

The complaint

Mrs C complains that a car that was supplied to her under a hire purchase agreement with MI Vehicle Finance Limited, trading as Mann Island, wasn't of satisfactory quality. Mrs C's partner is also involved in her complaint.

What happened

I issued provisional decisions on this complaint in September and November 2022. I described what happened in my provisional decisions as follows:

"A used car was supplied to Mrs C under a hire purchase agreement with Mann Island that she signed in July 2020. There were some issues with the car and it was inspected by an independent expert in April 2021. The car's steering rack was replaced in July 2021 under the car's warranty but there continued to be issues with the car so Mrs C complained to Mann Island. It said that Mrs C hadn't provided evidence to show that the faults were linked to the previous repair or fault.

Mrs C wasn't satisfied with its response so complained to this service. A garage reported issues with the car and it was then inspected by another independent expert in April 2022. Our investigator recommended that Mrs C's complaint should be upheld. He felt that there was sufficient evidence that the previous repair attempts had failed and he thought that it was fair for Mrs C to be able to reject the car. He recommended that Mann Island should return Mrs C's deposit, make necessary amendments to her credit file, refund 20% of her payments from April 2022 and pay her £100 compensation for distress and inconvenience.

Mrs C says that she paid £2,455.83 for a tow bar to be fitted to the car in August 2020 and that she should receive more compensation from Mann Island. She made a settlement proposal to Mann Island which it didn't accept. Mann Island hasn't accepted or rejected our investigator's recommendations (but it has referred to the car's MOT test in July 2021) so I have been asked to issue a decision on this complaint".

I said in my provisional decision in September 2022: *"I consider that this complaint should be upheld for these reasons:*

- *Mann Island, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mrs C - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;*
- *the car that was supplied to Mrs C was about four years old, had been driven for 33,174 miles and had a price of £49,995;*
- *satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;*

- *there were some issues with the car and Mrs C's partner arranged for it to be inspected by an independent expert in April 2021 – the car's mileage was recorded on the inspection report as 42,813 miles and the report identified issues with the car's steering rack and said that: "... taking into consideration the time and mileage since finance inception the fault would have been developing at that time";*
- *the car's steering rack was replaced under warranty in July 2021 and the invoice recorded the car's mileage as 42,830 miles;*
- *the car failed an MOT test later that month because a steering rack gaiter was missing but it was tested again later the same day and passed with a recorded mileage of 42,874 miles;*
- *Mrs C says that there continued to be issues with the car so she complained to Mann Island and then to this service;*
- *a garage that was working on the car in April 2022 reported: "We found that the steering felt rough and noisy to turn either way but no free play was felt at the time of inspection but on closer inspection of the power steering oil it looked contaminated and having been told by the customer the rack has only been fitted a few months previously I suspect the contaminants in the oil are from the previous rack issues and the system hasn't been flushed and cleaned out properly causing premature wear to the new rack. The correct repair from here would be to replace the rack, pipes pump and fluid reservoir to ensure the car is in a safe road worthy condition; anything less would only lead to a recurrence of the current fault";*
- *Mann Island arranged for the car to be inspected by another independent expert in April 2022 – the inspection report recorded the car's mileage as 55,431 miles and said: "There's an audible noise from the steering rack when operated from lock to lock, there are also a number of issues which the customer has raised which are listed above ... the engineer would not expect this issue with the vehicle only having covered around 13,000 miles since replacement";*
- *the first independent inspection identified a fault with the car's steering rack which the inspector said would have been developing when the car was supplied to Mrs C, the steering rack was then replaced but a garage and a second independent inspection have identified continuing issues with the steering rack and the inspector said that the faults wouldn't be expected to have occurred so soon after it was replaced;*
- *I consider it to be more likely than not that there was a fault with the car's steering rack when the car was supplied to Mrs C which caused the car not to have been of satisfactory quality at that time – the steering rack has been replaced under warranty but issues with it continue;*
- *as I consider that the car wasn't of satisfactory quality when it was supplied to Mrs C and the repair hasn't dealt with the issue, I find that it would be fair and reasonable for Mann Island to allow Mrs C to reject the car and to take the actions described below;*
- *Mrs C has complained about other issues with the car and the second independent report said that there were a number of other issues with the car but, as I consider that Mrs C should be able to reject the car because of the issues with the steering rack, I don't consider that it's necessary for me to make any finding as to whether the other issues would have been enough to have caused the car not to have been of satisfactory quality when it was supplied to Mrs C;*
- *I find that Mann Island should end the hire purchase agreement and arrange for the car to be collected from Mrs C – both at no cost to her;*

