DRN-4323444

The complaint

Mr O 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 O entered into a credit agreement with MI on 25 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 O 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 £25,000 and the total amount owed under the agreement including interest came to £29,483.80. This was to be repaid in 59 monthly instalments of £491.38 and a final repayment of £492.38. The vehicle was over four and a half years old when it was supplied to Mr O and had covered 45,322 miles.

Mr O told the selling dealer via text on 21 April that he was having some problems with the car. He followed this up with an email on 26 April to say he'd experienced issues with the car since early April and wanted to return it for a full refund. The problems included a depleted battery, an illuminated engine light and the fan and wipers running when the car wasn't on.

Mr O let the dealer know he'd been in touch with MI. Mr O returned the car to the dealer on 28 April for repair. The dealer said they were unable to replicate the issues, nevertheless they replaced the battery. Mr O said he was told on 10 May that the car was running perfectly. He collected the car around the 11 May but continued to experience problems with it.

The dealer had offered Mr O a full health check with a specialist dealer and he took the car to the specialist on 24 May. The specialist found an intermittent fault with the power relay for the inter cooler fan. The dealer said that the specialist quoted for a replacement relay for the fuse box but Mr O declined to have this fixed. However, Mr O said that the specialist couldn't get hold of the dealer to discuss this and so couldn't fix the car that day. The specialist sent an email directly to the dealer's mechanic on the afternoon of the 24th in which it confirmed the cost to date was £60 and the total cost including the repair would be £154.18. Mr O collected the car and paid £60 to cover the diagnostic work.

Mr O said he continued to have issues with the car into June including the car pulling to the left, air getting into the passenger side of the car, the air-conditioning blowing hot and cold when off and other mechanical faults. The dealer said that it was happy to pay for the repair to the car identified and costed by the specialist. It said that a quote of £60 to repair an issue on a £25,000 car didn't mean that it was unfit for purpose. The dealer also said that Mr O had raised additional issues after his initial complaint which were unrelated and it should be given the opportunity to investigate these.

MI didn't uphold Mr O's complaint. It said that although Mr O raised issues relating to the battery, the wipers and the fan within 30 days of the car being supplied to him, the dealer didn't find any of these faults present. A health check at a specialist dealer later found an

issue with the power relay. MI said that the power relay issue was unrelated to Mr O's initial complaint and that it wasn't raised within 30 days. It said that the dealer had offered to cover the cost of this repair but Mr O didn't accept this as he wanted to reject the car. MI referred to the Consumer Rights Act 2015 (CRA) which states that if a fault is found outside of 30 days of supply, the dealer has a right to provide a repair in the first instance.

Mr O wasn't happy with this response. He said he had raised the issue of the fan in his initial complaint but mistakenly referred to it as an alternator fan and not a cooling fan. He referred his complaint to us.

One of our investigators looked into things. They found that the fault with the fan's power relay was likely to have been there when the car was supplied and so, in the circumstances of this case, the car was of unsatisfactory quality. However, our investigator also found that Mr O didn't exercise his right to return the car until 26 April. As the car had been supplied to him on 25 March this meant Mr O was outside of the 30 day limit to reject the car as set out in the CRA. Our investigator concluded that the dealer's offer of repair was therefore fair and recommended this resolution along with a refund of the £60 Mr O had paid for the specialist diagnosis.

Mr O was unhappy with this recommendation. He said he didn't acquire the car until the 31 March and so he was within the 30 day limit to reject it. He asked for his complaint to come to an ombudsman to decide and it came to me.

I issued a provisional decision on 21 July 2023 explaining why I thought Mr O's complaint should be upheld. I shared the information I'd relied on with both parties and allowed some time for them to comment on what I'd said or provide any new information for me to consider.

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 considered the case again, including what both parties said in response to my provisional decision, I remain of the view that Mr O's complaint should succeed and that my proposals for putting things right for him are fair. I'll set out the reasons for my conclusions again in this final decision and address the parties' responses where appropriate.

Let me begin, as I did in my provisional decision, by acknowledging everyone's strength of feeling about what happened. I understand that prior to Mr O emailing the dealer on 26 April 2022 he'd visited the garage and had a discussion with the dealer about what to do with the car. The dealer had another car in stock which Mr O felt would be a suitable swap but they couldn't agree the terms of this arrangement. It seems Mr O wanted to leave the car with the dealer but the dealer wouldn't accept it.

When the fault with the power relay was diagnosed in May 2022 the dealer was happy to pay for this repair, but said that the fault was minor and didn't warrant the return of the car. MI didn't uphold Mr O's complaint because it said the fault with the power relay for the cooling fan diagnosed by the specialist was unrelated to the issues he'd originally raised with the dealer and so it should be allowed the opportunity to repair this.

