

The complaint

Mr M complains that a car he acquired with credit from MI Vehicle Finance Limited trading as Mann Island (MI) wasn't of satisfactory quality.

What happened

Mr M entered into a credit agreement with MI on 18 March 2022 to acquire a used car. The credit to buy the car was granted by MI under a hire purchase agreement. This meant MI was the owner of the car and Mr M was, in essence, paying for the use of it. As owner, MI was responsible for the quality of the car.

The cash price of the car was £22,995 and the total amount owed under the agreement including interest came to £27,413.60. Mr M paid £4,000 by way of a deposit and part-exchange of his existing car. The remainder was to be repaid in 59 monthly instalments of £390.21 with a final repayment of £391.21. The vehicle was over seven years old when it was supplied to Mr M and had covered 35,874 miles.

Mr M experienced issues with the car before the end of March 2022 and it went back to the dealer for repair in early April. The car came back from the garage on 19 April and Mr M was told that the AC condenser and the offside rear ABS sensor had been replaced and a new battery fitted. The car was back in for repair with the dealer in May as the ABS light had come on again. Mr M was told that the issue was a loose connection from the previous ABS sensor repair.

Mr M experienced issues with the car in June and July 2022. On 27 June the car went in for repair of an oil leak and the ABS. Mr M said that the car was with the dealer for about nine days this time. Soon after the car was returned, the ABS light came on again and Mr M experienced the car pulling to the left. The car was brought to a different garage on 11 July to fix the tracking.

Mr M complained to MI in August. The ABS warning light was coming on and the car was emitting smoke. The car went back to the dealer in September who replaced the front left ABS sensor and the EGR valve. Mr M had experienced issues with the gears, which were confirmed by the dealer. However, the dealer said that this issue appeared to have sorted itself after the repairs.

MI issued a final response to Mr M in October about his complaint. It said that the dealer had fixed all the issues apart from a repair to the exhaust flexi pipe, which was down to wear and tear. MI paid Mr M £150 for the inconvenience of having to return the car to the dealer several times for repairs.

Mr M got in touch with us. He wanted to return the car and have his down payment of £4,000 refunded. In January 2023 one of our investigators looked into things for Mr M. They found that the repairs appeared to have been successful but Mr M hadn't been able to use the car for the whole of the time he'd had it, given how often it had been in for repairs. They recommended that in addition to the £150 MI had paid Mr M, it should refund his repayments for two months, being £780.42.

On 2 February 2023 Mr M told us that he didn't accept the recommendation to resolve his complaint because he was once again experiencing issues with the ABS sensor. The car failed an MOT on 17 February 2023 with three major defects, including a fault with the ABS. Mr M took it to a garage for repair about a week later and provided an invoice for the repair dated 8 March 2023. This confirmed the ABS light was on, along with the traction control light. The repair was to the offside rear ABS sensor. The car passed an MOT on 10 March. The garage quoted Mr M for what it called a more permanent fix which involved replacing the ABS wiring and sensors.

We looked into Mr M's complaint again with this new evidence and recommended that Mr M be allowed to return the car. Attempts at repair had happened and further repairs would not be an appropriate remedy given the length of time Mr M had been dealing with the faults.

MI didn't accept this recommendation. It said the latest work had been carried out at a garage Mr M chose and the quote appeared biased towards what he wanted, which was to reject the car. In addition, the garage found that after repair the car showed no fault codes or evidence of the faults returning. MI said it hadn't had the opportunity to inspect the car to confirm the faults and questioned why Mr M hadn't been in touch when the ABS light reappeared in 2023.

MI asked for the complaint to come to an ombudsman to decide and it came to me. I sent out a provisional decision on 5 July 2023. I shared the information I'd relied on, explained why I thought Mr M's complaint should be upheld and set out my proposals for putting things right for him. I allowed some time for the parties to provide any comments or new information for me to consider when making my final decision. Mr M accepted my provisional decision and MI had no further comments or information. This is my final decision on the matter and will be legally binding on Mr M's acceptance.

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 reconsidered everything, and having no comments or new information to consider, I've seen no reason to depart from my provisional conclusions. I'm upholding Mr M's complaint and will set out my reasons again for doing so.

As I'd said in my provisional decision, The Consumer Rights Act (CRA) 2015 is relevant here. This act implies a term into any contract to supply goods that those goods will be of satisfactory quality. Satisfactory means what a reasonable person would expect, taking into account the description of the goods, the price and any other relevant circumstances. 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. The relevant circumstances in this complaint would include, for example, the nature of the fault and the age and mileage of the car.

The CRA gives customers solutions if they find themselves with faulty goods. They can reject the goods if the fault happens within 30 days, or have the goods repaired or replaced. Outside of this period the supplier has the chance to repair the goods before anything else happens. The supplier must either repair or replace the goods within a reasonable time and without significant inconvenience to the customer (Section 23). If this doesn't solve the problem and it's found that the fault was there or developing when the goods were supplied, then a consumer might be entitled to other solutions such as a price reduction or a final right to reject the goods.

