

## **The complaint**

Miss O complains about the quality of a car she acquired under a hire purchase agreement with MI Vehicle Finance Limited (MI Finance).

## **What happened**

In September 2020, Miss O entered into a hire purchase agreement with MI Finance to acquire a used car first registered in April 2018. The car had travelled approximately 3,690 miles. The cash price of the car was around £13,389. Miss O provided an advance payment of around £370, and there were 59 monthly payments of approximately £250 plus a final repayment of around £251 which included credit arrangement and the option to purchase fees.

Miss O said, in summary, that in May 2021 she noticed that when driving the 'check engine' light would sometimes come on for the remainder of the journey and then disappear overnight. This would happen once every couple of weeks and when the engine light was on, the car experienced infrequent jolting while driving. She said this was almost as if the brake pedal was being pushed at random intervals, or, when she was slowly pulling away from traffic lights, as if the car was in an incorrect gear. So, she had it checked out by one of her car manufacturer's approved dealerships – who I will refer to as the 'repair shop'. In July 2021 this repair shop couldn't find any faults. The car had travelled approximately a total of 7,516 miles at that time. As the issues got worse with time, Miss O had it checked out again in November 2021. This time the repair shop was able to confirm that the car was struggling in gears. Miss O said that car had travelled approximately 9,000 miles at the time. The diagnostic report done by the repair shop cost £359.99. Miss O said that she corresponded with the head office of her car's manufacturer, who agreed, as a gesture of goodwill, to cover the cost of this diagnostic report plus the cost of the car being transported from the repair shop to a gearbox garage.

In November 2021, Miss O said that she raised a complaint with MI Finance and they requested an estimate for the work that needed to be carried out. She asked them if there was a preferred gearbox garage they would want her to book the car in with, but was told that any VAT approved gearbox specialist would be acceptable to obtain an estimate. The repair shop recommended a gearbox garage to Miss O – I will refer to this garage as the 'transmission shop'. Miss O had the car transported to the transmission shop from the repair shop and paid £78 for the gearbox specialist diagnostic test. The transmission shop estimated that the car needed a new gearbox/transmission costing £3,600.

In March 2022, MI Finance wrote to Miss O. In this correspondence they said that the car had been in her possession in excess of 12 months when she raised a complaint with them. And they said that they haven't received sufficient evidence that the fault was present when she bought the car. They also said that they have contacted the car manufacturer who were unwilling to assist with the repair. But MI Finance decided to make her a gesture of goodwill offer without admission of liability. As part of this offer, they agreed to pay for the repairs needed to the gearbox/transmission at the transmission shop from which Miss O provided a cost estimate. They also agreed to reimburse her £78 she paid for the gearbox specialist

diagnostic test; Plus cover the storage charges which have been incurred (approximately £294 at the time of their response).

MI Finance have told our service that on 14th March 2022, they paid a total of £432 to Miss O. This covered the storage fees incurred (£294), fee to move the car (£60), and the diagnostic fees when the car was first booked in at the transmission shop (£78).

Our investigator thought that the car was not of satisfactory quality when supplied to Miss O and that MI Finance needed to do something to put things right. He thought MI Finance's offer was reasonable but thought they should also refund Miss O her full monthly payments from September 2021 until the car has been successfully repaired and returned to her. He thought they should refund 15% of her payments from May 2021 to September 2021 to reflect the impaired use of the car. Plus pay 8% simple yearly interest on any refunded amounts from the date of payment until the date of settlement. The investigator also thought that MI Finance should pay Miss O £200 for any distress or inconvenience caused. Plus, on production of a valid receipt, he thought that they should cover the costs of the initial diagnostics / test carried out by the local garage.

MI Finance agreed with the investigator.

Miss O agreed with the investigator too, but also questioned whether the issues with the battery failing would be covered. She said that, due to the time the car being left idle, the battery has failed and she said that she mentioned this to MI Finance previously. And then later, on 2 August 2022, Miss O wrote to our service saying that the transmission shop has fixed the gearbox, but she can't pick up the car from there as it has failed its MOT. She said, that the car failed an MOT because some of the car's doors are shut and can't be reopened. She said that previously it was assumed that this was the fault of the battery, but the battery had been replaced and the issue is still there.

On 30 August 2022, MI Finance told our service that they will pay for the battery replacement and for a second MOT that will be required. Our investigator wrote back to MI Finance to say Miss O has confirmed that the car will be moved to the repair shop from the transmission shop, to complete the repairs on the doors that are not opening. In this correspondence the investigator said that, as the fault is linked to the original issue, he would expect MI Finance to cover the further costs to repair and to transport the car from the transmission shop to the repair shop. He explained that, although the car can be driven without an MOT to have the repairs carried out, he didn't think it's unreasonable for Miss O to have the car transported to the repair shop, because the car has failed the MOT due to the doors not opening.