The CRA 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 presence of a fault doesn't necessarily mean that the goods provided were of unsatisfactory quality – it depends on the circumstances.

I've considered whether or not the faults Mr O experienced with the car were present or developing when it was supplied to him and, if they were, does this mean the car was of unsatisfactory quality? If the car was of unsatisfactory quality, where does that leave Mr O now bearing in mind the time limits in the CRA and the circumstances of this case?

Was the car of unsatisfactory quality when supplied?

Mr O said the faults occurred on or before 9 April 2022 and provided photos of the battery depletion and dashboard lights, and a video of the car with a flat battery as evidence. The dealer responded to Mr O's request on 26 April to return the car with an offer to repair it. It said that the battery wouldn't be covered under warranty as the photos showed that Mr O had the keys in the ignition with the car off which would run the battery down. The dealer also said that Mr O wouldn't be entitled to a refund because he'd said that the problems weren't present when the car was supplied.

Mr O returned the car to the dealer on the 28 April. The dealer said it ran numerous tests and took the car for long test drives but didn't manage to replicate the issues. I note that the dealer said to Mr O in an email on 4 May "To confirm as per email from finance company the issues we are looking for are battery, wipers scraping and alternator fan. Can you explain what an alternator fan is as there is no such thing." It offered to have the car booked in with a specialist dealer for repair.

Mr O emailed MI on 6 May to say that the dealer hadn't managed to replicate the faults. He said that he was happy to take the car back if it was fixed but he was adamant that he didn't want to take ownership of a faulty car. MI advised Mr O to collect the car from the dealer and take it for a test drive. It said Mr O could return the car for investigation with a specialist if he experienced or still felt there was a fault with it. Mr O confirmed that he'd collect the car and said it might take a few days or a week for anything to show up as the problems he was having were intermittent.

Immediately after this, Mr O emailed the dealer to say that he would accept the car back for a trial period if the dealer was satisfied the faults were fixed. He said if it still wasn't right then they could take the car to a specialist. As mentioned, the specialist diagnosed a fault with the power relay. The dealer confirmed in an email to MI that the issue found was an intermittent fault with the inter cooler fan.

I'm satisfied that Mr O's initial complaint to the dealer included the problems he'd experienced with the cooling fan. He didn't refer to it as such but I think it's reasonable to accept that he was mistaken in his naming of this part. It seems to me that the dealer accepted liability for the repair of this but didn't accept that this meant the car it supplied was of unsatisfactory quality.

Given how soon after acquiring the car these issues manifested and that the fault was intermittent I think it's reasonable to conclude that they were there or developing when supplied. I also think it's reasonable to conclude that the car should have been provided free of these defects, given its age and mileage. As mentioned, the car was over four and a half months old when supplied and had travelled 45,322 miles (as per the dealer's invoice dated 25 March). By the 3 May it had travelled 46,621 miles (as per dealer's diagnostic report) which presumably included the dealer's long test drives. I've concluded that the car wasn't of satisfactory quality when supplied.

Did Mr O exercise his right to reject within 30 days?

The CRA gives customers solutions if they find themselves with faulty goods that aren't of satisfactory quality. 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. Consumers must exercise their right to reject within the time limit of 30 days as specified by the CRA otherwise they lose this right. The CRA says that the right is exercised if the consumer indicates to the trader that they are rejecting the goods and treating the contract as at an end.

In this case Mr O told the dealer that he wanted to reject the car by email on 26 April. The dealer said that that Mr O had possession of the car from 25 March and so didn't reject the car within the 30 day time limit. Although the finance hadn't been arranged by then, the dealer said they had been happy for Mr O to have the car because he was known to them and at that time it was taking days for the disbursements to come through from finance companies. The sales invoice has this date and Mr O signed the finance agreement on that date.

Mr O disputes this. He said that the finance wasn't granted until the 29 March and he collected the car on the 31st. The invoice from the broker to MI is dated the 28th, the welcome letter to Mr O from MI is dated the 29th and his first payment under the agreement was made on the 29 April by direct debit. The registration certificate (V5C) states Mr O is the registered keeper of the car from the 1 April 2022. Mr O taxed the car on 1 April and insured it from the 2nd.

Section 22 of the CRA states that the time limit for exercising the short-term right to reject is the end of 30 days beginning with the first day after these have all happened:

- ownership or (in the case of a contract for the hire of goods, a hire-purchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,
- the goods have been delivered, and
- where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.

Leaving aside the contested point of exactly when the car came into Mr O's possession, MI confirmed that the finance wasn't paid out until the 29 March and the V5C is dated the 1 April. As per the CRA the 30 day limit begins with the first day possession has been transferred, goods have been delivered and other action which enables the consumer to use the goods has happened. In this case I think it's reasonable to consider that the other actions which needed to happen for Mr O to use the car included the finance disbursement and Mr O becoming the registered keeper. The latter is a condition of the finance agreement (paragraph 3.3). So I've concluded that Mr O did exercise his short term right to reject within the time limit specified in the CRA.

