

The complaint

Mr E has complained about the quality of a van he acquired under a hire purchase agreement with MI Vehicle Finance Limited (MIVF).

What happened

The circumstances of the complaint are well known to the parties, so I won't go over everything again in detail. But, in summary, Mr E acquired a used van under a hire purchase agreement with MIVF in January 2023. The van was nearly six years old and had covered around 52,000 miles. It cost around £18,000 and he made a £3,500 advance payment.

Shortly after acquiring the van Mr E sought to reject it. He was unhappy with its quality. He said the van was smoking and the engine wasn't running properly. He was also unhappy that it looked like the van had been resprayed, repaired and that it hadn't been serviced properly. Mr E initially sought to reject through the supplying dealer and broker. An £80 diagnostic was carried out which indicated there might've been an over-fueling issue and an oil leak.

Mr E decided to refer his complaint to our service and MIVF. He said he needed the van for work and was losing income. An independent inspection was arranged for 30 April 2023. The mileage was around 52,800 at this point. The expert said it was clear the van hadn't been used for some time as the brakes had evidence of surface corrosion. The expert said Mr E was using a rental vehicle for work. The expert said it was clear the van had gone through bodywork repairs that hadn't been done to manufacturer's standards. He noted the right-side rear door was difficult to open and close.

The expert concluded the timing chain was reaching the end of its life and that the issue was likely present at the point of supply. The expert said the van shouldn't be used until it's been repaired. And that the responsibility lied with the supplier.

MIVF said it would uphold the complaint and would allow Mr E to reject the goods. It said it wouldn't charge for the 800 miles use and it would arrange a full refund of deposit and what had been paid to date.

Our investigator looked into things and said in addition to allowing Mr E to reject the goods, MIVF should also reimburse him for the £80 report; pay him £200 compensation; and pay him £1,000 to reflect his loss of income.

MIVF queried the investigator's recommendation for loss of income. And it said it thought the redress gave Mr E double benefit. It also said that as this was a business contract the Consumer Rights Act (2015) didn't apply and that it could have relied on a term excluding its liability for quality and fitness, but it didn't do this.

Mr E asked for the road tax to be refunded as well, but otherwise broadly accepted the recommendations. 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 Mr E 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.

Mr E acquired the van under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The relevant legislation in this case is the Supply of goods (Implied Terms) Act 1973. And exclusion terms under the agreement would need to satisfy the requirement of reasonableness as set out in the Unfair Contract Terms Act 1977, but seeing as though it doesn't seem to be in dispute the van wasn't of satisfactory quality, and that MIVF has agreed to allow Mr E to reject the goods, I'm not intending to spend time undertaking a detailed analysis of the relevant legislation and how that fits in to Mr E's complaint.

All parties agree the van can be rejected. MIVF has offered to reimburse Mr E everything paid under the agreement (and not make a deduction for use). Given things went wrong very soon after the van was acquired, and that he hardly had any use of it, I find this to be fair in all the circumstances.

I agree any adverse information is fair to be removed from Mr E's credit file in relation to the agreement, seeing as though there appears to have been a breach of contract. Moreover, I agree Mr E should also be reimbursed £80 if he had to pay this to have diagnostics carried out on the van. He'd need to supply supporting evidence if he's paid this.

Our investigator recommended £200 compensation for the distress and inconvenience caused. I can't generally hold MIVF responsible for any failings of the broker and the supplying dealer after the agreement was entered into if it wasn't involved. But I'm mindful that while Mr E sought help from the broker and dealer first, it looks like MIVF were put on notice of the complaint about a month after acquisition. And as the supplier of the goods under the hire purchase agreement, MIVF is responsible for dealing with a complaint about their quality.

Based on the timeline I've seen, I think MIVF did try to help Mr E resolve things. It liaised with the dealer, the broker and Mr E. I can't see it was responsible for any significant delays. But acquiring a van that wasn't of satisfactory quality clearly would have caused some level of distress inconvenience to Mr E. He had the worry of the issues, he had to take the van to have faults diagnosed at a garage. He's had to arrange alternative transport. And he's had to attend an inspection with an independent expert. All of this would have had an impact on Mr E. And I consider £200 to be broadly fair given what went wrong – taking into account what I can consider against MIVF.

I think the main thing in dispute between the parties relates to the loss of income. Mr E is essentially claiming damages or financial losses as a result of a breach of contract. But there's quite a lot to think about when deciding whether losses should be payable in these sorts of scenarios. The sort of things I need to think about are whether the losses were directly flowing from the breach of contract; whether Mr E has tried to mitigate his losses; and whether they were reasonably foreseeable or too remote.

