

## **The complaint**

Miss B complains that a car she acquired via a hire purchase agreement with MI Vehicle Finance Limited (“MIVF”) wasn’t of satisfactory quality.

## **What happened**

In September 2021 Miss B entered into a four-year hire purchase agreement for a used car with MIVF. The car was five years old and had a mileage of 76,714. The car had a 12-month warranty and an MOT. Miss B was also told that it had recently been serviced.

In September 2022 the car began to make a knocking noise and a warning light illuminated. Miss B took the car to a garage who advised that there could be an issue with the timing chain and said she should check with the warranty company as to repairs.

The warranty company asked Miss B to take the car to an approved garage which she did. This garage told her that the car required a new engine as there hadn’t been an oil or oil filter change carried out as per the manufacturer’s recommendations.

Miss B arranged for an engineer to inspect the car and provide her with a report as to the car’s condition. This report cost Miss B £250. The engineer said that the car’s engine had been damaged due to excessive internal wear caused by poor quality and dirty engine oil and a blocked filter. The engineer said that in their opinion the car hadn’t been serviced prior to the point of supply to Miss B and that the supplying dealer may have reset the service light to conceal that this hadn’t taken place. An estimate for replacing the engine was set at just under £12,000.

Miss B complained to MIVF and provided a copy of the inspection report she’d obtained. MIVF arranged for a report to be prepared from an independent engineer. This engineer didn’t view the car but wrote their report based on the information they received as to the length of time Miss B had had the car, the miles she’d driven plus details provided by the supplying dealer as to the service and MOT they had carried out. The independent engineer said that looking at the service history held by manufacturer the car had been serviced in November 2020 when the car had a mileage of 68,669. The supplying dealer had also provided evidence that the car had been serviced by them in September 2021 when the mileage (assumed from the MOT that was carried out at around the same time) was about 76,715. This service was said to have consisted of an engine oil and filter change.

The independent engineer said that for the engine type in this model of car, it should have been serviced at 13,000km or 12 monthly intervals. They said as Miss B hadn’t serviced the car since she’d acquired it and had driven in excess of 17,000 miles then MIVF wouldn’t be liable for the current fault.

MIVF asked the engineer who had inspected the car at the request of Miss B for their comments on the findings of the second report. The engineer replied that they had clarified the service schedule with the manufacturer who had confirmed that for this model the car, it should be serviced at 21,000 miles or 24 months whichever was the sooner. They also said that in their opinion the car had been mis-sold as there was a high likelihood the engine had

had excessive wear at the point of supply.

The first engineer queried the cost quoted by the supplying dealer for the service they said they had carried out on the car. The engineer said this appeared to be too low when taking into account the garage had purported to change the oil and filter, added Adblue and changed a wiper.

MIVF then asked a second independent engineer to provide their opinion. Although initially this report was unhelpful due to a mistake made regarding the length of time Miss B had had the car, this third engineer then provided a second view when the length of time the car had been in Miss B's possession had been clarified. This independent engineer said that they had inspected the car, finding the oil filter removed and inside the car. They said this filter had shown signs of deterioration and that the oil was dark and coagulated.

This independent engineer also said that following diagnostics, a number of fault codes were displayed though none related to the condition of the engine oil. The engine had been turned on and found to be spinning at a rate that wouldn't be considered normal and loss of compression was anticipated though further investigation and engine stripping would be required. They said loss of compression could have many causes and the fault with the car wasn't considered to be due to a lack of servicing.

The independent engineer said that in their opinion the fault with the car wouldn't have been present at the point of supply as the car would only have been drivable for between 1000 and 1,500 miles in that condition.

MIVF offered Miss B, as a gesture of goodwill, to reimburse the monthly payments she paid following the car breaking down and suspend the remaining payments while the matter was investigated. It also offered £2,000 towards the engine repairs.

Miss B was unhappy at MIVF's offer as she said the car wasn't of satisfactory quality and she believed the issue was due to either the lack of a service or a poor service being carried out by the supplying dealer. She complained to this service.

