

## **The complaint**

Mr K is unhappy with how MI Vehicle Finance Limited (MI) have handled a hire purchase agreement and a personal contract purchase (PCP) agreement that he took out with them.

## **What happened**

Mr K says he took out the following two finance agreements to use the cars for both personal and business use.

### *Car one*

In September 2020, Mr K acquired a car under a hire purchase agreement which was worth around £54,000. A £10,000 deposit was paid, and the total amount payable was around £62,400 over 60 months. The monthly repayments were £874.67, with a final payment of £875.67.

### *Car two*

In August 2021, Mr K acquired a car under a PCP agreement with a cash price of £51,990. A £5,000 deposit was paid and the total amount payable was around £60,200 over 38 months. The monthly repayments were around £930 with an optional final purchase payment of around £20,800.

Mr K says he left car one with a friend in December 2021 in Scotland. Mr K was in England and was unable to collect the car from Scotland due to falling ill with Covid-19. Mr K says his friend asked him to use the car for an emergency and he agreed to this. In early January 2022, his friend was caught by the police driving the car and so it was seized and impounded on suspicion the car was stolen. Mr K was made aware the car was seized, but due to still being unwell, he wasn't able to collect it from the compound.

Mr K says he was told by the police that he could collect the car but that he'd have to contact MI first. Mr K then contacted MI towards the end of January 2022, to let them know what had happened. At the same time, Mr K asked for a settlement figure to settle the agreement and to be able to keep the car. Mr K says he'd been told by MI he could pay the settlement for both cars. Mr K says he offered to return car two to MI as this was an option they gave him and just pay the settlement for and keep car one.

Mr K complains MI never sent him the settlement figure he asked for and believed they were being obstructive to him. Mr K says instead, MI sent default notices explaining they'd take possession of both cars and sell them. Eventually, MI wrote to Mr K in February 2022 to let him know they had grounds to believe he had seriously breached the terms of both agreements and that the cars were materially at risk. So, after considering things, MI said they concluded it was right for them to terminate both agreements. Mr K says this was unfair as previously, they were prepared to give him the early settlement figures, but then that seemed to have been retracted. Mr K says it also wasn't clear why MI had terminated both agreements.

Mr K says while he recognised he breached the agreement by not informing MI of car one's seizure, Mr K says MI unfairly repossessed this car. Mr K also says he paid more than one third of his repayments, so MI needed to have a court order to repossess the car, which they didn't have. Mr K says he hadn't breached any of the terms in the agreement for car two, so he didn't think they'd fairly terminated that agreement. Mr K also says MI didn't give him a chance to collect car one himself and feels he's not been treated fairly by them.

Mr K says it was unfair for MI to sell car one at an auction and charge him auction fees – Mr K says he could have easily have found a buyer for this car, sell it at a higher price and avoid the costs he was charged by MI.

Overall, Mr K doesn't think he's been treated fairly by MI as they've terminated both agreements.

MI said having reviewed the circumstances relating to the seizure of car one, they were satisfied their approach was appropriate and reasonable - their decision to terminate the agreements and recover the cars for sale was correct. MI say they acknowledge Mr K was given information which was contradictory to their position set out in their default notices, and accepted this wasn't helpful to Mr K. However, taking into account the wider circumstances, MI say they didn't believe Mr K had been substantially misled or caused any unfairness.

Our Investigator looked into Mr K's complaint and concluded:

In relation to car one:

- Mr K had acknowledged car one wasn't in his possession (he'd given it to a friend to use in an emergency) before it was seized and didn't dispute the fact that he breached the agreements' terms relating to not informing MI immediately about the seizure.
- Mr K wasn't able to provide evidence to show the friend who drove the car was insured. Instead, there was evidence of a fleet insurance policy which allowed anyone over 25 to drive the car. Despite Mr K saying this was a one-off occurrence, our Investigator understood MI's concerns that Mr K may allow the cars to be driven by others given the type of insurance policy in place.
- Our Investigator recognised MI didn't obtain a court order as per sections 90 and 91 of the Consumer Credit Act 1974 (CCA). However, this term is written for the protection of the consumer. But in this case, the car wasn't repossessed from the debtor – Mr K – it was recovered from a compound where the car had been held since the police seizure.
- MI were left with a difficult choice as Mr K told them during a conversation in February 2022 that the compound were going to dispose of the car two days later. So, it was understandable for MI to recover the car to ensure this didn't happen and to sell it at auction. MI weren't wrong to act quickly to collect the car.
- Mr K admitted to not always having the car in his possession – he said he works between his home address in England and Scotland. MI weren't aware the cars were being kept at another location, which meant a further breach of the terms of the agreement.
- Mr K had also changed the number plate of the car which was a breach of the terms.