What should happen now to put things right?

Mr O has been consistent in his request to reject the car. He accepted its return from the dealer on advice from MI that if the issues continued he could have it looked at by a specialist. Mr O continued to experience issues with the car and the fault was diagnosed on the 24 May. On 28 May 2022 Mr O told MI that he wanted to reject the car and would stop his finance payments. He said that he had lost too many days work because of the car and it was causing too much stress as it seemed there were daily issues with it. I've concluded that Mr O should now be allowed to reject the car.

I said in my provisional decision in July that "*My starting point is that the car should be returned to MI at no cost to Mr O and the agreement terminated. However, events have moved on since 26 April 2022 when Mr O first asked to reject the car and putting Mr O back in the position he would have been in had his rejection been accepted earlier isn't straightforward.*

Mr O told us in February 2023 that he has continued to drive the car for short journeys because the battery would die often if he simply let it sit and that the mileage was approximately 49,000. He said that he can't rely on the car because when he tries to start it, even if it's been driven the day before, it takes a long time to start and occasionally needs to be jump-started. Nevertheless Mr O has now had the use of the car for some 15 months (excluding periods when the car was in for repair) and it's travelled over 3,700 miles. I think it's fair that Mr O pays something to MI as the owner of the car for the use he's made of it.

The monthly payments under the agreement are £491 but I don't think amount is a fair reflection of the use Mr O has had. It's clear Mr O didn't make as much use of the car as he could have, given the mileage, and his enjoyment of it was no doubt curtailed by the issues he experienced. I think a fair amount Mr O should pay is £250 for each month he had use of the car.

In addition, Mr O has experienced distress and inconvenience by being supplied with a faulty car. Mr O told us that this matter has caused immense stress to himself and his family and would like to see things resolved as soon as possible. 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.

My understanding is that Mr O hasn't been making payments towards the car for some time and his account is currently in arrears."

Mr O said in said in response to my provisional decision that he had registered the car as off-road (SORN) in June 2023 and the current mileage was 53,735. Mr O said that he hasn't had normal use of the car as he would easily have travelled 1,000 miles in most months. He also asked me to reconsider the number of months that he should be liable to pay a usage charge.

This means that Mr O has driven the car around 8,400 miles. The annual mileage allowance under the agreement was 18,000. As I'd said in my provisional decision, it's clear Mr O didn't make as much use of the car as he could have, given the mileage, and his enjoyment of it was no doubt curtailed by the issues he experienced. Although Mr O has since confirmed that he's driven it further than I'd quoted in my provisional decision, my conclusions still stand.

The car is shown as SORN on the government website and the last MOT recorded is from February 2022. I remain of the view that the original monthly payment of £491 isn't a fair reflection of Mr O's use of the car and that an amount of £250 is a fair and reasonable amount to pay for each month he's had the use of it up to a maximum of 15 months. This means the most MI can charge Mr O as a usage charge is £3,750.

MI said in response to my provisional decision that it wished to know the current mileage of the car and be provided with photographs of it to assess its condition. Mr O told us what the current mileage is but hasn't provided proof of this or mentioned the condition of the car. I

haven't considered this point further or made any findings on it. If MI choses to apply additional charges to Mr O's account on collection of the car other than what I've considered here and if these charges give rise to a dispute which can't be resolved between the parties, then Mr O can refer another complaint to us about these.

I'd mentioned in my provisional decision that Mr O hadn't been making payments to his account for some time and was in arrears. Mr O said in his response to us that he would need to repay his outstanding balance in instalments as he's suffering severe financial hardship. I'd remind MI of its obligation to treat Mr O fairly and sympathetically regarding his debt which may mean agreeing an affordable repayment plan with him.

Putting things right

MI now needs to:

- End the agreement with nothing for Mr O to pay going forwards and collect the car at no cost to him;
- Limit Mr O's liability to £250 a month for each month he's had the use of the car to a maximum of 15 months;
- Reduce this adjusted balance further by £60 being the amount Mr O paid for the fault diagnosis by the specialist in May 2022;
- Consider all payments Mr O made towards the agreement as payments towards this adjusted balance;
- Remove any adverse information about this agreement from Mr O's credit file when the adjusted balance has been cleared;
- Pay Mr O an amount of £500 to reflect the distress and inconvenience this matter has caused him.

My final decision

For the reasons I've explained above I am upholding Mr O's complaint about MI Vehicle Finance Limited trading as Mann Island and it now needs to put things right for him as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 3 October 2023.

Michelle Boundy
Ombudsman