MI told us that from the dealer's perspective none of the faults were present at the point of sale and none were because of a failed attempt at a previous repair. The dealer said it carried out the repairs under warranty and not because it accepted liability for them. The first ABS issue (with the offside rear sensor) in March 2022 had been repaired and hadn't reoccurred. The dealer said the second ABS issue (front left sensor) could have been caused by the repair to the oil sump in June/July. That repair had involved unplugging both sensors and a loose connection upon reinstalling could have caused the ABS light to come on. The dealer said it wasn't given the chance to put this right until September.

This is at odds with Mr M's account. He said that he told the dealer the ABS/traction control light had come on again before it went in for repair in June. The car went back to the dealer on the 27 June and was returned on 7 July. Mr M said he was told the ABS and the oil leak were fixed. The next day Mr M called the dealer to say that the ABS light was on again and the car was pulling to the left.

I haven't made a finding as to whether the dealer missed a chance to repair the ABS when it had the car in June/July. The repairs needed earlier in the year in March/April were to do with a rear ABS sensor and the work in September involved the front ABS sensor. It may be that these issues were linked to an underlying problem but I haven't concluded that the work carried out in September was due to a failed repair earlier in the year.

However, I understand that the car failed its MOT in February 2023 in part due to a problem with the rear offside ABS sensor, which the dealer had repaired in March/April the previous year. This issue manifested shortly after the car was supplied so I think it was there or developing at the point of supply. Mr M chose to have the fault repaired at that time rather than reject the car. However, Mr M had driven just over 3,000 miles before the fault appeared again (February 2023) and so I think it's more likely than not that the earlier repair on the rear sensor had failed.

MI said that the garage that carried out the repair on the rear offside ABS in March 2023 was biased towards Mr M's view of events, in other words that the car wasn't fit for purpose when it was supplied. The invoice provided for the repair said that the wiring harness for the ABS sensors showed signs of multiple previous sub-standard repairs. The garage found that any attempts now to repair would only be temporary and quoted for a new wiring loom and offside rear sensor. MI said that it has had no opportunity to inspect the car to confirm if the faults did return and that there was no supporting evidence of this issue returning apart from the invoice provided by Mr M.

As mentioned, the car failed its MOT in part due to the issue with the ABS sensors. I'm happy to rely on the reported MOT as independent evidence of the issue returning. I understand from Mr M that the MOT was not carried out by the repairing garage. Mr M has confirmed that the fault has not reoccurred since he paid for the temporary fix but he is now in a position where he feels he will have to pay for the cost of a full repair (quoted as £1,223) to ensure this particular issue doesn't reoccur. Mr M wishes to reject the car.

The dealer has had a reasonable period of time to fix this issue. I think another attempt at repair would likely cause further inconvenience to Mr M. I've concluded that he should now be allowed to reject the car on this basis.

The car had travelled 35,874 miles when supplied and by 10 March 2023 had travelled 39,052. I don't know what the current mileage is. I think it's fair that Mr M pays something for his use of it given he'd have incurred some costs to stay mobile otherwise. The monthly payments were £390 (rounded) but I don't think this is a fair reflection of the use Mr M made of the car. A proportion of these payments went towards repaying interest and it's clear Mr M didn't make as much use of the car as he could have and that his

enjoyment of it was curtailed by the issues he experienced. Altogether, I think a fair amount Mr M should pay is £275 for each month he's had the car. Anything Mr M has paid in excess of this amount should be treated as an overpayment and refunded.

In addition, Mr M has experienced distress and inconvenience by being supplied with a faulty car. There isn't a specific calculation for awards to compensate for the emotional impact of errors. We have an approach which I've borne in mind alongside everything else when making this decision. As set out on our website, an award of over £300 and up to £750 might be fair where the impact of a mistake has caused considerable upset and worry and significant inconvenience that needed extra effort to sort out, typically over weeks or months. I think an award in this range would be appropriate here.

Putting things right

MI now needs to:

- End the agreement with nothing for Mr M to pay going forwards and collect the car at no further cost to him;
- Limit Mr M's liability to £275 a month for each month he's had the car;
- Consider all payments Mr M made above this limit including his deposit as overpayments;
- Add an amount of £228.53 to this overpayment total to cover the cost of repair of the car in March 2023;
- Refund this total to Mr M along with 8% simple interest per year* from the date of each overpayment to the date of reimbursement;
- Remove any adverse information about this agreement from Mr M's credit file;
- Pay Mr M an amount of £300 to reflect the distress and inconvenience this matter has caused him.

*HM Revenue & Customs requires MI to take off tax from this interest. MI must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained above I'm upholding Mr M's complaint about MI Vehicle Finance Limited trading as Mann Island and it now needs to put things right as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 August 2023.

Michelle Boundy
Ombudsman