- *the hire purchase agreement shows that Mrs C made an advance payment of £17,462.89 for the car to be supplied to her - I find that it would be fair and reasonable for Mann Island to refund to her the advance payment that she made, with interest;*
- *Mrs C says that her use of the car has been limited since the ongoing issues with the steering rack were confirmed in April 2022 - its mileage later in April 2022 when it was inspected was 55,431 miles and the car passed an MOT test in August 2022 when its mileage was recorded as 57,041 miles;*
- *the car has passed an MOT test and was driven for about 1,600 miles between April and August 2022 - our investigator recommended that Mann Island should refund 20% of Mrs C's monthly payments under the agreement for the period from April 2022 as compensation for her impaired use of the car and I find that to be fair and reasonable in these circumstances - I'm not persuaded that it would be fair or reasonable for me to require Mann Island to refund a larger proportion of those payments, or any other monthly payments, to Mrs C;*
- *Mrs C paid £2,455.83 for a tow bar to be fitted to the car in August 2020 and the car was driven for nearly 24,000 miles between July 2020 (when it was supplied to her) and August 2022 (when it passed the MOT test) so I consider that Mrs C will have had considerable use from the tow bar - but the term of the hire purchase agreement was five years and Mrs C will be deprived of her expected use of the tow bar for at least the remaining term of the agreement so I find that it would be fair and reasonable in these circumstances for Mann Island to reimburse Mrs C for three-fifths of the cost of the tow bar which I calculate to be £1,474;*
- *these events have clearly caused distress and inconvenience for Mrs C and I find that it would also be fair and reasonable for Mann Island to pay her £100 to compensate her for that distress and inconvenience;*
- *I understand that Mrs C's account with Mann Island is in arrears so I find that the payments referred to above should be applied to her account to pay the arrears with the net amount then paid to Mrs C; and*
- *I find that Mann Island should also remove any information about the hire purchase agreement that it's recorded on Mrs C's credit file".*

In response to that provisional decision Mrs C said that she paid a total of £19,999 to the dealer, that she had to pay £352.50 for the car to be repaired in October 2022 and that the impact of this on her business and relationship hasn't been mentioned. I issued a second provisional decision in November 2022 in which I said:

"Mrs C has provided evidence to show that she paid the dealer £1,000 in July 2020 and £18,999 in August 2020. The invoice shows that a deposit of £1,000 was paid for the car by Mrs C and that the total amount due from her was £51,532.11. The hire purchase agreement shows that the cash price of the car was £49,995 and that Mrs C made an advance payment of £17,462.89. I consider that the evidence that she's provided shows that she made advance payments totalling £19,999 for the car to be supplied to her and I find that it would be fair and reasonable for Mann Island to refund to her the advance payment that she made, with interest.

Mrs C has also provided evidence to show that she paid £352.50 for work on the car in October 2022. The invoice refers to work on the steering and electrical issues about which Mrs C had complained to Mann Island. In addition to the findings that I set out in my provisional decision, I find that it would be fair and reasonable for Mann Island to pay Mrs C £352.50 to reimburse her for cost of that work, with interest.

I said in my provisional decision that Mrs C had clearly been caused distress and inconvenience and I agreed with our investigator that it would be fair and reasonable for Mann Island to pay her £100 to compensate her for that distress and inconvenience. That distress and inconvenience includes the impact that these events have had on her business and her relationship and I'm not persuaded that more compensation is justified in these circumstances".

