

The complaint

Miss M complains that she was mis-sold a car she acquired with credit provided by MI Vehicle Finance Limited.

What happened

In October 2023 Miss M acquired a car, financed by a regulated hire purchase agreement with MI Vehicle Finance ("MIVF"). The car was six years old, its cash price was £9,650, and its mileage was 42,424 miles. On the day after the agreement was executed, the car passed its MOT test with no advisories.

Four days later, she reported issues with the car, and asked to reject it.

Instead, the dealership just replaced the ABS sensor and the rear brake discs.

A few weeks after that, Miss M complained to MIVF. She said that the car's fuel economy was lower than had been advertised. She also mentioned the earlier issues with the ABS sensor and the brakes. MIVF did not uphold her complaint, on the grounds that the sensor and brakes had been replaced by the dealership, and that the fuel economy had been measured and found to be 43.4 miles per gallon ("mpg"). In its first final response letter, MIVF mentioned that Miss M's complaint had been that the car had been advertised as achieving 45 mpg, and that it had only been performing at 35 mpg. It also pointed out that performance can depend on several variables, including the manner of driving, and in its second final response letter it mentioned that Miss M had complained about not being able to put the car into first gear at speeds of 30mph (which the car is not designed to do).

In November 2023, Miss M complained about some further issues, including the steering pulling to the left. MIVF did not uphold that complaint, because the car had been inspected and test-driven by a number of mechanics who were unable to find anything wrong with it (except for a small leak in the clutch slave cylinder, which was replaced; the mileage on that occasion was 47,643, and the issue was thought to be due to wear and tear). Miss M then brought this complaint to our service.

In July 2024, on the advice of our investigator, the car was inspected by an independent third party. They found another fault – a possible misfire causing the car to lose power – but concluded that it would not have been present at the point of sale (meaning that MIVF was not liable for it), because Miss M had not reported it before. Apart from that, the car was in a reasonable condition for its age and mileage. They failed to find a fault with the gearbox, which Miss M had reported to be clunky.

MIVF told us that Miss M had previously driven a moped before getting this car, and so the difference in mpg may have come as a shock to her for this reason, and not because there was anything wrong with the car. It said that the issues with the ABS sensor and brake discs had not been serious faults and would have been commensurate with the age and mileage of the vehicle, so it would not have agreed to let Miss M exercise her short-term right to reject it – and it also said that Miss M had never made a "formal request" to exercise that right.

MIVF argued that as Miss M had driven 7,000 miles in the car, this demonstrated that it was fit for purpose and of satisfactory quality. It added that if the car was unsafe to drive or unusable, then Miss M should have stopped driving it when she first asked to reject it.

Our investigator upheld this complaint. She pointed out that the car had actually been advertised as performing at 61.4 mpg, and so it was underperforming. She said that the author of the independent report had assumed that Miss M had only recently reported that the car sometimes lost power, but actually Miss M had reported that in April 2024. That was just within six months of the point of sale, which means that legally the problem must be presumed to have been present at the point of sale unless MIVF can show that it wasn't.¹ On the balance of probabilities, the investigator concluded that this fault had been present all along, and so the car had not been of satisfactory quality at the point of sale. She also said, separately, that although the ABS sensor and brakes had been fixed, Miss M had been entitled to exercise her short-term right to reject the car.

The investigator recommended that MIVF take the car back, end the agreement with nothing further to pay, refund Miss M's deposit and 20% of her monthly payments (with interest on the refunds), and pay her £150 for her trouble.

MIVF did not accept that opinion. It argued that it should not have to refund any percentage of the monthly payments, because Miss M had been able to drive the car for thousands of miles, and the payment of £150 should be enough to compensate her for her inconvenience. It said that if the misfire identified in the July 2024 report had been present in 2023, then Miss M would surely have mentioned it in her original referral to the dealership and in her original complaint to MIVF, but she hadn't – she had only mentioned the ABS sensor and the brakes. Nor had she mentioned it later on. That strongly suggested that it was a new issue which had developed later on.

