

The complaint

Miss F has complained about the quality of a car she acquired under a hire purchase agreement she has with MI Vehicle Finance Limited (MIVF).

What happened

In September 2022 Miss F acquired a used car under a hire purchase agreement with MIVF. The car cost around £9,000 and it had covered around 60,000 miles. There was a deposit of £1,500 towards the agreement. Miss F said before acquiring the car she noticed the armrest was broken and the supplying dealer ("the dealer") agreed to have it replaced for her.

When Miss F took possession of the car she noticed the armrest was still broken. She spoke to the dealer and says it agreed to source and replace it for her.

A few days later Miss F says she noticed a loud rattling from underneath the car. She says she returned to the dealer and it said the back box silencer needed replacing but it was unable to do it so Miss F went to another garage. Miss F says the garage also noted a locking wheel nut was missing, which could have been an MOT fail. Miss F says the dealer ordered a new locking wheel nut set. Miss F took the car to another garage to have the rattling inspected and it told her the exhaust and back box needed replacing. She says the dealer paid around £340 to have this done.

Miss F says following this, she continued to speak to the dealer about the armrest but things weren't progressing. She contacted MIVF and the broker for help towards the end of October 2022. MIVF tried to chase up responses for Miss F. The broker offered £80 for the trouble having the repair carried out, when the part arrived at the dealer.

Things still weren't resolved over the next couple of months and Miss F complained. She said the problem wasn't simply a minor cosmetic issue. The unattached armrest had sharp edges and had caused her an injury. MIVF sent a response to the complaint towards the end of December 2022 saying the new armrest should be delivered soon and that it would credit Miss F £100 in recognition of the trouble and upset.

Miss F was unhappy the matter wasn't sorted despite regular chasing. Towards the end of January 2023, she says she went to the dealer to find out what was happening but was fobbed off. She returned a few days later when the dealer said the armrest had been received. Frustrated with progress, she decided to take it home and arrange to have it fitted herself, but when she opened the package, she realised the design and size were wrong. It didn't match the car's interior and it wasn't compatible. It looks like MIVF agreed with the broker that if the dealer didn't resolve things it would pay Miss F the cost of what a genuine replacement would cost, which she says was around £170.

Miss F says she continued to chase progress but wasn't getting anywhere. She also referred her complaint to our service saying she'd asked to return the car but this had been refused. In May 2023 the broker sent another response to her complaint saying it would offer £100 compensation and £171 for the replacement armrest. Miss F wasn't happy with this.

In summary, Miss F says she'd tried to reject the car within a few weeks, but the dealer said the issues would be resolved. She says MIVF told her she couldn't reject the car due to the timing. Miss F says she now no longer wants to keep the car. She says it's now very difficult to locate a replacement armrest and she doesn't think she should be put to all the trouble of resolving things herself.

Our investigator looked into things and said she didn't think the car was of satisfactory quality. She said the repair to the armrest had taken an unreasonably long amount of time. And so she thought Miss F should be allowed to reject the car. She said MIVF should:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Miss F.
- Refund the deposit contribution of £1,500.
- Pay 8% simple annual interest on the refunded amounts from the date of payment to the date of settlement.
- Pay a further £100 compensation.
- Remove any adverse information about the agreement from Miss F's credit file.

Miss F accepted the recommendations, but MIVF didn't. It said it appreciated there'd been a delay resolving the issue with the armrest, but this was down to a shortage of parts and later due to an incorrect part being ordered. It said it would be unfair to allow Miss F to reject the goods now she's changed her mind on accepting the repair. MIVF also said there'd been no failed repair as one was never carried out. It said Miss F hadn't been significantly inconvenienced by the issue and her use of the car hadn't been impacted. It also said if Miss F gave the broker her account details for a refund, things would have been resolved. Finally, it said rejection for an armrest is unjustified.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Miss F and MIVF that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Miss F acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Miss F entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

The car was used and had covered around 60,000 miles. So I'd have different expectations of it that if it was a brand new car. But given the car cost around £9,000 I don't think a reasonable person would expect it to have been supplied with any major issues present.

