

## **The complaint**

Mr V complains about the quality of a used car he acquired through a hire purchase agreement financed by MI Vehicle Finance Limited ('MI'). Mr V says the car wasn't of satisfactory quality when he acquired it and it took too long for it to be repaired. He wanted to reject the car.

## **What happened**

Mr V acquired a used car in October 2022. The car was first registered in September 2021 and so was just over a year old at the point of sale. It had 6,451 miles on the clock.

To acquire the car Mr V started a hire purchase agreement. The vehicle had a retail price of £47,764. Mr V paid a £7,764 deposit meaning £40,000 was financed. This agreement was to be repaid through 60 monthly instalments, there were 59 instalments of £839.62 followed by a payment of £840.62. If Mr V made the repayments in line with the credit agreement, he would need to repay a total of £58,142.

Below is a summary of the issues complained about by Mr V and the investigation and repair work that was carried out by the dealership.

On the 5 October 2022 Mr V said that the car had rust spots on the tailgate, a chip to the paint work and it was pulling to the left. These issues were rectified, I understand a new tailgate was fitted.

On 6 December 2022 the vehicle oil light came on and the car broke down. The car was recovered to the nearest dealership. After transportation to another dealership (which Mr V paid for) it was confirmed that the engine had seized due to a parts failure. I understand that Mr V was informed that it could take at least three months for the car to be repaired.

Mr V thought this was too long and he says that he told MI that he wanted to reject the car at this point. MI didn't agree to this. The car wasn't repaired until May 2023.

Mr V was provided with a courtesy vehicle throughout this time. Although it's worth noting that the car he had acquired was a large 'SUV' whereas the courtesy car was a small to medium estate car.

Mr V returned the courtesy vehicle in July 2023 but has not collected the repaired car as he wants to reject it. As far as I have been made aware Mr V is still paying for the car.

Mr V, using a representative, complained to MI saying that the car was not of satisfactory quality as it needed repairing almost straight away, and failed around six weeks after he had acquired it. I can see that there has been lengthy and detailed correspondence between both the parties to the complaint. I have read all of this, but I won't refer to it in full as I don't think I need to. This is because MI has agreed to put this right, and the ongoing issues concern the compensation payable to Mr V only. So I've concentrated on this.

The correspondence I've seen shows that Mr V thinks he should receive the following compensation. He says that MI should:

- Unwind the agreement.
- Refund his deposit of £7,764.
- Refund all of his monthly payments of £839.62.
- Refund the recovery costs of £133.
- Pay for loss of amenity of £3,000.
- Pay his legal costs which I understand to be £2,340.

MI has upheld this complaint and it agrees that the car wasn't of satisfactory quality. It doesn't think that what Mr V has requested as compensation is fair. It has made the following offer to put things right:

- Terminate the agreement and collect the car.
- Refund the full deposit of £7,764.
- Refund all monthly payments (rentals) since July 2023.
- Reimburse the cost of recovery which was £130.
- Pay £250 as compensation for the distress and inconvenience caused.

Mr V and his representative do not agree with this offer. I note that Mr V has agreed to not claim for the 'loss off amenity' in the ongoing correspondence.

Mr V brought his complaint to the Financial Ombudsman Service whilst this correspondence was ongoing, and before the car was repaired.

Our Investigator upheld Mr V's complaint. She said that it was agreed that there was a fault with the car and that MI should have put this right. She also felt that MI hadn't complied with section 23 of the Consumer Rights Act ('CRA') as it took far too long for the car to be repaired and this was likely to have caused Mr V significant inconvenience. And he didn't receive a courtesy car straight away. So, in addition to rejecting the car and unwinding the finance, she thought Mr V should receive the payment he had made in December 2022 and the payments from July 2023 to the date of settlement. And he should be reimbursed for 20% of the payments he made between January 2023 and June 2023 due to the courtesy car not being entirely suitable for him.

She thought that MI's offer to pay £250 compensation for the distress and inconvenience this had all caused him was reasonable. She didn't think an award of Mr V's legal costs was fair.

Mr V's representative didn't agree with the Investigator. It said that as MI didn't supply the courtesy car itself, this was done as part of the warranty process, then Mr V should receive back all of what he paid when he had a courtesy car, rather than only 20%. And the courtesy car was not suitable for his needs. It said that Mr V did need representation and so MI should provide a full refund and pay for the costs of this.

MI also didn't agree. It didn't think that Mr V had been caused significant inconvenience as a courtesy car had been provided for most of the period during which the vehicle was being repaired and for a short time beyond this.

MI doesn't think that Mr V had a right to reject the car but said it will take the vehicle back as a gesture of goodwill. The customer's vehicle was repaired and had been available to collect since May 2023. He has a duty to mitigate his losses which he hadn't done.

Because agreement wasn't reached this matter has been passed to me to make a final decision.

