

The complaint

Miss D complains about the quality of a used vehicle that was supplied through a Hire Purchase Agreement with MI Vehicle Finance Limited (MIVFL).

What happened

Around October 2022, Miss D entered into a Hire Purchase Agreement with MIVFL to acquire a used vehicle. The total cash price of the goods is listed on the agreement as £19,250. A deposit is listed as £1,500, the mileage of the vehicle on the agreement is listed as 43,500 and the vehicle was around three years old.

Miss D was due to make 59 repayments of £372.57, with a final payment of £373.57 if she wanted to keep the vehicle.

Miss D said that soon after acquiring the vehicle she noticed the tyre pressure warning light kept coming on, followed by the engine management light. Miss D said she brought the vehicle to a local garage where the Exhaust Gas Recirculation valve (EGR) was replaced, and all four tyres were resealed. Miss D said the mechanic advised her that the mileage showing on the vehicle may not be accurate.

Miss D said in July 2023 the vehicle broke down and was recovered to the same local garage which carried out the previous repairs to the EGR. The garage diagnosed a timing belt failure which Miss D says she was told had likely destroyed the engine. Miss D said the vehicle has been off the road since then. Miss D said she raised the issue with MIVFL on 20 July 2023. However, she said she was asked to provide evidence from a manufacturer garage that the issues, including the inaccurate mileage were present or developing at the point of supply.

Miss D acknowledged she acquired the vehicle without a service history but said it wasn't fit for purpose. She also believes that the vehicle had a higher mileage which was a likely reason why the timing belt failed when it did. Miss D says she'd like to hand the vehicle back and have all monies that she'd paid out for the vehicle, or costs incurred, returned to her.

In December 2023, MIVFL issued their final response to Miss D's complaint. In summary, MIVFL concluded that there was no evidence the mileage on the vehicle was incorrect and so didn't agree that this would have been the cause of the timing belt failure.

Unhappy with their decision, Miss D brought her complaint to our service for investigation. MIVFL also provided a timeline and summary of events which concluded that they hadn't received any evidence that the mileage on the vehicle had been altered, or that the issues reported were present or developing at the point of supply.

Having reviewed all the information on file one of our investigators recommended that Miss D's complaint should be upheld. The investigator concluded that the vehicle wasn't reasonably durable as he didn't think the timing belt should have failed when it did. He also concluded that the failure of the EGR was an indication that the vehicle wasn't of satisfactory quality when it was supplied.

Miss D accepted this recommendation. However, MIVFL didn't. They said they weren't aware of the issues with the EGR and said Miss D had unauthorised repairs carried out which may have impacted the life of the timing belt.

The investigator issued a second assessment advising that his view remained unchanged. However, MIVFL didn't respond to the investigator's assessment, which is taken as they haven't accepted it, so the case 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've thought about all the evidence and information provided afresh and 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.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Miss D complains about a Hire Purchase Agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Miss D's complaint about MIVFL. MIVFL is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a vehicle, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that MIVFL supplied Miss D with a used vehicle that had travelled 43,500 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new vehicle with lower mileage; and that there may be signs of wear and tear due to its usage which may impact its overall quality and reliability, so there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle.

Having said that, the vehicle was priced at £19,250 which isn't insignificant. It also wasn't a particularly old vehicle. So, I think it's fair to say a reasonable person would also expect it could offer a reasonable duration free from any major issues, especially if it has been well maintained and serviced.

From the information provided I'm persuaded there was a fault with the vehicle. This is apparent from the third-party garage invoice dated 26 January 2023 which confirms the EGR

and cooler was replaced along with the coolant. A statement from the third-party garage dated 10 August 2023 also confirmed that the timing belt had snapped.