MI Finance replied and said that they have not seen any evidence of what the fault is and whether it is, in fact, linked to the original fault. So, they said, they would need to see the report from repair shop to assess this complaint further.

Miss O provided an email from the repair shop that they checked the door operation and that all five doors open, close, lock, and unlock as normal, so they said they are unable to replicate or check further the fault that some of the doors were not opening. As part of this correspondence, the repair shop also attached a short video which they said shows oil leaks on the gearbox. The repair shop said that there 'are a few traces of oil leaks, the first one on the video shows dark coloured oil which is possibly engine oil as it's quite dark and the rest is mainly when the video gets to 25 seconds and the black cover has traces of clearer oil.' They said the next step would be to have the oil cleaned off and then retested but if the dark oil is engine oil, the gearbox may need to be removed for further investigation. They said they couldn't be any more specific on what was leaking or any costs involved, only that more time and investigation is required.

Based on this information, our investigator thought that there was enough information available to confirm that the initial repair had failed, or that further issues have arisen with the car. So, he was of the opinion that, due to the current condition of the car, it was fair for Miss O to be able to reject it. He thought that MI Finance should reimburse Miss O for the cost of the failed MOT and the replacement of the battery because, he thought, the issue with the doors was most likely linked to the flat battery and the car being stationary for a long period of time. He also thought that, due to further issues arising with the car, MI Finance should pay a further £100 for distress and inconvenience caused.

MI Finance disagreed with the investigator, so the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 23 February 2023. In the provisional decision I said:

***“What I’ve provisionally 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 need to take into account the relevant rules, guidance, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.*

*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.*

*I’m very aware I’ve summarised this complaint briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there’s something I’ve not mentioned, I haven’t ignored it. I’ve not commented on every individual detail. But I’ve focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.*

*Miss O acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. MI Finance 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 Miss O entered into. Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered to be 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 and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*In Miss O’s case, the car was used, with a cash price of around £13,389. It had travelled approximately 3,690 miles and was approximately two and a half years old when she acquired it. I would have different expectations of it compared to a brand-new car. But given the age, mileage and price paid, I think it is fair to say that a reasonable person would have high expectations of it and would expect the quality of the car to be of a higher standard than*

*a car which is more road-worn or has a lower price. Also, I think a reasonable person would expect it to be free from defects for a considerable period of time.*

*Considering the age and mileage of the car, and the faults Miss O experienced with the gearbox, I think a reasonable person wouldn't consider it reasonable for the car to have a significant fault such as gearbox/transmission failing. I understand that a gearbox may experience wear over time, but considering the circumstances of this case, I think most likely, a reasonable length of time for a car not to need a gearbox replacement would be more than 9,000 miles or three years. I think needing to replace a gearbox is a significant problem to arise on a car and it can be very expensive to put right. Given how, relatively, low the overall mileage of the car was, I do not think this was a cost a reasonable person would expect to bear, or a fault that would be expected to arise in the time frame Miss O has had the car. So, I don't think the car was sufficiently durable. For this reason, I do not think the car was of satisfactory quality. I know this is not so much in dispute, as MI Finance did agree to cover the costs of repairs associated with the gearbox failure, so I've gone on to consider what happened afterwards.*

*On 2 August 2022, Miss O wrote to our service saying that the transmission shop has fixed the gearbox, but she can't pick up the car from them as it has failed its MOT. She said that the car has failed an MOT because some of the car's doors are shut and can't be reopened. She said that previously it was assumed that this was the fault of the battery, but the battery has been replaced and the issue is still there. I understand that the issue with the doors fixed itself shortly after the battery was replaced so it is no longer of concern, but I have considered whether MI Finance should be responsible to pay for the battery replacement and for a second MOT.*

*MI Finance initially agreed to pay these costs, but have since told our service that they shouldn't be responsible for the amount of time it has taken for the original repair to be undertaken, which in turn, seemingly, caused the flat battery. They said the transmission shop were not their agents, nor acting on their behalf, so they do not feel that they should be liable for the cost of the battery, nor for the failed MOT. But considering the circumstances of this complaint I don't think it would be fair and reasonable for them not to be responsible for these two expenses. MI Finance had a chance to take the car to a garage of their choosing and I've not seen any evidence to show that they have tried to do that. I've also considered that the amount of time it took before they agreed to pay for the repairs prolonged the repair process, which is ultimately why the battery failed and in turn, most likely, caused the MOT to fail. Also, I don't think Miss O would've incurred these issues had they provided her with a car that was of satisfactory quality. But I don't think they should be responsible for any costs incurred for transport of the car from the transmission shop to the repair shop, once the gearbox was fixed, as Miss O could've driven the car herself.*

