

## **The complaint**

Mr B complains about a used car he acquired with finance provided by MI Vehicle Finance Limited (MIVF).

## **What happened**

In March 2023 Mr B entered into a four-year regulated hire purchase agreement with MIVF in relation to a used car. He also bought GAP insurance at a cost of £369. The car had a cash price of £8,450. Mr B paid a deposit of £1,000, of which £369 paid for the GAP insurance and the rest (£631) went towards the car; the total amount of credit was therefore £7,819. The annual mileage allowance was 18,000 miles, which would be reduced proportionately if the car was returned early.

Almost at once, Mr B experienced problems with the car, including smoke coming out from under the bonnet. He complained to MIVF, but it did not provide him with its final response within the eight week deadline, so he brought this complaint to our service.

In October, MIVF agreed to take the car back and end the hire purchase agreement, refund £631 of his deposit, refund all but six of his monthly payments, refund £375 which Mr B had already spent on repairs, pay interest on all of these refunds, pay him £200 for his inconvenience, and remove any adverse data that it had reported on his credit file. The reason it did not offer to refund six monthly payments was to take into account the fact that Mr B had driven 15,000 miles in the car in six months, and also that he had had the use of a courtesy car during repairs.

Our investigator thought that was a fair offer, but Mr B did not accept it. He wanted the full deposit of £1,000 to be refunded, but the investigator said that MIVF was not responsible for refunding the GAP insurance payment as that money had not been part of the credit agreement.

Mr B also provided evidence that he had paid a further £639.56 for repairs, and the investigator put that to MIVF. However, MIVF did not agree to pay for that, because those repairs only related to wear and tear. MIVF said it was reasonable for Mr B to pay for those himself, as he had driven 15,000 miles, and a vehicle should be serviced every 10,000. The investigator accepted that argument, but Mr B did not, and he asked for an ombudsman's decision. I wrote a provisional decision which read as follows.

## **What I've provisionally 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 done so, I think that MIVF's offer is mostly fair, for broadly the same reasons as the investigator. However, I think it should also include the cost of the GAP insurance. I will explain why, but before I do that, I will say for completeness that I uphold this complaint, because it is not in dispute that the car was not of satisfactory condition and the attempt to repair it was unsuccessful.

As I said, some of the deposit was used to pay for the insurance, and that was a cash payment; MIVF did not provide credit for that. All of the credit which was provided was for the car only. That means that if Mr B's complaint had been that the insurance policy was mis-sold, then MIVF would not have been liable for it; but it doesn't mean that the cost of the insurance can't be considered to be a consequential loss arising from the mis-sale of the car.

The usual remedy for selling a car that was in unsatisfactory condition is to try and put the consumer back into the position he would have been in if the sale had not happened. So Mr B should not be out of pocket for having paid for an insurance policy which he wouldn't have had if he hadn't entered into the hire purchase agreement. I am therefore minded to require MIVF to refund his whole deposit.

Turning to the additional repairs, MIVF is only liable for faults which were present on the day the car was delivered to Mr B. It is not liable for any problems which only develop afterwards, such as wear and tear. The relevant items here were changing the oil and air filters, and the front discs and brake pads. Given that the car was seven years old when he bought it, and he had driven it 1,966 miles since then, and it had passed its MOT in December 2022 with no advisories other than about the tyres, I think it is very likely that the matters which required repair in April 2023 were not faulty when the car was supplied. It would therefore not be fair to require MIVF to pay for them.

So I am currently minded to uphold this complaint in part, and to require MI Vehicle Finance Limited to:

- Collect the car at no cost to Mr B and end the hire purchase agreement,
- Refund his whole deposit of £1,000,
- Refund all but six of his monthly payments,
- Refund the £375 which Mr B spent on repairs,
- Pay interest on all of the above refunds at 8% a year from the respective dates of payment until the date of settlement,
- Pay Mr B £200 for his inconvenience, and
- Remove from his credit file any adverse data that it has reported about the agreement.

### **Responses to my provisional decision**

Neither party responded to my provisional decision. So there is no reason for me to depart from my provisional findings, and I confirm them here.

### **My final decision**

My decision is that I uphold this complaint, and I order MI Vehicle Finance Limited to put things right in the way I have set out above.

If MIVF considers that it is required by HM Revenue & Customs to withhold income tax from the interest, it must tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if he is entitled to. Mr B should refer back to MIVF if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 May 2024.

Richard Wood  
**Ombudsman**