less than if the car had been sold new. BFL said that since then, less than a year has passed and a further 10,266 miles have been completed, so they said that it is reasonable for a car of this age and mileage to already have a certain level of wear and require maintenance sooner than a newer car. So, they have concluded that they are not liable for the car's faults.

Ms M was unhappy with this response, so she referred her complaint to our service. She said she would like to reject the car, as she believes that it was not of satisfactory quality at the point of supply.

An investigator at this service issued an opinion on this complaint. The investigator was of the opinion that the fault with the clutch appears to have been resolved as repairs were carried out. As such, while the car may not have been of satisfactory quality when it was supplied, the investigator was of the opinion that repairs were undertaken and they have rectified the fault.

The investigator said that, as Ms M did not raise any concerns about the wheel arches, broken mirrors, or holes in the floor with the supplying dealership and did not provide evidence of these repairs being carried out, the supplying dealership was not given the opportunity to inspect the car and carry out repairs on these. Because of this, she did not recommend that Ms M be reimbursed for these. The investigator also said that the issue with the locking wheel nuts missing was also not raised with the supplying dealership at the time and was only raised more than six months after Ms M took possession of the car. So, she said, that it was not possible for her to conclude whether or not this was the responsibility of the supplying dealership. Also, she said that the dealership did provide Ms M with the relevant fixings on request and the repairs have since been carried out.

The investigator said that brake discs are wear and tear items and there was no evidence to show that they were worn to the extent that they would need replacing before the car was supplied to Ms M. And the number of other faults listed on the service invoice provided by Ms M were all due to wear and tear, as by the time of the invoice the car was over six years old and had covered almost 90,000 miles. So, she did not think that BFL would be liable for these repairs.

Regarding the failure of the engine on the car, the investigator said that the car was already five and a half years old at the point of supply and had travelled 80,367 miles and Ms M had also been able to drive the car for around 10,000 miles before the engine failed. So, the investigator said it was unlikely that the car had problems with the engine when BFL supplied the car to Ms M.

Ms M disagreed with the investigator.

So, the complaint has been 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Ms M acquired the car under a Hire Purchase Agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. BFL is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Ms M entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I

think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Ms M's case the car was used, with a cash price of around £6,597. It had covered around 80,367 miles and was about five to six years old when she acquired it. So, the car had travelled a reasonable distance and it is reasonable to expect there to be some wear to it because of this use. I would have different expectations of it compared to a brand-new car. As with any car, there is an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. And with second-hand cars, it is more likely parts will need to be replaced sooner or be worn faster than with a brand-new car. So, BFL would not be responsible for anything that was due to normal wear and tear whilst in Ms M's possession.

First, I considered if there was a fault with the car. I've considered Ms M's testimony, seen the invoices provided by Ms M, and also I've seen a copy of the independent inspection commissioned by BFL.

Ms M said she that when the car was delivered it had cosmetic damage. She said that the wheel arches were coming away from the main body, the inside had smashed mirrors and holes in the floor/carpets. Ms M also mentioned that the supplying dealership had to fix the clutch shortly after the car was supplied, which has also been confirmed by BFL. Also, in January 2023 the supplying dealership supplied Ms M with locking wheel nuts, so that the car could pass its MOT.

Ms M has also provided an invoice from her own garage dated 21 January 2023 when the car had travelled about 89,635 miles. This invoice states:

*“Front tyres low
Reverse light fault
Aux belt worn
Rear exhaust section corroded
Front left top mount worn
Slight damage to front bumper
Front brake discs and pads about 6000-7000 miles left”*

And she provided an undated letter from the same garage when the engine on the car failed, which, as we understand, happened within weeks of the above invoice. This letter states:

“We can confirm that the vehicle has suffered internal engine failure effeting [sic] both top and bottom end due to engine oil starvation. After closer inspection the oil strainer on the engine oil pump was blocked by rubber shavings. These were deposited from what is known as wet cambelt.

From experience this type of failure commonly occurs on these engines when wrong oil is previously used on long term basis.

I can confirm this engine has most likely failed due to wrong or no mainance [sic] in the past.”

The engine failure has also been confirmed by the independent report commissioned by BFL on 13 April 2023. At the time of this inspection, the car had travelled approximately 90,633 miles. This report concludes that there was a constant engine rattle, and that the engine

would need to be stripped to determine what has failed and what needs replacing. The report also found issues with the clutch.

Based on all of the above evidence, it is clear that the car had some faults that have been repaired but also still has other faults present, such as the engine failure. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Ms M.

Wheel arches coming away from the main body, the inside smashed mirrors, and holes in the floor/carpets plus promised new MOT

BFL have told us that prior to releasing the funds to the supplying dealership, Ms M was called to ensure that she was happy to proceed with the agreement. On this call, among other things, they said that Ms M was specifically advised to contact BFL immediately, if the car was not as expected. BFL said that Ms M did not contact them until she had been in possession of the car for over six months.

Ms M said that she had these fixed herself and she has not provided any evidence of these repairs. I've also not seen evidence as to how the car was described to her when she decided to acquire it. So overall, I've not seen enough evidence to say what faults existed, or that BFL should be responsible for them. I've also seen no evidence that Ms M was promised a new MOT.