Subject to any further comments or evidence from any of Mrs C, her partner and Mann Island, my provisional decision was that I intended to uphold this complaint. Mrs C has provided a detailed description of what has happened. She says that she and her partner now feel that they should have the choice to: send the car, that took them over a year and a half to find, back and receive their full deposit with any payments made whilst the car has been defective and a more realistic compensation amount; or keep the car, restart the payments from the moment this is all finalised; or instruct their solicitor to take the matter further.

Mann Island says that it understands that Mrs C is still using the car after having the steering rack replaced under the parts warranty and it's had no contact with her since November 2022. It says that her account is now over £8,000 in arrears and no payments have been made towards the agreement since June 2022.

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'm not persuaded that I should change the outcome that I set out in my November 2022 provisional decision. For the reasons set out in my provisional decisions, I consider that the car wasn't of satisfactory quality when it was supplied to Mrs C and the repair hasn't dealt with the issue so I find that it would be fair and reasonable for Mann Island to allow Mrs C to reject the car and to take the actions described in my November 2022 provisional decision.

I said in that provisional decision that Mann Island should refund to Mrs C the advance payment that she made for the car, with interest. I also explained why I thought that it was fair and reasonable for Mann Island to: refund 20% of her monthly payments under the agreement for the period from April 2022 as compensation for her impaired use of the car; reimburse her for £1,474 of the cost of the tow bar and the repair costs of £352.50; and pay her £100 to compensate her for the distress and inconvenience that she's been caused. I still consider that to be fair and reasonable in these circumstances.

Mrs C has had considerable use from the car and I consider that it's fair and reasonable that she should pay for that usage, less the compensation for her impaired use referred to above. I'm not persuaded that it would be fair or reasonable for me to require Mann Island to refund to her a larger proportion of her monthly payments or the cost of the tow bar or to increase the amount of compensation for her distress and inconvenience.

Mann Island says that Mrs C's account is now over £8,000 in arrears and no payments have been made towards the agreement since June 2022. As I said in my provisional decisions, the payments to be made to Mrs C should be applied to her account to pay the arrears with the net amount then paid to Mrs C. I consider that to be fair and reasonable.

I'm not persuaded that it would be fair or reasonable for Mrs C to be allowed to keep the car and restart her payments from the moment that all is finalised. If Mrs C doesn't accept my

decision, she will be able to take other actions, including instructing her solicitor to take the matter further.

Putting things right

I find that it would be fair and reasonable for Mann Island to take the actions described in my November 2022 provisional decision and as set out below.

My final decision

My decision is that I uphold Mrs C's complaint and I order MI Vehicle Finance Limited, trading as Mann Island, to:

1. End the hire purchase agreement and arrange for the car to be collected from Mrs C – both at no cost to her.
2. Refund to Mrs C the advance payment that she made for the car.
3. Refund to Mrs C 20% of the monthly payments that she's made under the agreement for the period since April 2022 as compensation for her impaired use of the car.
4. Pay £1,474 to Mrs C to reimburse her for part of the cost of the tow bar.
5. Pay £352.50 to Mrs C to reimburse her for the cost of the work on the car in October 2022.
6. Pay interest on the advance payment at an annual rate of 8% simple from the date of payment to the date of settlement.
7. Remove any adverse information about the hire purchase agreement that it's recorded on Mrs C's credit file.
8. Pay £100 to Mrs C to compensate her for the distress and inconvenience that she's been caused.

The payments referred to at 2, 3, 4, 5 and 6 above should be applied to Mrs C's account to pay the arrears with the net amount then paid to Mrs C. HM Revenue & Customs requires Mann Island to deduct tax from the interest payment referred to at 6 above. Mann Island must give Mrs C a certificate showing how much tax it's deducted if she asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 26 April 2023.

Jarrold Hastings
Ombudsman