Having considered the vehicle had a fault, it seems to me there are two key issues for me to consider in relation to this complaint:

1. had the mileage on the vehicle been altered?
2. was the vehicle of satisfactory quality when it was supplied to Miss D?

mileage

In her complaint form Miss D says she was told by a mechanic that the mileage on the vehicle may not be accurate. She provided a statement from the mechanic which gave the opinion that the EGR replacement and timing belt failure indicated the vehicle has a higher than displayed mileage. The statement also advised that diagnostics show the diesel particulate filter (DPF) regeneration was last done at 92,124 miles, despite the current mileage being displayed as 51,203.

Miss D believes the incorrect mileage may be a factor as to why the timing belt and EGR appeared to have failed when they did.

Having considered all the information here, I'm not persuaded from the evidence provided that the vehicle's mileage is inaccurate. Diagnostics relating to the DPF, from a manufacturer dealer in September 2023 refers to kilometres when displaying the distance travelled in the vehicle. So, I'm not persuaded this is the distance in miles travelled by the vehicle, as advised by the mechanic.

In addition, I've reviewed the mileage shown on the vehicle's MOT records. The mileage record on the MOT in August 2022 was 43,330, and when the vehicle was supplied in October 2022 the sales invoice has the mileage recorded as 43,500. I've seen no other evidence that persuades me the recordings are incorrect, so I'm satisfied the mileage as recorded on the Hire Purchase Agreement is correct, and I've seen nothing that persuades me that any alterations to it have taken place.

satisfactory quality

The invoice from the third-party garage dated 26 January 2023, persuades me that the vehicle required repairs to the EGR valve and cooler around four months after it was supplied to Miss D. I've not seen any evidence, for example in the form of an inspection report or diagnostics that confirms the cause of the failure to the components, however I'm satisfied that the replacement of the parts was required at the time.

I've no reason to consider Miss D would approve and pay for repairs to major parts that weren't required. So, I'm satisfied they were faulty and that as they required replacement within four months of supply, I'm also satisfied for these reasons, that the vehicle was not supplied in a condition that was of satisfactory quality.

Miss D provided us with copies of text messages dated in November 2022, a month after supply, that she says were to the dealership and broker. The messages advise of issues with the vehicle and the opinions of the third-party garage.

The messages have been shared with MIVFL and they've not disputed the dealership having received them. I've no reason to believe that a month after supply Miss D didn't inform the dealership and broker of the problems she was having. And in the circumstances, I think it

was reasonable for Miss D to use the third-party garage to look into the issues as the dealership appeared to be advising Miss D to wait around four weeks. I think it was reasonable that Miss D was concerned about leaving the issue for that amount of time without receiving some level of inspection or investigation into the matter.

I've also considered that the third-party garage is a professional maintenance and vehicle repairs centre, so I've no reason to doubt their ability to correctly diagnose and fix an issue. I'm satisfied that had the dealership investigated the issues Miss D was experiencing it's likely they would have arrived at the same outcome.

In her complaint form Miss D told us that her vehicle broke down as a result of the timing belt failure. A statement from a mechanic at the third-party garage, dated 10 August 2023 advised that the vehicle had a snapped timing belt, and that the guidance to have it changed was between 60,000 to 80,000 miles.

Miss D believes even should it not be proven that the mileage was altered, the vehicle was still not of satisfactory quality as it wasn't fit for purpose.

Miss D said the vehicle hasn't been used since it broke down in July 2023. Although I've seen no job cards or diagnostics confirming the timing belt has failed, a statement from the third-party garage confirms that the timing belt has snapped. In addition, a sales invoice from the manufacturer dealer dated 5 September 2023 confirms the mileage as 51,045. A further recovery invoice also confirms the vehicle was recovered from Miss D's home address to the manufacturer dealer and back again. So, from the evidence provided, I'm satisfied the vehicle failed at around 51,045 miles and hasn't been used since.

Research suggests that on the make of vehicle that Miss D has, the timing belt should be replaced every 60,000 miles or four years. MIVFL also came to the same conclusion in their submission to us.

I'm satisfied however, that the timing belt on Miss D's vehicle failed prematurely of the recommended maintenance schedule.