Problems with the clutch shortly after the car was supplied

The supplying dealership had fixed the clutch. But Ms M said her garage indicated that the mount had been either inadequately or excessively tightened post the clutch replacement, and that they needed to rectify all three threads and install new bolts. But I've not seen anything to show Ms M incurred a cost for this, or that she has raised the issues with the supplying dealership. So, the car at the point of supply may have been of unsatisfactory quality due to this issue, but this has now been rectified. I'm aware that the independent inspection, commissioned by BFL, has found issues with the clutch. But I think most likely these are not due to a failed repair by the supplying dealership. I say this because the report states that *"based on the visible evidence, we can confirm it appears that the operator of the vehicle has been riding the clutch based on the operation of the clutch and based on the fact that this component was replaced just one month after sale"*, and Ms M had travelled in the car approximately just short of 10,000 miles since the clutch was fixed by the supplying dealership.

Car's brakes

Ms M mentioned problems with the brakes. More specifically she said that the supplying dealership had just lubricated them rather than replacing them. But from the invoice provided by Ms M from her own garage, I can see that it states that front brake discs and pads have about 6,000 to 7000 miles left on them. So, I've seen no evidence that the brakes need to be replaced at the time of supply. Brakes are also a wear and tear item and considering that the car had travelled about 9,000 miles since supply and the brakes still had 6,000 to 7000 miles left on them, I do not think BFL should be responsible for this cost. The car had covered around 80,367 miles when supplied, so it had travelled a reasonable distance and it is reasonable to expect there to be some wear to it because of this use.

Missing locking wheel nuts

In January 2023, the car failed its MOT due to missing locking wheel nuts. But I've not seen enough evidence to say that, most likely, the car had these missing when supplied or that they were not put back on the car when the supplying dealership was fixing the clutch shortly

after inception of the finance agreement. I say this because, when the car failed the MOT, Ms M already had the car for about seven months and had travelled in the car approximately 9,000 miles. But even if I'm wrong, which I do not think I am, I've taken into consideration that the supplying dealership at the time had already provided Ms M with replacement wheel nuts, and I've not seen any other evidence to show that she had incurred any further direct financial loss due to this issue. So, I do not think BFL needs to take any further action in relation to this issue.

The invoice from Ms M's own garage, dated 21 January 2023

At the time the car had travelled about 89,635 miles, and approximately 9,000 miles since supply. The invoice states that the front tyres are low, reverse light has a fault, aux belt is worn, rear exhaust section is corroded, front left top mount is worn, and that there is a slight damage to front bumper. But the invoice does not stipulate the nature of these faults, what has caused them, or when they may have started to occur. So, I've considered the age and mileage of the car when the above issues were noted, alongside the fact that all of these are things that are subject to wear and tear. And as such, I think it is most likely that all of these needed to be fixed because of normal wear and tear and parts coming to the end of their life cycle. So, BFL is not responsible for anything that was due to normal wear and tear.

Engine failure

Ms M has provided an invoice for the car's service which was completed on the 21 January 2023, when the car had travelled about 89,635 miles. Within less than a month from then it seems that the engine failure occurred. Ms M has provided a letter from her garage that states "*the oil strainer on the engine oil pump was blocked by rubber shavings. These were deposited from what is known as wet cambelt.*" And this letter states that "*this type of failure commonly occurs on these engines when wrong oil is previously used on long term basis. I can confirm this engine has most likely failed due to wrong or no mainance [sic] in the past.*". So, I've considered this letter, but I've also considered what the independent inspection, and its follow up letter, has said.

The report states that the engine oil was critically low and maintaining the engine oil content can have a significant effect on the internal engine components. They explained that the lubricant required to keep the engine serviceable in this case does not appear to have been maintained, and that, at the time of their inspection, it was critically low – below the minimum mark. The report also states that they anticipate wear and deterioration will have developed in the engine components causing the abnormal noise or pick up, which is often related to lubrication issues. And that not maintaining the engine oil content can cause rapid wear and deterioration to develop. They further said they anticipate this condition was not present or developing at the point of sale. They also said that, as the car had covered 10,000 miles, since inception, the balance of probability with regards to how the condition developed moves from a pre-existing condition to being the result of inadequate oil maintenance and checks.

I've taken the above into consideration, and I've taken into consideration what Ms M has told us about topping up oil whenever it was necessary and that shortly before the failure – within less than a month and approximately 9,000 miles – she said that the car had an engine oil service so the oil would have been topped up at that point in time. But I've also considered that Ms M had travelled over 10,000 miles since inception. At no point earlier did she mention any noises coming from the engine. And if the fault with the engine was developing at the point of supply, I think it is most likely the engine would have failed sooner than it did. So overall, I've not seen enough evidence to be able to say that BFL should be responsible for this engine failure.

Ms M has also told us how all of these issues have had an impact on her and her family's life, so I would like to express my considerable sympathy for the position Ms M is in. I know this has been a very difficult time for her. And I've considered this, but while I sympathise with Ms M for the difficulties that she is experiencing, taking all the circumstances of the complaint into account, I do not think it would be fair or reasonable to ask BFL to do anything further regarding her complaint.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 11 April 2024.

Mike Kozbial
Ombudsman