Our investigator didn't recommend Miss B's complaint should be upheld. She said the engineer who had prepared the report on behalf of Miss B could be considered as not being fully independent as they had also provided the estimate for the repair and so could be said to have an interest in the outcome.

It appeared to be agreed, said our investigator that the car was found to have issues with the oil and oil filter though whether the car had been serviced prior to the point of supply to Miss B was in contention between the parties. However, it was also agreed, said our investigator, that Miss B hadn't been required to have the car serviced prior to its breakdown. She said that, following further investigation by her, the oil should have been changed every 7,500 to 10,000 miles so Miss B had driven around 8,000 miles with oil that could have become dirty in that time. She said that as the car was used, it would have suffered wear and tear prior to Miss B acquiring it. Our investigator added that she thought if the oil had been contaminated when Miss B had acquired the car then she wouldn't have been able to drive the number of miles that she had before it broke down.

Miss B disagreed with the view of our investigator. She said the manufacturer had confirmed in an email that the servicing schedule including changing the oil was 21,000 miles or two years whichever came first and not the number of miles quoted by the investigator. She said there had been no service lights illuminated before the car had broken down and so she disagreed she had failed to maintain the car.

Miss B also disputed that the engineer commissioned by her had not been independent as they had been appointed by the warranty company.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

I'd seen Miss B had arranged for a second quote from a manufacturer approved garage as to the cost of the engine repairs for the car. This quote was very similar in amount to that provided by the first engineer to her. So, I was satisfied there hadn't been any inflation as to the cost of fixing the fault by the first engineer.

I was aware that Miss B had been unhappy about comments she said MIVF had made to her regarding her complaint with this service, but I hadn't seen what was said and I thought if Miss B felt MIVF had acted inappropriately then she would need to raise that with it first. So that wasn't something I was going to address in my decision.

When looking at this complaint, I needed to have regard to the relevant law and regulations, but I am not bound by them when I considered what was fair and reasonable. And where information was missing or contradictory then I had to decide what I thought was the most likely thing to have happened.

As the hire purchase agreement entered into by Miss B was a regulated consumer credit agreement this service was able to consider complaints relating to it. MIVF was also the supplier of the goods under this type of agreement and was responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 can be aspects of the quality of the goods.

Here the car was around five years old and had a mileage of about 76,500 which was higher than what may usually be expected for a car of this age. So, it would have been reasonable to expect some issues of maintenance and repair to be needed over time. The car broke down after 12 months and 18,000 miles of use.

I'd seen that there had been three reports prepared as to what was wrong with the car, one commissioned via the warranty company by Miss B and two by MIVF. However, they all appeared to have reached different conclusions.

Looking at these reports individually, the first in time was provided on behalf of Miss B and was prepared by an engineer who inspected the car. I was satisfied on the qualifications they had set out that they were suitably experienced to provide this report. MIVF had raised that this engineer wasn't truly independent because they had also provided the estimate for the repairs and so may have had a vested interest in the outcome of Miss B's complaint. However, I wasn't convinced, in these circumstances, that the provision of the estimate hadn't made the engineer impartial. I'd seen they had been recommended by the warranty company, and I thought with their knowledge and experience that they would be aware that there was no guarantee that their garage would be used for any repairs. Further, with a

repair bill of that size and with a used car it was always a possibility that the repair would be considered uneconomical. So, I thought it was reasonable to give weight to their report.

I thought this engineer was very clear as to their findings which had been made after checking the engine oil and dismantling the oil filter housing. They said that in their opinion the car had not been serviced in accordance with the manufacturer's recommendations prior to Miss B acquiring it. They said that the car had missed an annual service including an oil and filter change around the time it had been supplied to Miss B. They set out that the oil had become so dirty and contaminated that it had started to deposit dirt and debris around the engine which in turn had caused accelerated wear to the timing chain and its guides and accelerated wear to turbo charger bearings.

The second report in time was prepared at the request of MIVF, however I thought it was important to note that this engineer hadn't seen the car and had given an opinion based on the evidence that had been provided. This engineer was also incorrect about the recommended service interval for this make and model of car. And, in light of that error, I didn't think I could reasonably give much weight to this engineer's conclusions.