### **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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase – so we can consider a complaint relating to it. MI as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The CRA 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that *'the quality of the goods is satisfactory'*.

To be considered 'satisfactory', the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the car's history.

The CRA assessment of 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.

Here, the car was acquired was around a year old and with a cash price of £47,764. So, I think it's fair to say that a reasonable person would expect the level of quality to be higher than an older, more road-worn car and that it could be used – free from defects – for a considerable period of time.

### **Was there a fault with the car and was it of satisfactory quality**

As I've outlined above the car initially had some rust spots and some damage to the paintwork. And there was a problem with the steering. These faults were repaired. But a relatively short time after this the engine failed and needed replacing. I think there is broad agreement that the car did have faults and it wasn't of satisfactory quality. And MI has agreed to pay compensation for this. The remaining dispute concerns what form this compensation should take.

MI has agreed that it should take the car back and end the finance. I can see MI doesn't entirely agree that Mr V should have the right to reject the car and it has referred to Section 32 of the CRA. Which says that:

*'If the consumer requires the trader to repair or replace the goods, the trader must –  
(a) do so within a reasonable time and without significant inconvenience to the consumer'*

It feels it repaired the vehicle within a reasonable time frame and there wasn't significant inconvenience to Mr V as he was provided with a courtesy car.

As a starting point, and although it doesn't affect my findings, it's worth noting that Section 24 of the CRA says that:

*'A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations - after one repair or one replacement, the goods do not conform to the contract;'*

The CRA doesn't say that there is one repair for each issue. It is one repair overall, and the engine was the second repair to enable the car to conform to the contract. So, I don't think it's in question that Mr V does have the right to reject the car. And the finance agreement should be unwound.

That's said I've not seen anything that shows that the dealership or MI could source a suitable replacement easily. And it is reasonable to say that the car he had purchased would have met Mr V's needs. So, it wasn't unreasonable, in these circumstances, for a second repair to have been attempted. But this should have been done within a reasonable time frame and without significant inconvenience to Mr V, which is what I've considered below.

I think it's reasonable to say that it took far too long to repair the car. I have noted what MI has said about some of it being beyond its control, and the nature of the engine repair being time consuming and complicated. But this is simply far in excess of what is reasonable, given the amount that Mr V was paying to MI each month. MI should have offered more suitable alternatives, such as another car or rejection of the vehicle, much sooner than it did.

And Mr V purchased a large car because, I understand, he has two disabled children. I think if MI had acted reasonably, it would have realised that he would be accessing a car that wasn't entirely suitable for him over a protracted period of time and, again, it should have put this right much sooner. And not insisted that he wait for the repair of his car at some indeterminate time in the future.

So, I think refunding 20% of the amounts he has paid over January to June 2023 is reasonable.

Mr V didn't have use of a car in December 2022 and MI has agreed to refund the payments he made from July 2022 onwards. I agree that, if MI had acted correctly, he shouldn't have paid these.

I also note that Mr V was inconvenienced on several occasions by having to take the car back and forth to the garage. He was, it seems, kept mobile in a courtesy car, but ultimately that wasn't the car he was paying for and I don't think it was right for him. I can imagine it would have been very frustrating and distressing for him, given his personal circumstances. So, in addition to the above compensation, I think the £250 offer by MI and is fair.

Mr V's representative has said that Mr V should receive all his payments back as MI didn't supply the courtesy car itself. And it has referenced several legal cases that it says support this. But I can't see that any of the information provided considers Mr V's, or a similar, situation, regarding the provision of a courtesy car by a third party. I don't think they support what Mr V's representative has said about this.

And Mr V was provided with a courtesy car which he did use over the months he was waiting for the repair of the car he had agreed to acquire. It's reasonable for this to be accounted for. Particularly given the interrelationship between the dealership and the repairing garage and the finance company. So I think it is reasonable that Mr V received back 20% of the amounts he paid to MI over the time he had the courtesy car.

In respect of the legal costs that Mr V's representative said should be paid. We are a free service to consumers, and we don't usually pay third party representatives fees. Mr V did choose to incur these, and so I don't think it would be appropriate to refund them here.

### **Putting things right**

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and direct MI to:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr V.
- Refund Mr V's deposit of £7,764.
- Refund Mr V's finance payment for December 2022.
- Refund 20% of his monthly finance payments from January 2023 to June 2023.
- Refund the monthly instalments from July 2023 to the date of settlement.
- Refund the cost of recovering the car to the dealer when it broke down.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay £250 for any distress or inconvenience that's been caused due to the faulty goods.

If MI considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr V how much it's taken off. It should also give Mr V a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons I've explained, I partly uphold Mr V's complaint.

MI Vehicle Finance Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 3 January 2025.

Andy Burlinson  
**Ombudsman**