In relation to car two:

- The default notice served for this car said Mr K failed to comply with the conditions of his agreement. Mr K had changed the number plate of the car and the car had been kept and insured in a manner which meant it wasn't always under Mr K's control - there was a suspicion he allowed others to use the car.
- As the agreement had been terminated, our Investigator said she would have expected Mr K to mitigate any other losses like payments for tax, MOT or insurance, himself by amending an insurance cover or stop any other ongoing costs relating to the car.
- Mr K didn't initially want to surrender the car and while we couldn't direct Mr K to do anything, our Investigator reminded Mr K that under the terms of the agreement, he didn't own the car and MI could decide to sell the car at auction.

Overall summary of conclusion:

- MI hadn't acted unfairly when making their decision to terminate the agreements due to the breaches set out.
- Even though Mr K was given the expectation he could settle the agreements and take ownership of the car, this expectation didn't lead to any material loss for Mr K.
- MI had sold car one at auction in order to reduce depreciation and limit Mr K's liability – this was fair for them to do as per the agreement terms.

Mr K disagreed. I've summarised the key points below:

- He never changed his address and was working in Scotland at the time. His insurance company suggested he put the overnight address as the Scotland address.
- He never allowed anyone to be a regular user of car one and this was only used by his friend in an emergency. Mr K couldn't inform MI the car had been seized as he was unwell with Covid-19. Mr K also clarified the circumstances under which car one was seized and explained his friend had been parked when this happened.
- He wasn't told by the dealership when acquiring the car that he needed to tell MI he changed the number plates on the car.
- He was using both cars some of the time for business purposes and so it worked out better for him to have all his cars under one policy – the fleet insurance policy.
- He was told by the police compound several times he could collect car one. But that they just needed confirmation from MI which wasn't provided. The car was kept at the compound for over a month while MI did their investigations and they waited until the compound said they would dispose of the car before deciding to get the car.
- Other than the number plate change, Mr K said he didn't breach any other terms and conditions on car two. This car was always in his possession as it was the newer car out of the two.

So, the complaint has been passed to me to decide.

#### *Current status of the two cars and agreements*

MI have recently provided us with information about the status of both cars and agreements:

In relation to car one, MI told us it was sold at auction for around £45,000. MI also confirmed that after paying off the remaining amount on the finance agreement, this left a surplus amount of around £34,000 owing to Mr K.

MI told us Mr K didn't initially want to return car two. But following conversations with Mr K in January 2023, he handed the car back to them. MI allowed the original motor dealer that supplied this car to Mr K to buy it back for £39,000. MI said there was a shortfall on this agreement following the sale of this car – the settlement balance was around £44,900, so after deducting the £39,000 that the car sold for, this left a shortfall of around £5,900. MI said they deducted this shortfall amount from the surplus amount of car one, leaving Mr K to receive around £29,600 as a net surplus amount. MI say they've arranged for this amount to be paid into Mr K's bank account.

So, overall, both cars have been sold and both agreements have ended with nothing left for Mr K to pay.

### **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved as I appreciate that a lot of information and testimony has been provided. No discourtesy is intended by this. Instead, I've focused on what I think are the key issues here. Our rules allow me to do this. If there's something I've not mentioned, it isn't because I've ignored it, I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is a fair outcome.

While both agreements have ended and both cars sold, Mr K has remained of the opinion that MI have treated him unfairly in their handling of both agreements. So, I've thought about whether MI acted reasonably in terminating the agreements.

In relation to car one, the credit agreement sets out its terms and conditions. I think the below is most relevant to the circumstances here:

- *You must inform us immediately of any damage to the vehicle, or if the vehicle has been stolen, seized or lost and about anything else which may affect our ownership of the Vehicle.*

Mr K has acknowledged he didn't let MI know the car had been seized as he was ill with Covid-19. I understand Mr K's point, but he also previously told us it had completely left his mind to call MI about this and understands this was a mistake. Mr K only contacted MI when he was told the compound wouldn't give him access to the car without MI's confirmation. So, having considered this, I'm satisfied Mr K breached the relevant term above because he forgot to contact MI.

MI also had some concerns about the car and whose possession it was in – the agreements' terms state the car must be kept in Mr K's possession or under his control at all times. This wasn't the case as Mr K's friend was using it, in Scotland, while Mr K was in England, for reasons he's explained. However, MI weren't aware of this and had concerns the car was being used or allowed to be used by someone else, which is a breach of the agreement. Mr K acknowledges he breached the above term but feels MI's actions of repossessing the car are not relative to the breach. I understand Mr K's point, but as I've said, MI had concerns about the car and as they're the owners of the goods, they're entitled to terminate the agreement if there has been a breach. And I don't find this action to be unreasonable in the circumstances of this case.