*Once the car was back at the repair shop, Miss O said that there were further issues identified. The repair shop found other issues and they attached a short video which they said shows oil leaks on the gearbox. The repair shop, in the email correspondence, said that there 'are a few traces of oil leaks, the first one on the video shows dark coloured oil which is possibly engine oil as it is quite dark and the rest is mainly when the video gets to 25 seconds and the black cover has traces of clearer oil. The next step would be to have the oil cleaned off and then retested but if the dark oil is engine oil, the gearbox may need to be removed for further investigation. We cannot be any more specific on what is leaking or any costs only because more time and investigation is required'. So, based on this, Miss O thinks that she should be able to reject the car.*

*MI Finance disagrees. In summary, they said Miss O would only be able to reject the car if the repairs they had paid for have now failed. They said that there is an absence of evidence, and no connection has been established, between the original gearbox issues and*

*the oil traces which the repair shop has found. So, they said it could be a new issue, it could be a related issue, or it could be no issue at all (or at least not one giving Miss O the right to reject). They also said that as there is no conclusive evidence what's leaking, it is plausible that this is a minor issue (if, indeed, it is an issue at all), and entirely unconnected with the original gearbox issue or the repair work carried out in relation to it. So, I've considered this.*

*The CRA set out that Miss O has a short term right to reject the car within the first 30 days of supply, if the car is of unsatisfactory quality. However, she would need to ask for rejection within that time. Miss O would not be able to retrospectively exercise her short term right of rejection at a later date. As she was unaware of the fault within the first 30 days, she couldn't possibly express her wish to reject the car within that time. The CRA also say that, if the car acquired wasn't of satisfactory quality, or not as described, then Miss O would be entitled to still return it after 30 days, but Miss O doesn't have the right to reject the car until she has exercised her right to a repair. So, Miss O doesn't have an automatic right to return the car. For me to conclude that Miss O can exercise her right to reject the car, I would need to see that the car wasn't of satisfactory quality, because the faults she complains about were likely to have been present or developing at the point of sale, and that MI Finance's attempt to repair them has failed.*

*I know that the repair shop has indicated that there were a few traces of oil leaks, but the car just had a new transmission fluid and its engine oil replaced at the beginning of August 2022, so it could be that these traces are just a result of some spillage that occurred during the gearbox repair and the maintenance that followed. But in this decision, it is not for me to speculate why these oil traces are there, so I have instead considered the evidence available to me. The email from the repair shop says that they can't be specific on what is leaking as more investigation is required. The evidence provided doesn't demonstrate the repair has failed and that the issues Miss O has experienced previously have reoccurred again. It seems that, most likely, this fault with the gearbox/transmission has now been fixed and I haven't seen anything to support that it hasn't. So, while I sympathise with the situation Miss O finds herself in, I don't think it would be fair or reasonable to allow her to exercise her right to reject the car.*

*As I said above, it's most likely the car wasn't of satisfactory quality at the time of supply and this matter caused Miss O a lot of distress and inconvenience when trying to resolve it. I think it was also very stressful for her when she was arranging and using alternative transport. And I know she had to correspond extensively with the garages as well as with MI Finance. I don't think she would've needed to do any of those things had MI Finance supplied her with a car that was of a satisfactory quality at the point of supply. So, I think MI Finance should pay Miss O £200 in compensation to fairly reflects the distress and inconvenience caused to her.*

*Miss O has been able to use the car from September 2020 until November 2021, but the gearbox wasn't working properly since May 2021 onwards. Driving the car while the gears were sticking is likely to have been somewhat stressful and annoying to her. So, this would have reduced the utility and enjoyment Miss O would have had while driving it. There is no exact mathematical method to quantify the impact on Miss O having to drive the car with this issue, but having considered the circumstances, I think that Miss O should be entitled to receive back 15% of the six hire purchase repayments she made from May 2021 to November 2021. Also, Miss O didn't drive the car from November 2021 until it was fixed in August 2022, which is approximately nine months' loss of use. So, I think it is fair that she's also refunded nine months' worth of hire purchase repayments.*

*MI Finance have told our service that on 14th March 2022, they paid a total of £432 to Miss O. This covered the storage fees incurred (£294), fee to move the car (£60) and the*

*diagnostic fees when car was first booked in at transmission shop (£78). I think it was fair and reasonable for them to pay these, as Miss O wouldn't have incurred these had she been provided with a car of satisfactory quality in the first place. But I also think they should pay, or refund, her the transportation cost she has incurred when transporting the car back to the transmission shop in July 2022 on production of a valid receipt or invoice if this has not yet been paid.*

### **My provisional decision**

*For the reasons given above, I intend to partially uphold this complaint and direct MI Vehicle Finance Limited to:*