The problem in this case is that I don't find I have the grounds to say MIVF should be responsible for the loss of income Mr E says he's incurred. MIVF wasn't aware of the issue initially, so it couldn't have done anything to help in the first few weeks. It liaised with the parties involved to get things resolved. An independent report was carried out and the expert said Mr E had been using a hire vehicle for work. Mr E had sensibly been taking steps to mitigate. But I can't then direct MIVF to award loss of income when Mr E had been using

another vehicle for work. Moreover, Mr E has shown us notes of invoices and a statement from mid-2022 showing income. But this isn't enough for me to determine what, if anything, Mr E lost out as a result of the issues with the van. So I don't have the grounds to direct MIVF to reimburse Mr E for loss of income. And I'm also mindful MIVF isn't asking Mr E to pay anything for use of the van – albeit that use was impaired. I think this has to be taken into account when deciding what MIVF needs to do to put things right.

With regards to the road tax paid, I have to bear in mind that Mr E was required to tax the van. I've thought about whether he should cover the tax for the first month, or up until MIVF were put on notice. But given he's had hardly any use of the van, in the very particular circumstances of this complaint, I consider it fair he receives a refund of the tax he's paid but he'll need to provide sufficient evidence of that in response to this provisional decision.

I think the rest of the recommendations made by our investigator seem broadly fair. So I'm intending to come to the same conclusion. One final thing I will mention is that I can see Mr E has been hiring vehicles for work. Mr E's monthly repayments towards his van under the hire purchase agreement were around £330. If he's paid more than this monthly towards hire vehicles, he should supply sufficient evidence in response to the provisional decision and I'll consider it. I would look at what period the hire was for, whether the vehicle was equivalent and so on. But for the avoidance of doubt, this will not mean he'll be getting double recovery. It wouldn't be fair for Mr E to receive a full refund of payments towards the hire purchase agreement and the full hire costs. But I'm willing to consider evidence if he's ended up paying more than £330 monthly for hire vehicles.

I proposed MIVF:

1. end the agreement with nothing further to pay;
2. collect the van (if this has not been done already) at no further cost to Mr E;
3. refund Mr E's deposit contribution of £3,500;
4. refund Mr E all repayments;
5. refund Mr E £80 for the report carried out on 14 February 2023.
6. refund Mr E road tax payments, upon receipt of sufficient evidence.
7. pay 8% simple yearly interest* on all refunded amounts from the date of payment until the date of settlement;
8. pay a further amount of £200 for any trouble and upset that's been caused due to the faulty goods;
9. remove any adverse information from Mr E's credit file in relation to the agreement.

We received responses from MIVF and Mr E. I wrote a side letter to the parties saying:

I want to thank the parties for their responses. MIVF has supplied a response from the supplying dealer. But this seems mainly focussed on the quality of the goods. I should point out that I'm considering a complaint against MIVF, as the supplier of the goods, under the hire purchase agreement. I've found the goods weren't of satisfactory quality. And MIVF has already agreed to rejection. So I'm not going to go over that again.

The purpose of this letter is to follow up from my provisional decision because I asked... (Mr E) to supply any evidence he was paying more than £330 per month for hire vehicles.

Mr E has shown us that between the end of March and the beginning of October he'd paid around £6,500 towards hire vehicles. He's supplied invoices from the rental company.

I asked our investigator to speak to Mr E about the invoices. In summary he said he acquired the van mainly for working, but with some personal use as well.

I noted there were different sorts of vehicles that were hired. There were some vans, but there were also some cars as well. Mr E told our investigator that the vans were more expensive to hire. He said it would cost around £80 a day to hire a van but it was closer to £30 a day to hire a car. Mr E said he had a friend who was dropping off work equipment for him as well to help.

I also noted that some of the cars that were hired were of a higher class than the most basic ones. I wanted to know if Mr E had shopped around for the best deal. Mr E said he hired a small or medium car, but it depended on availability.

I saw that MIVF issued its response in May 2023 and it looks like it was willing to pick up the van from June. I asked our investigator to explain that I don't think I'd have the grounds to direct MIVF to reimburse anything paid for hire from June onwards. I think this is fair.

I've thought about the evidence submitted. Mr E paid around £2,360 for hire cars up until the end of May 2023. The monthly payments for that period total around £660.

