

## **The complaint**

Mr M complains about the settlement he received from MI Vehicle Finance Limited, who I'll call "MI Finance", when they agreed his car had been misrepresented to him.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

## **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.

I don't think MI Finance have provided sufficient redress here and I'm asking them to increase it in line with our investigator's suggestion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr M acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

It was agreed here that the car provided to Mr M in October 2021 had been "clocked" and that the deal and the finance agreement had therefore been misrepresented to him.

When this Service identifies a misrepresentation of this kind we would usually tell the business to take the car back and end the finance agreement, refund the finance instalments less any they could retain for fair usage as required under the Consumer Rights Act (2015), refund any deposit or part exchange contribution, compensate the consumer for the distress and inconvenience caused, and remove the agreement from the consumers credit file. We'd also ask the business to add interest to any refunds.

Mi Finance agreed to take the car back and end the finance agreement, refund two of the nine finance instalments Mr M had paid (£1,786.06), and pay him £150 in respect of the distress and inconvenience caused.

## **Putting things right**

The finance instalments Mr M had been paying had been calculated on the assumption the car he was leasing had a lower mileage than it did, and he'd therefore been paying more each month than he should have. Our investigator asked MI Finance to calculate how much

that overpayment was, and they explained it was £1,875.72 after 8% simple interest per year had been added. I'd agree with the basis of that calculation.

MI Finance had paid Mr M £1,787.06 in respect of what they said was lack of use of the car. There's no set method for working out what fair usage should be, but here Mr M had completed nearly 9,000 miles in the car in his ten months of ownership and that's above average usage. I can't therefore see that Mr M had any appreciable loss of use. But MI Finance should have refunded the overpayment and when deducting the lack of use refund that I don't think was necessary, that leaves a balance of £88.66 that I think MI Finance should now refund to Mr M.

Having considered the £150 payment for distress and inconvenience that MI Finance provided I think that's in line with what this Service would have ordered in the circumstances, and I don't think it was unreasonable.

Mr M has asked me to consider some costs that he says he incurred as a consequence of the misrepresentation, but it was always his responsibility under the agreement to service the car and replace wear and tear items such as tyres. So, I'm not asking MI Finance to refund those expenses.

### **My final decision**

For the reasons I've given above I uphold this complaint in part and tell MI Vehicle Finance Limited to pay Mr M a further £88.06 in respect of the redress due when rejecting his car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 August 2023.

Phillip McMahon  
**Ombudsman**