The third report was again prepared at the request of MIVF. This independent engineer had viewed the car though there had been some confusion in respect of their first report as to how long Miss B had had it in her possession. This particular report didn't reach any conclusions however, their second one did, once they had been made aware of the length of time Mrs B had the car and the number of miles she'd driven.

This third engineer had said that they didn't think the issue with the car was due to a lack of servicing but was anticipated to be due to the engine losing compression which could have been for a number of reasons. They said the engine needed to be stripped and inspected for a diagnosis to be made.

This engineer also said that although servicing could have some impact on the life expectancy of an engine, other variables were also significant. They said that the condition of the timing chain could be dependent on oil condition, but it was also a matter of wear and tear, and a fault wouldn't been unexpected at this car's age and mileage.

The engineer confirmed that the oil had been coagulated, and they described the oil filter, which hadn't been in situ but instead inside the car, as having deteriorated and being in a damaged condition. They said further comment from the supplying dealer should be required about the condition of the filter.

I couldn't see that MIVF had sought the dealer's explanation as to the filter though I had seen it had queried whether the oil filter seen by this engineer had been the one that had been in the car. But I thought it was very unlikely to have been a different one. I didn't have any evidence that the first garage/engineer would be so unprofessional that they would place a different filter in the car for this independent engineer to inspect.

Looking at the first and third reports there had been several areas in which the engineers had agreed. And although the third engineer said that the fault with the car wasn't due to a lack of servicing, they had accepted that this could have had an impact on the life of the engine components. They had also said that further investigation was required.

The first engineer's view was that the supplying dealer had not serviced the car prior to its supply to Miss B. The supplying dealer had disputed that. They had provided a handwritten record dated September 2021 which had shown a list of different cars, one of which had been the car acquired by Miss B, and next to the registration number it said, "*Service Ad Blue Wiper blades*" and then gave the cost as £100. However, there was no job card for the

car and this service hadn't been recorded on the manufacturer's system.

I had also seen an estimate for the cost of the service that had been carried out on the car showing it would have been expected to have been nearer to £150 with one hour's labour and VAT as opposed to the £100 marked by the supplying dealer. Looking at this estimate, I thought the cost the supplying dealer said had been incurred undertaking this service appeared to be lower than would have been reasonably expected even with the savings a garage would have been able to implement by buying things like oil in bulk.

As set out above, the third independent engineer had commented on the poor condition of the oil filter they had found in the car. I'd also seen that later, this engineer had stated that an oil filter might not always require changing at a service, but I didn't accept that this would be good practice when servicing a car of this age or mileage. It also appeared to be contrary to the manufacturer's recommendation. This engineer had also said that the condition of the filter should be raised with supplying dealer, and I thought it was reasonable to infer from that comment that the oil filter was in an unexpected condition given the service history of the car.

So, looking at the condition of the car's oil and filter were found in, I thought it was unlikely that this had arisen solely from Miss B's use even though this could have been considered higher than average in terms of annual mileage. I was also satisfied that the car hadn't required servicing while in Miss B's possession.

However, given the age and mileage of the car, I still needed to consider whether wear and tear had been responsible for the fault with the car as opposed to a missed/incomplete service.

The third engineer had raised that in their opinion the fault with the car wasn't due to a problem with the annual service and that the timing chain was coming to the end of its life. While I accepted a fault with the timing chain could arise when car had reached the mileage this one had, I thought the evidence as to the dirty oil and deteriorated oil filter meant that it was more likely than not that the contaminated oil had led to a serious fault developing and the car requiring a new engine. I didn't think on the evidence I'd seen that the issue with the car arose from normal wear and tear. I therefore thought that even though Miss B had been able to use the car for a year and drive around 18,000 miles in that time that the issue had arisen because of the service that was either not carried out or not carried out properly. I didn't think the car had been as reasonably durable as would be expected because had the annual service been carried out as recommended by the manufacturer then the car would have been unlikely to have developed a fault that required the engine needing to be replaced.