I've taken into consideration that Miss D told us she knowingly acquired the vehicle without any service history or servicing documentation, and I recognise the importance of servicing for the maintenance of the timing belt. However, I think it's reasonable to consider that the vehicle would have been serviced or checked over for suitability or roadworthiness prior to sale. For example, the MOT was completed about two months prior to sale, and so it's reasonable that Miss D would have expected the vehicle she was acquiring would be received in a reasonable condition and would provide a reasonable duration without significant maintenance required.

In addition, I've considered that the vehicle was three years and four months old when it was supplied, and nine months later it experienced what appears to be catastrophic failure. Miss D completed around 7,000 miles in nine months which isn't significant. And paid in excess of 19,000 for the vehicle which I think is significant.

The CRA says 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 can be aspects of the quality of goods. From the evidence provided I think it's fair to conclude that Miss D's vehicle was not suitably durable because it suffered catastrophic failure and likely engine damage after 50,000 miles as the result of a part failing that should not reasonably have failed at that mileage.

I note that while the mileage at point of failure was over 50,000 – this was not a very old or particularly cheap vehicle. In fact, it cost Miss D almost £20,000. In the absence of misuse of the vehicle (or some other factor like accident damage) I think a reasonable person would consider this to be unacceptable.

Putting things right

As I've concluded that the vehicle wasn't of satisfactory quality at the point it was supplied, and that it has since experienced catastrophic failure, I'll be instructing MIVFL to put things right.

Despite reporting the issues soon after supply, there was no definitive action taken by the supplying dealership to support any immediate repairs, which seems to have led Miss D to seeking the services of the third-party garage. Considering the issues, I think the delays by the dealership were unreasonable. I'm persuaded they had the opportunity to act sooner to carry out an investigation and repairs.

The CRA says that where a consumer has the right to a repair, that it must be done within a reasonable time and without significant inconvenience. Considering the circumstances of this complaint and the timeframes involved, I'm satisfied that Miss D has been significantly inconvenienced whilst waiting for the issues to be resolved. So, in the circumstances I'm satisfied that a rejection is the fairest approach. Miss D has also requested this as a resolution in her complaint form.

MIVFL should end the agreement and collect the vehicle from Miss D, refunding her deposit and all the repayments she made from July 2023 when the vehicle broke down to the date of settlement. This is because she's not had any use of the vehicle since that point.

MIVFL should reimburse to Miss D £1,172.52 for the cost of repairs to the EGR, cooler and coolant as per the third-party invoice dated 26 January 2023. They should also reimburse to Miss D £165 for the diagnostics carried out by the manufacturer dealership and £168 for the recovery of the vehicle as per the invoice dated 4 September 2023.

Miss D has described the distress and inconvenience caused to her as a result of the problems with her vehicle. For example, the inconvenience to her friends for using their driveway to store her vehicle, the inconvenience of having to get to work without a vehicle and the worry of her finances. So, in the circumstances I'm in agreement with the investigator that £250 is a fair recognition of the impact to Miss D.

MIVFL should pay 8% simple interest on all refunds and reimbursements and ensure no adverse information remains on Miss D's credit file relating to this agreement.

My final decision

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

- collect the vehicle at no additional cost to Miss D
- end the Hire Purchase Agreement and remove it from Miss D's credit file
- refund the £1,500 deposit contribution Miss D paid (if any part of this deposit is made up of funds paid through a dealer contribution, MI Vehicle Finance Limited is entitled to retain that proportion of the deposit)
- refund to Miss D all repayments made on the agreement from July 2023 to the date of settlement as she ceased use of the vehicle at that point
- reimburse to Miss D £1,505.52 for the costs of repair, diagnostics and recovery as described in my decision

- pay 8% yearly simple interest on all refunds and reimbursements calculated from the date of payment to the date of settlement
- pay Miss D £250 compensation for the distress and inconvenience caused
- remove any adverse information that may have been recorded with the credit reference agencies in respect of the finance agreement

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 11 November 2024.

Benjamin John
Ombudsman