There's no exact scientific formula to use to work out what Mr E should be reimbursed. When thinking about consequential losses, I need to think about whether they were directly flowing from the breach of contract; whether they were reasonably foreseeable; whether there's a break in the chain of causation; and whether Mr E has mitigated the losses.

I don't think it'd be fair to direct MIVF to refund Mr E everything he paid for the hire vehicles. They weren't all comparable. And while I can see he went to the same hire company and explained he only took higher classed vehicles when the basic ones weren't available, ultimately he could have shopped around more and potentially found a better deal. But taking all that into account, I consider up to the end of May at least, Mr E would have expected to be using the van he acquired for £330 per month. The van wasn't of satisfactory quality. It was intended to be used for work, so I think it was reasonably foreseeable for MIVF that Mr E may have incurred other costs to stay mobile and be able to work. And I think those losses flow from the breach of contract. I think Mr E has taken some steps to mitigate the losses. But, for the two months I've mentioned, he's ended up paying around £1,700 more than he expected, or ought to have done had there not been a problem with the van.

In the round, given what I've said above, I think he should also be reimbursed another £1,000 towards the hire car costs. It's a coincidence this is the amount our investigator originally recommended. I'm not trying to put Mr E in a better position he otherwise would have been in. I'm aiming to reach a fair and reasonable outcome for all parties involved.

I'm pleased to note that MIVF, in response to our investigator's recommendations, when talking about Mr E hiring a replacement van, also said:

If the rentals for any such replacement exceeded the monthly payments under the credit agreement, then there might be a case for saying that he should, in addition, be entitled to the difference if reasonably incurred, but not otherwise.

I think the difference was reasonably incurred. And I've tried to be fair to everyone in my calculations.

So, in addition to what's already been recommended, I'm proposing to direct MIVF to also reimburse Mr E another £1,000.

Mr E responded to say MIVF should be paying him more. He said it's unfair he's only getting £1,000 back for the rentals when he spent £6,500. He said it's not fair he was required to

shop around for cheaper rentals, and that the hire company he found was the cheapest. He said he'd lost work because of the issue and that the compensation wasn't sufficient for the distress and inconvenience. Mr E said MIVF should cover at least half the fees. MIVF ultimately accepted the outcome and didn't have anything further to add.

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 want to thank the parties for their responses. It seems the only thing left in dispute is the amount MIVF needs to pay Mr E. I can understand why Mr E would like MIVF to reimburse him more towards the hire costs. He's spent a lot of money and I do empathise with the situation. Like I said in the side letter, there's no exact science to use in this sort of situation. I need to be fair to both parties. There's lots to think about with consequential losses. Mr E will have any payments he'd made refunded, so he'd always have had to pay something to get around. I drew the line in June because this is when it looked like MIVF were willing to pick up the van. I can't fairly direct MIVF to reimburse Mr E anything he's paid from then.

While I appreciate it would have been inconvenient for Mr E to have to arrange the hire cars and for him to have to shop around, I do need to think about whether he mitigated the losses sufficiently. He hired different sorts of vehicles, that weren't all comparable. And he hired the vehicles over a quite a long-term including weekdays and weekends for business and personal use. The figure I reached was the figure he accepted when our investigator sent her assessment (albeit for different reasons). Moreover, I'm conscious that with the remedy proposed, Mr E won't have to pay for any use of the van that he had, although I appreciate there were issues with it. But he had around 800 miles of use that I also need to factor in. I'm required to resolve complaints quickly and with minimum formality. So, in the round, I thought a payment of £1,000 seemed like a fair way to put things right for the parties and to help everyone draw a line under things. And I still think that's right.

Putting things right

To resolve the complaint MI Vehicle Finance Limited should:

1. end the agreement with nothing further to pay;
2. collect the van (if this has not been done already) at no further cost to Mr E;
3. refund Mr E's deposit contribution of £3,500;
4. refund Mr E all repayments;
5. refund Mr E £80 for the report carried out on 14 February 2023.
6. refund Mr E road tax payments upon MIVF's receipt of evidence.
7. pay 8% simple yearly interest* on all refunded amounts from the date of payment until the date of settlement;
8. pay Mr E £1,000 towards the hire car costs;
9. pay £200 compensation;
10. remove any adverse information from Mr E's credit file in relation to the agreement.

*If MIVF considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr E how much tax it's taken off. It should also give Mr E a tax deduction certificate if he asks for one, so he 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 Mr E to accept or reject my decision before 23 December 2023.

Simon Wingfield

Ombudsman