

The complaint

Ms M complains MI Vehicle Finance Limited trading as Mann Island (MVF) supplied her with a car that she believes wasn't of satisfactory quality.

What happened

In July 2022, Ms M entered into a 60 month hire purchase agreement for a used car. The car cost £32,000, it was around four years old and had covered over 25,000 miles. Ms M was required to pay monthly instalments of £657.

She says immediately after collecting the car, she experienced issues with it. She told the dealership that at times, the car wouldn't allow her to drive over 20 mph despite her accelerating. She also said the drive gear 'D' on the gearstick was flashing. In addition, she reported the following issues:

- Wing mirror was cracked;
- Holes under the chairs;
- Worn brakes;
- Issues with the windscreen wiper.

The dealership said she should return the car to them or take it to a local garage. Given how far away Ms M lived from the dealership, she chose the latter. The car was looked at by a garage in July and August 2022. No faults were found relating to the loss of power but it was recommended the washer jet and wiper blade are replaced.

Despite this, Ms M said the acceleration fault persisted and sent videos of the same to the dealership. She said to resolve the issue, she would have to pull the car over, turn the engine off and back on again to regain full power. In response, the dealership gave the same above options, that is return it to them or take it to a local garage.

In October 2022, the car was returned once again to a local garage. They found a fault when the car went into stop/start mode. They configured the transmission control module and said the car was fine to drive. However shortly thereafter, Ms M reported the fault remained. She complained to MVF.

MVF said there was insufficient mechanical evidence of a fault. They provided the following options to Ms M:

- The car to be taken to a garage for diagnostic;
- She provides a quote for a hire car to allow the dealership to investigate the fault;
- They would arrange an independent inspection to look at the car.

Unhappy with their response, she referred the complaint to our service. The investigator concluded the car wasn't of satisfactory quality at supply and MVF should cover the cost of a repair. He outlined a number of things MVF needed to do to put things right including refunding travel expenses, refunding 10% of the monthly instalments to reflect the impaired use, pay £300 compensation for the trouble and upset caused, etc.

MVF said they wasn't disputing there appeared to be a fault but they could only put things right if Ms M allowed them to do so. They highlighted she hadn't opted for one of the options listed above. Because of that, they said they couldn't assess the inconvenience or the impaired use of the car.

Ms M also disagreed and said she wanted to reject the car. She stressed she had made this clear during the first 30 days after receiving it. She also provided recent video evidence which showed despite accelerating, the car wouldn't drive above a certain speed and the D on the gearstick was flashing. These videos were sent to MVF for their consideration.

In May 2023, I sent my provisional findings outlining my intentions to uphold the complaint.

In summary I said:

- Based on the consumer's videos and the job card from the garage in October 2022, I believe there was a fault with the car (likely the transmission).
- This fault was reported within a short time after collection. On balance, I find the fault was present or developing at supply meaning the car wasn't of satisfactory quality.
- Where that happens and it's outside the first 30 days of supply, the relevant law allows one opportunity for repair. I find that repair was carried out in October 2022. The job card said "*Found vehicle flashing in D when vehicle went into stop start*". It goes on to say "*Configure existing transmission control module (TCM) and tested vehicle. All OK*". Based on this, it seemed there was a fault with the transmission and something had to be done by the engineer to the TCM in order to rectify it. It was then tested and it was found to be working as it should.
- Despite the repair, Ms M reported the fault persisted. She said the engine light and speed limiter comes on and off intermittently and she's provided video evidence of the same. On that basis, I find the repair in October 2022 failed as it was clear there is an ongoing fault.
- Ms M doesn't want a further repair. She says she's lost confidence in the car and she's concerned about the safety of driving it. The CRA says if the one opportunity of repair doesn't fix the fault or others remains, the consumer can reject the car. Given what has happened I believe rejection should be allowed.
- To put things right, MVF should refund 15% of the monthly instalments paid to reflect the impaired use. Upon proof of evidence, MVF should reimburse Ms M's reasonable financial costs incurred as a result of being supplied with a faulty car e.g. alternative travel arrangements, diagnostic costs, etc.
- MVF don't need to pay Ms M's loss of earnings but I've taken it into consideration when considering the overall trouble and upset. MVF should pay £300 for the trouble and upset caused and remove any adverse information from Ms M's credit file.

Response to the provisional findings

Broadly speaking, Ms M agreed with the findings. She provided invoices of costs she incurred for ride sharing applications (alternative travel arrangements) and an invoice for a two day inspection of the car in April 2023. This report confirmed there were a number of faults with the car including it going into limp mode, issues with a number of sensors, engine

light on, etc. It concluded an extensive inspection would be needed, ideally by the manufacturer or a specialist garage to identify all the faults and its causes.

However Ms M didn't believe the compensation was enough. She stressed the impact of having a faulty car, her concerns about her safety and well-being driving it, the worry of not knowing if the fault would present itself or if she would be left stranded and not able to drive it.