I've first considered the exhaust and back box needed replacing within a few days of Miss F taking possession of the car. I don't think a reasonable person in this situation would expect to have been required to replace those parts within a few days. It suggests there was a fault

with the car when it was supplied. And I think that fault made the car of unsatisfactory quality, which would be a breach of contract in relation to the implied terms relating to the quality of the goods. While MIVF weren't involved at that stage, the supplying dealer arranged for the repair to be covered for the exhaust and back box, which seems to have resolved things.

Miss F also mentioned the dealer needed to replace the locking wheel nuts. I understand having a missing wheel nut is an MOT failure. And would likely be an issue with regards to the safety of the car. I don't have further supporting evidence for this but, on balance, it looks like this was another issue with the quality of the car that also led to a breach of contract, albeit one that looks like it's been remedied.

So I think both issues were resolved, but it was no doubt disappointing for Miss F and inconvenient having to sort things out.

The armrest is a slightly different sort of issue, because it's an express term of the contract that I think was breached. The issue with the armrest didn't get resolved for months. Miss F must have been incredibly frustrated at having to send so many emails. She had to chase the dealer, the broker and MIVF. She attended the dealer several times. The dealer eventually ordered the wrong armrest. And she was left with an offer to sort it out herself. I don't think this is fair, or what was agreed before she entered into the contract.

The car shouldn't have been supplied with an issue with the armrest. Just because this is a part that doesn't impact whether or not the car can be driven doesn't mean it should just be classed as not being very important. It was important to Miss F. She says the sharp edges injured her. From looking at the photos supplied, I can see how this could happen. So at worst, this is another problem that could impact safety.

The repair to the armrest wasn't carried out within a reasonable amount of time. And I think trying to sort things out was becoming very inconvenient for Miss F. She's supplied a very detailed timeline of all the effort she's gone to in trying to resolve matters. I appreciate MIVF was, to a large extent, reliant on the dealer. And that MIVF wasn't involved at the start. But I think it would have been clear to MIVF after a few months that it might have been sensible to look at other options rather than wait for the dealer. This might have resolved things for Miss F.

How should things be put right now? I can understand why MIVF would think that simply paying Miss F to have the armrest replaced would be a fair way to resolve things. I think that paying damages would be in line with a fair remedy for a breach of an express term of the contract. But, in the very particular circumstances of this complaint, it's taken far too long to resolve matters and I don't think paying damages is suitable. The part needs to be fixed. It's proven not easy to do. Miss F says the part is hard to source. MIVF has also indicated there's a shortage of parts. The car is nearly 10 years old now, so it's not unusual parts are harder to find. I'm not persuaded that paying damages will help Miss F resolve things.

Therefore, I find the recommendations made by our investigator to be fair and reasonable in all the circumstances. I agree Miss F should be able to hand the car back at no cost, with a refund of the deposit. I find the monthly payments Miss F has made to be broadly fair for MIVF to keep in relation to the use Miss F has had of the car. Our investigator said a further £100 compensation was fair. For the reasons given above, I think MIVF could have helped bring matters to a close sooner. While it's not responsible for everything that went wrong, I find a further £100 to be fair. And this should be in addition to the £100 it previously offered. If that's not been paid, it should pay her £200 in total.

Miss F accepted the provisional decision. I can't see we've received a further response from MIVF.

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.

Seeing as though Miss F has accepted the provisional decision, and I can't see we've had further submissions from MIVF I see no reason to depart from the conclusions I reached.

Putting things right

I direct MI Vehicle Finance Limited to:

1. End the agreement with nothing further to pay.
2. Collect the car at no cost to Miss F.
3. Refund the deposit contribution of £1,500.
4. Pay 8% simple annual interest* on the refunded amounts from the date of payment to the date of settlement.
5. Pay £200 compensation. MIVF can offset anything already paid from this amount.
6. Remove any adverse information about the agreement from Miss F's credit file.

*If MIVF considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss F how much tax it's taken off. It should also give Miss F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and direct MI Vehicle Finance Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 4 December 2023.

Simon Wingfield
Ombudsman