

The complaint

Ms G is unhappy that a motorbike supplied to her under a hire purchase agreement with Billing Finance Limited ('BFL') was of an unsatisfactory quality.

What happened

In November 2022, Ms G was supplied with a used motorbike through a hire purchase agreement with BFL. She paid a £195 deposit and the agreement was for £3,694 over 36 months; with 35 monthly payments of £172.64 and a final payment of £173.64. At the time of supply, the motorbike was around six months old, and had done 3,786 miles. Ms G repaid the finance in December 2023.

Ms G says she started to have problems with the motorbike from shortly after it was supplied to her. She had to replace the dashboard in January 2023, as she had no working speedometer or fuel gauge; replace the battery and regulator in March 2023; and in August 2023 issues were identified with the clutch and chain.

Ms G complained to BFL, who arranged for the motorbike to be inspected by an independent engineer. This inspection took place on 30 August 2023, when the motorbike had done 6,808 miles – 3,022 miles since it was supplied to Ms G. The engineer identified issues with the clutch but felt that, due to the time the motorbike had been in Ms G's possession and its age and mileage, this was due to general wear and not because of a fault that was present or developing at the point of supply.

Due to the engineer's findings, BFL didn't uphold Ms G's complaint. So she brought it to the Financial Ombudsman Service for investigation.

Our investigator said there was a clear fault with the motorbike and, while the engineer had said this hadn't been caused by a fault that was present or developing when the motorbike was supplied, it wasn't reasonable for a clutch to have failed on a vehicle that was just over a year old and which had done less than 7,000 miles. As such, the investigator thought the motorbike wasn't sufficiently durable when it was supplied, and this made it of an unsatisfactory quality.

At the time the investigator was forming their opinion, Ms G was arranging for the motorbike to be repaired. So, the investigator said that BFL should cover the cost of these repairs, as well as the cost of the replacement dashboard and battery; refund 20% of the payments Ms G paid between December 2022 and August 2023, to reflect the impact of Ms G having to use a motorbike that wasn't working correctly; refund 100% of the payments (or equivalent) between September 2023 (when the motorbike stopped being used due to the clutch issue) and the date the clutch is repaired; and pay her an additional £150 compensation.

BFL didn't agree with the investigator's opinion. They agreed to cover the costs of the replacement dashboard and battery, and pay Ms G the £150 compensation, but they didn't feel they were responsible for the issues with the clutch based on the engineer's comments and because Ms G had had use of the motorbike for around nine months before it failed.

Ms G rejected this counteroffer from BFL and asked that this matter be passed to an ombudsman to decide. She also provided an invoice, dated 22 March 2024, showing the clutch had been replaced at a total cost of £1,215.79.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Ms G was supplied with a motorbike under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the motorbike should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BFL are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the motorbike must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the motorbike was supplied, unless BFL can show otherwise. So, if I thought the motorbike was faulty when Ms G took possession of it, or that the motorbike wasn't sufficiently durable, and this made the motorbike not of a satisfactory quality, it'd be fair and reasonable to ask BFL to put this right.

In this instance, it's not disputed there was a problem with the dashboard or the battery, and BFL have agreed to cover the costs of these. As such, I'm satisfied that I don't need to consider the merits of this within my decision. Instead, I'll focus on what remains in dispute – the clutch – and what, if anything, I think BFL should do to put things right.

I'm satisfied there was an issue with the clutch on the motorbike supplied to Ms G. The independent engineer has confirmed this was present from August 2023, and Ms G has provided evidence that the clutch was replaced in March 2024. While I appreciate the engineer's comments that the clutch failed due to general wear, I also need to consider durability. And I don't think any reasonable person would expect the clutch to fail on a motorbike that was just over a year old and that had done less than 7,000 miles.

As such, I'm satisfied the motorbike supplied to Ms G was insufficiently durable, and this made it of an unsatisfactory quality when it was supplied. So, BFL need to do something to put things right.

Putting things right

Ms G has provided evidence of the costs she's incurred in repairing the motorbike, both for the issues BFL have already agreed to cover and for the clutch replacement, and I've seen this evidence has been provided to BFL. Given that the motorbike wasn't of a satisfactory quality when supplied, I think it's only fair that BFL reimburse Ms G for these costs.

Ms G was able to use the motorbike from December 2022, when she started to have issues with it, until August 2023, when she stopped using it due to issues with the clutch. However, her usage and enjoyment of the motorbike was impaired by these issues. Because of this, I also think it's fair that BFL refund some of the payments Ms G made. And I think 20% of the payments made for these months fairly reflects the impaired use caused by the motorbike not being of a satisfactory quality.

Notwithstanding this refund, the motorbike was off the road and undrivable between September 2023 and March 2024 due to the clutch failure. During this period, Ms G wasn't supplied with a courtesy motorbike. So, she was paying for goods she was unable to use. As, for the reasons already stated, I'm satisfied the motorbike was off the road due to it being of an unsatisfactory quality when it was supplied, and as BFL failed to keep Ms G mobile; I'm satisfied they should refund the payments she made during this period.

I'm aware that Ms G settled the finance in full in December 2023. However, it would not be fair to expect BFL to refund the full amount Ms G paid to settle the agreement. Had the agreement run its normal course Ms G would've only been refunded the payments up to and including March 2024. So, it's only fair that, when calculating this refund, BFL refund Ms G the equivalent of the payments between the date she settled the agreement and March 2024, which she would've made if the agreement hadn't been settled.

Finally, I think Ms G should be compensated for the distress and inconvenience she was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended BFL pay Ms G an additional £150 to recognise the distress and inconvenience she was caused. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward. So, this is a payment I'm directing BFL to make

Therefore, BFL should:

- refund the equivalent of 20% of the payments Ms G paid between December 2022 and August 2023, to reflect the impaired usage she had of the motorbike during these dates;
- refund the equivalent of 100% of the monthly payments that would normally have fallen due between September 2023 and March 2024, to reflect that Ms G didn't have any use of the motorbike between these dates;
- Reimburse Ms G the costs she incurred relating to replacing the dashboard, battery and regulator, and clutch;
- apply 8% simple yearly interest on the refunds, calculated from the date Ms G made the payment to the date of the refund[†]; and
- pay Ms G an additional £150 to compensate her for the trouble and inconvenience caused by being supplied with a motorbike that wasn't of a satisfactory quality (BFL must pay this compensation within 28 days of the date on which we tell them Ms G accepts my final decision. If they pay later than this date, BFL must also pay 8%

simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires BFL to take off tax from this interest, BFL must give Ms G a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Ms G's complaint about Billing Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 10 January 2025.

Andrew Burford
Ombudsman