So, on balance I preferred the report prepared by the engineer commissioned by Miss B. They had examined the car and had set out in detail the condition of the oil and of the filter. I also didn't think their evidence had been contradicted by the third engineer in respect of their findings about the condition of the car's oil and filter. I therefore didn't think the car had been of satisfactory quality at the point of supply to Miss B and that it was fair for her to reject it given the level of repairs that were required and the time the car had now been off the road.

For the reasons given I intended to uphold Miss B's complaint and I thought it would be fair for MIVF to do the following:

- Cancel the agreement with nothing further to pay.
- Collect the car at no cost to Miss B.

- Reimburse Miss B the £250 cost of obtaining the first inspection report with interest at the annual rate of 8% simple from the date of payment until the date of settlement.

As Miss B had been unable to use the car since September 2022, any payments made under the agreement from that date should be reimbursed to her. While I appreciated Miss B had exceeded the agreed mileage, I thought it would be fair that no deduction for that was made from this reimbursement but, instead, I took account of that when considering an award of compensation for the distress and inconvenience caused to her having to deal with the faulty car.

I also thought it would be fair for Miss B to be reimbursed the cost of insuring the car from September 2022 to date as she hadn't been able to use it. Miss B to provide details of this cost (copy of the policy showing the monthly cost) to MIVF before this repayment could be made.

Miss B had found dealing with the car distressing and she had been unable to use it for some time now. However, I needed to take into account the amount of use she had been able to make of the car before it had broken down. I thought compensation of £250 was fair and reasonable in these circumstances.

Looking at the invoice paperwork, the deposit of £500 was shown as being made by the dealer although Miss B had provided a screenshot of a proposed quote showing a customer deposit of £500. I wasn't persuaded that the information supplied by Miss B showed that there was an error on the invoice, however, if she can provide a bank statement showing this payment I would of course review that. But at that time, I wasn't going to ask that the deposit was reimbursed to her.

Miss B, although agreeing with most of my provisional decision, has asked me to reconsider the issue of compensation. She says the car's insurance was cancelled as she couldn't get an MOT and she is concerned this will mean insurance will be more expensive in the future as she will have to declare this for the next five years. She says she has also received a £100 fixed penalty notice for not having insurance in place.

Miss B says this matter has been a significant strain as she hasn't been able to use the car. She says she had purchased another car using the reimbursement of three-monthly payments, but this had broken down causing her financial loss.

Finally, Miss B asks that she is reimbursed the £80 cost of removing and retaining the private plate she had added to the car.

MIVF disagrees with my decision. It says that Miss B has had the car for one year and driven for 18,000 miles before it failed, and this is a considerable mileage with no maintenance or servicing taking place.

MIVF says it disagrees that the engineer instructed by Miss B was independent. It says they provided a one-sided view with no reference to the mileage of the car. In contrast, MIVF says, the engineer it had instructed is independent.

MIVF says it disagrees with my decision to dismiss the evidence that the car had been serviced prior to its supply to Miss B. It says it makes no sense for the supplying dealer to have switched off the service light rather than change the oil. MIVF also says that had the fault been present or developing at the point of supply then Miss B wouldn't have been able to make the use she had of it before it broke down.

## **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 have reviewed the evidence provided for this complaint and I haven't changed my view that Miss B's complaint should be upheld.

I still prefer the evidence of the engineer commissioned by Miss B. I have set out in detail above why I reached that conclusion, and I am still satisfied that even though they didn't comment on the mileage driven by Miss B (other than to say the requirement to have had the car serviced as per the manufacturer's recommendations hadn't yet arisen) that this report is preferable to the report provided by the final independent engineer.

I accept there isn't sufficient information to say that the supplying dealer switched off the service light for this car or that they hadn't carried out a service at all, but I think the evidence, such as the condition the filter was found in, means it's more likely than not that the service wasn't carried out adequately or as per the manufacturer's recommendation. I think it's important to repeat here that the final independent engineer had also said that the supplying dealer should be asked to comment on the filter's condition. And I think this confirms that the filter wasn't in the condition that would have been expected.

