

The complaint

Ms B and Mr M are unhappy that a car supplied to them under a hire purchase agreement with MI Vehicle Finance Limited ('MIVF') was of an unsatisfactory quality. The complaint has been brought jointly however the correspondence on file has been provided by Mr M, so for the purpose of simplicity, I will refer to Mr M throughout my decision, however the decision applies to the agreement held in joint names.

What happened

In October 2022, Mr M was supplied with a used car through a hire purchase agreement with MIVF. He paid an advance payment of £10,000 (of which £499 was a payment for tyre insurance) and the agreement was for £50,948 over 60 months; with 59 monthly payments of £1,069.42 and a final payment of £1,070.42. At the time of supply, the car was around three years old, and had done 10,236 miles.

Mr M noticed issues with the car almost immediately, that it was pulling to the left when driving, and there were intermittent issues with the screens within the vehicle. Roadside assistance was required on two occasions in November 2022, with both engineers recommending Mr M took the car to a dealer for investigation.

In January 2023, an independent inspection was carried out which confirmed the issues and concluded that it was likely that the faults had been present at the point of sale. The report also identified staining to the offside rear shock absorber and recommended further investigation be carried out in respect of this. Following repairs being carried out to the car, Mr M remained unhappy with the car and complained to MIVF. MIVF offered to allow Mr M to reject the vehicle and end the agreement, but they would retain a number of payments to reflect the fact that Mr M had had use of the car. Mr M was unhappy with the complaint response and forwarded his complaint to this service.

Following an investigation, the investigator upheld Mr M's complaint, and in line with the offer that MIVF had already made, recommended that MIVF should allow Mr M to reject the vehicle, cancel the agreement, and receive a refund of his deposit less the insurance payment made plus interest. Mr M did not wish to reject the vehicle at that time, and withdrew the complaint.

Mr M continued to experience issues with his car. In December 2023 a suspension service was carried out, which identified a suspension fault which Mr M paid to be repaired. Mr M emailed MIVF on 9 January 2024 to state that "the rear diff has been leaking since we bought the vehicle" and attached pictures which he stated provided evidence showing that faulty/rusty parts were replaced. On the same date he emailed to confirm that flood water evidence had been found in the battery compartment for the first time.

On 4 February 2024, Mr M arranged for a third-party inspection to be carried out. The report provided following the inspection confirmed that the checks "in and around the engine bay and underside of the vehicle" showed that the vehicle had been submerged in water at some point in the past. It stated that the level of water staining in and around the engine bay would have been expected to have been picked up during a vehicle health check and noted. It

further stated that the vehicle met minimum MOT standards and the flood water damage was not affecting the vehicle being road legal in their opinion.

The report stated that the flood water had been present *“for some considerable time, however exactly when the damage occurred is impossible to confirm”*.

In February 2024, Mr M raised a further complaint with MIVF. He complained that the vehicle was faulty, had issues that were not disclosed at the time of the purchase and he believed he had been scammed. MIVF did not provide a final response within eight weeks to Mr M and he referred his complaint to this service.

On 29 April 2024, MIVF provided their final response. In this they reiterated that they had previously offered Mr M the option of rejecting the vehicle however as he had not accepted this and they did not know how he wished to resolve his complaint, they were not in a position to make any further offer to him.

On 9 July 2024, Mr M contacted MIVF to explain that the car had suffered engine failure and was not drivable. He arranged for an inspection to be carried out on 31 July 2024, which identified the issues but stated that this was not caused by water damage. A further report from the main dealer was subsequently provided and considered, with the result being that the inspection report was amended to state that the floodwater had caused the tension roller to be broken, and that the mechanical failure was water related. It further stated that they did not know when the damage occurred.

Following an investigation, our investigator said that he was not persuaded that the oil leak at the transfer box and residue around the differential seal were present at the time the car was supplied to Mr M and was also not persuaded that the water within the engine was present at that time. He did not uphold the complaint.

Mr M didn't agree with the investigator. He said that he didn't think that the investigator had fully taken into account the facts of the case and requested that the complaint be escalated.

Because Mr M didn't agree, 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

I think it's important to firstly explain the context and limits of my decision. Mr M has previously made a complaint in relation to the quality of this car, covering different issues. The issue under consideration here is in respect of the most recent complaint point raised, that is, the water damage within the car, the total breakdown of the vehicle which appears to be linked to flood water damage, and the fact that Mr M believes that this damage occurred prior to him receiving the car.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a hire

purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, MIVF are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless MIVF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr M to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask MIVF to put this right.

It is not in any dispute that the car provided to Mr M under the finance agreement was not of a satisfactory quality at the time it was supplied to him. In the response to Mr M's original complaint, MIVF acknowledged the faults that were present at the point of supply, and offered him the opportunity to return the car and end the agreement. He did not accept this at that time, and has not provided evidence that he pursued alternative courses of action in respect of the vehicle at that time. Therefore it is not appropriate for me to reconsider the complaint for which a resolution has already been offered and rejected.

The current complaint relates solely to the issues resulting from the water damage that was identified in early 2024, the breakdown of the vehicle in July 2024, and whether the water damage was present at the point that it was supplied. I am not persuaded that it was.

On 4 February 2024, a third-party report was completed at Mr M's request. This identified that the transfer box was leaking oil and the rear differential unit had oil residue around the differential seal. It was noted there was evidence of historic flood damage to the engine bay area (stated to be multiple areas of brackish water staining), flood water damage in the boot area and the underside of the vehicle. It stated that there was evidence that the vehicle had been submerged in deep water at some point in the past which did not appear to be recent but could not be stated when this was. The report further states *"the level of water staining in and around engine bay and to the luggage area we would expected this to have been picked up during a vehicle health check and noted"*.

During the time that the car was in Mr M's possession, it underwent a number of investigations, and passed an MOT test on 19 August 2023 when it had mileage of 16,544 miles. The first time that the water damage was commented on was in January 2024, it had not been noted or in any other way highlighted at any time prior to this. I note Mr M's comments that the MOT inspection and report would not necessarily be expected to identify the water damage, however due to the extensive nature of the water damage, I do not think it is reasonable that none of the investigations previously carried out would have noted the water damage had it been present at the time that the vehicle was supplied (and therefore would have been evident at any of the previous inspection points).

I've also noted the agreement requires Mr M to service the car regularly, and in line with the manufacturer's guidelines, which are a service every 12,000 miles or 12-months, whichever

is sooner. As the car was supplied to Mr M in October 2022 at 10,236 miles, and the mileage when the car was independently inspected in February 2024 was 20,162 miles; I would have expected at least one service to have taken place between these dates. However, Mr M hasn't provided a copy of this service document, which I would have expected to have identified the water damage if it was present at the time.

Further to this, a report from the main dealer indicates that the level of water damage that is evident within the vehicle would be unlikely to have allowed the vehicle to continue running for the length of time that it did before breaking down, and for the additional mileage covered (approximately 10,000 miles).

The evidence provided indicates that the breakdown of the vehicle was as a result of the flood damage experienced. And, as I've already explained, an independent assessor stated in February 2024 that exactly when that damage occurred, is impossible to confirm. However, as there is no evidence to suggest that this flood damage occurred prior to Mr M taking ownership of the vehicle in October 2022, when I consider this against the CRA (that I've referenced above), I'm not persuaded that it would be fair or reasonable to hold MIVF responsible for this. It therefore follows that I do not uphold Mr M's complaint.

My final decision

For the reasons explained, I don't uphold Ms B and Mr M's complaint about MI Vehicle Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr M to accept or reject my decision before 12 May 2025.

Joanne Molloy
Ombudsman