MVF disagreed with my provisional findings and maintained their stance. In summary, they said:

- Neither themselves or the dealership had seen the car therefore they hadn't had the opportunity to inspect or diagnose the fault themselves;
- Ms M refused to allow them to do so despite them offering an inspection, a repair and the provision of a hire car;
- They hadn't authorised a repair to take place therefore they hadn't had the opportunity to repair;
- They shared the recent videos with the dealership but it was unclear exactly what was happening and they don't give an accurate reflection of what the issues may be. Mechanical diagnostic evidence was required.

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.

In relation to the points raised by MVF, given the options given by the dealership when the fault was initially reported, I find Ms M acted reasonably in taking it to a local garage and she did so on more than one occasion. She followed their instruction so it's unfair for MVF to say they nor the dealership haven't had the opportunity to inspect the car themselves when they both said she could take it to a third party.

Based on the several videos and findings of the garage in October 2022, I'm satisfied there's sufficient evidence to reasonably conclude there's a fault with the car. Although the exact issue or the cause of it may be unknown that doesn't mean a fault isn't present. Given how quickly it was reported after supply and the miles covered, I believe the fault was most likely present or developing at supply so I can't say the car was of satisfactory quality.

Broadly speaking, it seems MVF accept there's a fault. However they dispute they've had the opportunity to repair it. While I accept MVP nor the dealership carried out the repair, that doesn't mean one didn't happen. Ms M was told on more than one occasion that she had the option to take the car to a local garage and that's what happened. Based on the job card from October 2022, a fault was found and the engineer configured the transmission control module. It's unclear what exact actions were taken but it's clear they done something to try to fix the issue and then tested it to make sure it was working as it should. I remain of the opinion that constitutes a repair.

In any event, I've considered had she contacted MVF to say the garage had found the fault and they believed they were able to fix it, I'm persuaded it's most likely they would've agreed to it as all parties concerned wanted to resolve the issue. I also must bear in mind this was a manufacturer approved garage who presumably have a lot of knowledge, experience and

expertise about issues facing cars of that particular manufacturer and they are best placed to rectify them. So I believe Ms M acted reasonably by allowing the garage to carry out the repair in October 2022 in the hope it would fix the fault.

However unfortunately the fault remained and I'm satisfied Ms M has provided enough evidence to demonstrate that. The videos show the 'D' light flashing on the gearstick and despite her accelerating, the car doesn't go over 20 mph. The inspection report of April 2023 further outlines a number of faults.

Given the timeline of events, Ms M said she doesn't want another repair and wants to reject the car. Given what's happened, I can understand why. It's clear she's lost confidence in it and I'm sorry to hear it's not driving as a reasonable person would expect.

Where the one opportunity of a repair has failed, the CRA allows rejection and that's what I believe should happen in this case. The agreement should come to an end with nothing further for Ms M to pay. The car should be collected at no cost to her and any adverse information about this agreement removed from her credit file.

As outlined above, Ms M explained in detail the impact this situation has had on her and her overall worries and concerns. I can't award for hypothetical scenarios, only what's actually happened but I've taken her concerns into account when thinking about compensation. I've also taken into consideration Ms M's multiple trips to the garage, difficulties commuting to work, arranging alternative travel, the inconvenience of having to pull over to restart the car every time the fault presented itself. Having done so, I'm still of the opinion, £300 compensation is fair and reasonable for the trouble and upset caused.

I've also thought about Ms M comments about the refund of 15% of the monthly instalments she's paid, she doesn't think that's enough. I said MVF should pay this amount to reflect the impaired use of the car bearing in mind it's an intermittent fault. Since taking possession of the car, Ms M has covered over 5,000 miles so it's fair to say she's managed to still drive it so it's fair she pays for that. In the circumstances, I believe a 15% refund of the instalments paid is fair.

Lastly, Ms M has provided evidence of payments for alternative transport. As these costs were incurred as a result of being supplied with a faulty car, these should be refunded by MVF. They should also refund any diagnostic costs or inspection report costs incurred by Ms M. Copies of these invoices will be forwarded to them.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Ms M's complaint.

To put things right, MI Vehicle Finance Limited trading as Mann Island must:

- End the agreement with nothing further for Ms M to pay;
- Collect the car at no cost to Ms M;
- Refund 15% of the monthly payments made by Ms M as compensation for the impaired use of the car*;
- Refund the cost of the alternative travel arrangements*;
- Refund the cost of any diagnostic or inspection reports related to the car*;

- Remove any adverse information about this agreement from Ms M's credit file;
- Pay £300 compensation for the trouble and upset caused.

*MI Vehicle Finance Limited should also pay 8% simple interest per year on all the above refunds calculated from the date of payment up to the date of settlement.

If MI Vehicle Finance Limited considers tax should be deducted from the interest part of my award it should provide Ms M with a certificate showing how much it has taken off, so she can reclaim that amount if she is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 31 July 2023.

Simona Reese
Ombudsman