Mr K raised a concern that MI didn't obtain a court order before repossessing the car and says they should have done this. It doesn't seem to be in dispute a court order wasn't obtained, so I'll go on to comment on whether I think it was fair for MI to repossess the car without one.

As our Investigator explained, under the CCA, where one third of the total amount has been paid under the agreement, a creditor can't recover possession of the goods from a debtor without a court order. But from the information I have available to me, the car was recovered from a third party i.e. the compound where it had been held after the police seized it and not from the debtor, Mr K. So, there isn't a breach of the CCA here. I appreciate Mr K feels MI stalled things by not collecting car one sooner and chose to do this two days before the compound said they were intending to dispose of the car. But it seems MI were carrying out investigations into what had happened. And I don't find this to be unreasonable. Ultimately, even if MI did obtain a court order, they were doing so at the risk of the car potentially being disposed of. So, I think MI's actions of recovering the car as quickly as possible to then allow them to sell the car and reduce the amount of money Mr K owed under the agreement wasn't unreasonable.

Mr K says he could have sold the car himself and for more money than MI did at auction. However, when MI terminated the agreement, I don't find it unreasonable that they didn't allow Mr K to then become in possession of the car to be able to sell it himself. As I've already mentioned, the car was MI's asset and not Mr K's.

Mr K has questioned why he was charged auction fees, but he hasn't provided further detail on the fees themselves. MI said there were costs associated in recovering car one, but that in the end, Mr K wasn't charged these. In any case, as per the terms of the agreement, Mr K is responsible for any costs incurred by MI in the event of a breach, which results in MI taking steps to repossess the car or enforce the agreement – including legal costs, court fees and costs incurred in selling the car. So, I don't think it was unfair for MI to charge Mr K any fees relating to the selling of the car.

Mr K also acknowledged changing the number plates on both cars. Mr K first said the dealership knew he was changing the number plates and that they never told him to tell MI. More recently, Mr K says after changing the number plates, he had many calls with MI and they knew about the number plate changes but didn't mention anything to him about it. Mr K hasn't expanded on how he knows MI knew about the number plates being changed - Mr K acknowledges not telling them about this and I haven't seen any evidence to suggest MI were made aware of this by another party.

Mr K says the dealership knew he was changing the number plates, but they didn't tell him to tell MI. Under Section 56 of the CCA, the dealership would be acting as MI's agent and so MI would be responsible for anything the dealership did or didn't say. The dealerships that supplied the cars haven't suggested they were aware of the number plate change. Having considered this, alongside the inconsistencies in what Mr K has told us, I'm not persuaded the dealerships nor MI were aware of the number plate changes. Overall, the term of car one says Mr K can't interfere or allow anyone else to interfere with any registration plates. This term is also mirrored in the agreement of car two. So, I think Mr K breached this term by changing the number plates.

Mr K told us he used both cars for personal and business use. And that he wasn't able to keep both in his possession at all times as understandably, he couldn't physically drive both at the same time. Mr K says he works in between his home address in England and Scotland and that his insurance company advised him to use the Scotland address as the overnight address. However, this address was different to that on the agreements – they both had the England address. Mr K says he kept car two in his possession as it was the

newer car out of the two, but I haven't seen any evidence to suggest MI were made aware car one would potentially be kept at a different address. There's a strong suspicion the agreement was breached on this basis, but even if I'm wrong on this, it's not unreasonable for MI to want to know where the car was kept.

I appreciate the service Mr K received wasn't always as he expected. Specifically, when MI initially told him they were prepared to let him settle the agreements but didn't tell him what the settlement figures were. I can understand the frustration caused to Mr K when finding out that they weren't in fact going to settle the agreements and were taking possession of the cars. And I can see MI recognised this could have been dealt with better. But I don't think MI need to do anything more in recognition of this as I don't think there's really been an impact on Mr K. Ultimately, MI were investigating matters and gathering information into what happened which I don't find to be unreasonable.

Having considered all of the information, Mr K breached the terms of both agreements as I've set out above, so I don't think MI were unfair in terminating the agreements, requesting that car two was handed back and then selling both cars before offsetting the amount against the agreements. Ultimately, MI owned the goods and were satisfied there were terms in the agreements which had been breached.

### **My final decision**

For reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 14 April 2023.

Leanne McEvoy  
**Ombudsman**