- *Pay or refund the expense for the gearbox repairs, if this has not yet been paid or refunded;*
- *Pay or refund the expense for the replacement of the battery, if this has not yet been paid or refunded;*
- *Refund Miss O 15% of the six months' hire purchase repayments she has made from May 2021 to November 2021;*
- *Refund Miss O nine months' of the hire purchase repayments she has made from November 2021 until the car was fixed in August 2022 to cover the loss of use;*
- *Pay or refund Miss O the transportation costs she incurred when transporting the car back to the transmission shop in July 2022, on production of a valid receipt or invoice, if this has not yet been paid;*
- *Add 8% simple interest per year to all of the above points above from the date of each payment to the date of settlement;*
- *Pay Miss O £200 for the distress and inconvenience caused.*

*If MI Vehicle Finance Limited considers tax should be deducted from the interest element of my award, they should provide Miss O with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so."*

I asked both parties to provide me with any additional comments or information they would like me to consider by 9 March 2023 and our service explained that if both parties reply before then, I may be able to give my final decision sooner.

MI Finance responded and said they had nothing further to add.

Miss O responded and said she didn't agree with my provisional decision, so I've considered her response and I'll comment below.

### **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.

Miss O, when responding to my provisional decision, said, in summary, that in her opinion the car is still not repaired and it isn't in a road worthy condition. She said that despite a new gearbox being installed, the car still wasn't returned to her in a working state, so she said that she shouldn't be liable for fixing additional faults. She reiterated that the repair shop has indicated that there were a few traces of oil leaks, so she says that until further diagnosis is done there is no way of confirming the replaced gearbox is now working correctly. She said that because the car had a service done after the gearbox had been fitted, and then not driven on a road, she feels there should be no oil leaks at all. She doesn't feel that it is fair that MI Finance can disagree with the finding that further investigation is required. And she feels that any additional faults that occurred must ultimately be MI Finance's responsibility.

I've considered this, but for me to conclude that Miss O can exercise her right to reject the car, I would need to see that the car wasn't of satisfactory quality, because the faults she complains about were likely to have been present or developing at the point of sale, and that MI Finance's attempt to repair them has failed. The evidence provided doesn't demonstrate the repair has failed and it doesn't demonstrate that the issues Miss O has experienced previously have reoccurred again. As I mentioned in my provisional decision, the email from the repair shop says that they can't be specific about what is leaking, as more investigation is required. As such, the evidence provided doesn't demonstrate the repair has failed. And I still think that, most likely, the fault with the gearbox has been fixed and I haven't seen anything to support that it hasn't.

Also, Miss O told us, in detail, about how she was impacted when the car was stored in her possession before the gearbox replacement took place. She said that she was unable to drive the car at that time, and she explained how the situation has impacted her family relations, and the distress and inconvenience that has been caused to her and others. So, Miss O feels that the £200 compensation doesn't fairly reflect the impact of the situation.

It is important for me to first explain that in this decision I can only consider the impact the situation had on Miss O directly. In my provisional decision I felt that it was fair for MI Finance to refund Miss O nine months' worth of the hire purchase repayments she has made from November 2021 until the car was fixed in August 2022. This was to cover the loss of use when she was unable to use the car. And while I appreciate the difficult situation Miss O was in, I still think that £200 in compensation fairly reflects the direct distress and inconvenience caused to her. I know that Miss O is arguing that she still has no use of the car and that she should be refunded further monthly payments and other expenses. She said that she feels unsafe and uneasy with the new gearbox. But I haven't seen anything to support that most likely the gearbox repair has failed, as mentioned above, and in my provisional decision. So, it would not be fair or reasonable for me to ask MI Finance to refund her any other monthly payments.

Miss O, in her reply to my provisional decision, again mentioned that the car had failed its MOT and that the intermittent issues with the doors locking had not been resolved. But the repair shop couldn't find this issue with the doors, and I've not seen any other evidence that this issue has reoccurred. And I've already concluded in my provisional decision that MI Finance should be responsible to pay for the battery replacement and for the second MOT, and I remain of that opinion.

### **My final decision**

For the reasons given above, and in my provisional decision, I require MI Vehicle Finance Limited to:

- Pay or refund the expense for the gearbox repairs, if this has not yet been paid or refunded;
- Pay or refund the expense for the replacement of the battery, if this has not yet been paid or refunded;
- Refund Miss O 15% of the six months' hire purchase repayments she has made from May 2021 to November 2021;
- Refund Miss O nine months' of the hire purchase repayments she has made from November 2021 until the car was fixed in August 2022 to cover the loss of use;
- Pay or refund Miss O the transportation costs she incurred when transporting the car back to the transmission shop in July 2022, on production of a valid receipt or invoice, if this has not yet been paid;

- Add 8% simple interest per year to all of the above points above from the date of each payment to the date of settlement;
- Pay Miss O £200 for the distress and inconvenience caused.

If MI Vehicle Finance Limited considers tax should be deducted from the interest element of my award, they should provide Miss O with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 4 April 2023.

Mike Kozbial  
**Ombudsman**