MIVF says that 18,000 miles is a significant mileage to have driven a car of this age and original mileage without undertaking any service or repair work. However, I'm satisfied that it was established the car didn't require a service as per the service schedule. I also haven't seen any evidence that Miss B ignored any warning lights or necessary repairs before the car broke down.

I accept, as set out above, that this was a used car with a relatively high mileage which means that repairs and maintenance would be reasonably expected after a reasonable period time. However, I'm still satisfied from the evidence that has been provided, that the inadequate service leading to the contamination of the oil had caused a fault that now requires the engine to be replaced. I am also satisfied that Miss B wasn't alerted to the condition of the oil and had reasonably relied on the car having been serviced in line with the manufacturer's recommendation prior to her acquiring it.

I also think that even though Miss B was able to drive the car for 18,000 in 12 months this didn't mean the car was of satisfactory quality at the point of supply. The car wasn't as durable as would be reasonably expected due to the inadequate servicing leading to a fault developing or being present at the time Miss B acquired it.

Miss B has asked me to look again at the amount of compensation and also to have the deposit reimbursed. Looking at the deposit first, Miss B hasn't been able to provide proof of payment as she says she paid this with a credit card she no longer holds, and that the supplying dealer hasn't responded to her requests to confirm she made this payment. While I sympathise with this, I don't have enough evidence to request MIVF reimburse any deposit to her since the paperwork contradicts that Miss B had made this payment. So, I haven't changed my view about this amount being returned.

Miss B has also raised the issue about the cancelled insurance and a fixed penalty she received. Again, while I sympathise with the position Miss B finds herself in, she did have the responsibility to mitigate any losses. So, here that means Miss B should have taken steps to SOR the car as it was unusable and couldn't be MOT'd. I don't think it's fair that I ask MIVF to pay additional compensation for this.

Also as set out above, Miss B had driven the car further than the mileage limit set out in the agreement. She therefore faced paying MIVF around £700 (9p per mile) for that additional use. I think it's fair to waive any excess mileage fee here but to take that into account when looking at a fair amount of compensation and other reimbursements to Miss B. While I accept Miss B has suffered distress and inconvenience dealing with this faulty car, I still think compensation of £250 together with the reimbursed monthly payments from September 2022 is fair and reasonable in total. So, I'm not going to ask MIVF to cover the cost of retrieving the private plate nor any other financial losses Miss B has raised.

I'm therefore upholding Miss B's complaint in the same terms as my provisional decision.

### **Putting things right**

I'm asking MIVF to do the following:

- Cancel the agreement with nothing further to pay.
- Arrange for the collection of the car at no cost to Miss B.
- Reimburse Miss B the £250 cost of obtaining the first inspection report with interest at the annual rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Miss B any payments made under the agreement since September 2022 together with interest at the annual rate of 8% simple from the date of payment until the date of settlement.
- Pay Miss B £250 compensation for the distress and inconvenience for dealing with the faulty car.
- Reimburse Miss B the cost of insuring the car from September 2022 until cancelled once she has provided proof of that cost.
- Remove any adverse information about this account from Miss B's credit file.

### **My final decision**

For the reasons set out above, I'm upholding Miss B's complaint. I'm asking MI Vehicle Finance Limited to do the following:

- Cancel the agreement with nothing further to pay.
- Arrange for the collection of the car at no cost to Miss B.
- Reimburse Miss B the £250 cost of obtaining the first inspection report with interest at the annual rate of 8% simple from the date of payment until the date of settlement.
- Reimburse Miss B any payments made under the agreement since September 2022 together with interest at the annual rate of 8% simple from the date of payment until the date of settlement.
- Pay Miss B £250 compensation for the distress and inconvenience for dealing with the faulty car.
- Reimburse Miss B the cost of insuring the car from September 2022 until cancelled



once she has provided proof of that cost.

- Remove any adverse information about this account from Miss B's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 September 2023.

Jocelyn Griffith  
**Ombudsman**