

The complaint

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

What happened

Mr M acquired a used car under a hire purchase agreement with MIVF in March 2023. The car cost around £26,700 and had covered around 60,000 miles. There was an up-front payment of £6,700 and monthly payments were around £440. The agreement was to be paid back over five years. Mr M made some overpayments.

In summary, there were faults with the car and Mr M was allowed to reject it. He was given back his deposit and other sums paid towards the agreement. He was charged £745.75 in relation to around 3,500 miles he'd covered in the car. But he was unhappy with the amount he'd been refunded. He said he should be due back other costs he incurred for repairs, servicing and maintenance. He complained to MIVF.

MIVF thought Mr M had been put in a fair position. Mr M didn't agree and referred his complaint to the Financial Ombudsman.

Our investigator noted Mr M paid for parts and work to the car – £195.05 on 20 March 2023 (oil filter; interior air filter; spark plug; engine oil; air filter). He paid £178.80 for a service on 30 March 2023. An inspection report was requested at the end March 2023 because the car was thumping at times when changing to lower gears due to an issue with the rear differential. The rear differential repair was quoted at a cost of around £2,100 from what I've seen.

Mr M also paid £186.48 on 11 April 2023 for changing the rear differential oil. Mr M mentioned he'd paid other costs but didn't have evidence. And he said he took the car to another garage because he was noticing issues with the gearbox.

From what I've seen, the broker offered to pay Mr M £1,500 towards the cost of repairs for the rear differential. Mr M didn't want to be at a loss, and he was concerned about other issues with the car. I understand the dealer accepted rejection as per his request and he gave the car back in August 2023.

MIVF sent a final response setting out the car had been rejected and the agreement had been settled. It said a deduction of £745.75 had been made for the mileage covered. It said it would refund Mr M £7,000.29 in relation to overpayments and monthly payments minus the deduction. And it paid Mr M £150 for the trouble and upset caused.

Our investigator looked into things and said MIVF should refund Mr M £186.48 in relation to the differential oil work because this was part of the reason he was allowed to reject the car.

MIVF accepted the outcome, but Mr M didn't. He reiterated it took around five or six months to resolve. He requested the other costs were returned as well. Our investigator thought the cost of the service was something Mr M would have done in any event. Mr M said he was

misled about the service history and had to have it serviced or else the car wouldn't have been covered under warranty. And he highlighted the car was returned having been serviced and so he shouldn't have to bear the cost.

As things weren't resolved, the complaint has been passed to me to decide.

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 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 M 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 M 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 Mr M entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. MIVF is the "trader" for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.

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.

In Mr M's case, the car supplied was used and had covered around 60,000 miles. There'd be different expectations than if it was a brand-new car. But I'm conscious it cost nearly £27,000 so I don't think the reasonable person would have expected any significant issues with it when it was supplied.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Based on what I've seen, I think there was a fault with the car. It seems to have been quite a significant issue with the rear differential that manifested shortly after the supply of the car. The fault was likely present or developing at the point of supply. And I think it made the car of unsatisfactory quality. I'm aware Mr M has complained about a fault with the gearbox as well, but I've not been supplied supporting evidence of that. In any event, it all seems rather academic because Mr M was allowed to reject the car, which broadly seems like a fair outcome for him.

The thing left to decide is whether the refund and compensation Mr M received is fair, or whether MIVF needs to do more. I think it's fair to try, as far as reasonably possible, to put Mr M back in the position he'd been in had he not been supplied a car that was of unsatisfactory quality.

As a starting point, I have to bear in mind Mr M was able to use the car, albeit with the issues he complained of, and having certain repairs and servicing carried out. The CRA says a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure.

I've thought about what a fair deduction would be and have taken into account relevant guidance on what fair usage should be, such as the guidance set out in the "Consumer Rights Act: Guidance for Business" published by the Department for Business, Innovation and Skills. I've been mindful of the following elements of the guidance which would be relevant to this complaint such as that fair usage should reflect the use the consumer has had from the goods. Deductions shouldn't be made for the time the goods were being repaired or having faults assessed. Considerations can be made for all relevant information when assessing how much use the consumer has had and what level of deduction would be appropriate to reflect this and relevant information can include, for example, the type of goods, the intended use, expected lifespan etc.

In the particular circumstances of this case, I think the monthly repayment towards the hire purchase agreement is broadly a reasonable starting point to use for a month's worth of use of the car, if the car was of satisfactory quality. Whereas the supplying dealer decided to charge a pence per mile figure. The supplying dealer charged Mr M £745.75 for the use he had of the car. This works out at around £150 monthly for five months. But this is significantly less than the monthly repayments towards the hire purchase agreement, which would have been around £440 had Mr M not made overpayments. Even had a deduction been made from the monthly repayments to reflect the impaired use Mr M had, I still think the charge that was applied was quite generous for him.

Having considered everything, Mr M has shown us around £375 of costs he's not been returned (an order for parts, and service carried out in March 2023). MIVF has agreed to refund the cost in relation to the rear differential oil. Mr M has mentioned other costs incurred, but I've not seen sufficient evidence of those. The main thing outstanding, from what I can see, is the £375 for parts and service. In all the circumstances, for slightly different reasons, given I think the mileage calculation the supplying dealer used likely benefitted Mr M by more than £375, I'm not going to direct MIVF to reimburse him those costs. It's agreed to pay for the repair in relation to the fault, which I think is fair.

I'm conscious the matter would've caused some overall inconvenience. It must have been really frustrating for Mr M to have had issues with the car so soon after acquiring it, particularly given the cost involved. He's had to have repairs carried out, and it took a few months to resolve matters. MIVF paid him £150 in relation to that, which I think is broadly fair as well.

Therefore, when looking at things holistically, I think with the further refund, Mr M is put into a reasonable place. He ends up paying a fair usage charge for the time he was able to use the car, even taking into account impaired use. And he's been compensated for the distress and inconvenience caused. I agree with our investigator that a refund of the £186.48 for the repair in relation to the fault, on top of what's already been arranged, seems like a fair and reasonable outcome.

My final decision

My final decision is that I uphold this complaint and direct MI Vehicle Finance Limited to pay Mr M £186.48.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 April 2024.

Simon Wingfield
Ombudsman