MIVF also pointed out that Miss M had agreed to have the ABS and brakes repaired, and that this seems to have been agreed on the same day that she had asked to exercise her short-term right to reject the car. She had not complained that this repair had been carried out against her instructions. So she had voluntarily forfeited her short-term right to reject.

MIVF asked for an ombudsman to review this case.

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.

The law

Under the Consumer Rights Act 2015, it was an implied term of the agreement that the car would be of satisfactory quality. What is satisfactory quality will depend on the age and mileage of the car, in that a used car would not be expected to be in the same condition as a brand new one. MIVF is only liable if the car was not of satisfactory condition at the point of sale; it is not responsible for any defects which only appear later on (unless it turns out that they were present all along).

If a problem is discovered within six months of the point of sale, then it must be presumed that the problem was present all along, unless MIVF can prove that it was not. That

¹ See section 19(15) and (15) of the Consumer Rights Act 2015. This rule applies to the final right to reject, but not to the short-term right to reject.

presumption applies to the faults Miss M reported in and before April 2024. (It does not apply to the short-term right to reject, but it is not in dispute that the ABS and brake issues were present at the point of sale and that Miss M had the right to request repair or rejection in October 2023.)

If the car was not of satisfactory quality at the point of sale, then MVIF (or the dealership on MVIF's behalf) is normally entitled to one attempt to put it right. Only if that attempt is unsuccessful, then Miss M becomes entitled to reject the car and end her finance agreement (the "final right to reject"). The exception to this rule is the short-term right to reject, which is not limited by MIVF's right to have the car repaired. The short-term right to reject must normally be exercised within 30 days of receiving the car, but under section 22(6) this time limit is automatically extended if Miss M agrees to let the dealership try to repair the car instead. If that happens, then if (and only if) the problem still hasn't been fixed, the short-term right to reject can still be exercised, until the extended time limit runs out. However, it appears that the ABS and brakes were successfully repaired.

There is no requirement of formality in exercising the short-term right to reject. Section 20(5) and (6) just say:

"(5) The right is exercised if the consumer indicates to the trader that the consumer is rejecting the goods and treating the contract as at an end.

(6) The indication may be something the consumer says or does, but it must be clear enough to be understood by the trader."

So I reject MIVF's argument that it didn't have to let Miss M reject the car just because she had not made a "formal request" to reject it. It's not in dispute that she did ask to reject the car, and so MIVF was obliged to take back the car and unwind the agreement, unless she agreed to have it repaired instead.

Miss M did agree to the repair, and the repair was successful. So that would normally mean that she has lost the short-term right to reject. But I would not agree that she has lost that right if her agreement to the repair was brought about by falsely representing to her that she could not exercise the right to reject because her request lacked formality. If that's how it happened, then she was unfairly denied her right to reject. However, I do not need to decide this point, because of my conclusion about the final right to reject.

The final right to reject

The July 2024 report says that the misfire had not been mentioned before, and concludes that therefore it would not have been present at the point of sale. Our investigator's opinion about that was that although Miss M had never used the word "misfire" in her complaints, she had described that the car sometimes felt as if it was in danger of cutting out, which was consistent with the symptoms reported by the independent expert which had led him to diagnose the misfire. She therefore thought that the expert's conclusion was based on a false premise, and that the misfire issue had been present all along, and that the dealership had failed to diagnose and repair it. On that basis, she decided that Miss M had the final right to reject the car.

MIVF's second final response letter confirms that in April 2024 Miss M did complain that the car "feels like it wants to stall." That was just within six months of the agreement, so that establishes the statutory presumption that this fault was present all along (I'll come back to this). The dealership was unable to replicate this issue, but the July 2024 report says:

“On the main bypass the vehicle was accelerated to 65mph, at this point the vehicle was found to have a flat spot. This happened twice within 200 yards. This was compared to a misfire/fuel starvation affect, on both occasions lasting for about 2-3 seconds. ... This is an issue that can evolve at any point. ... however, the misfire was not mentioned in the list in the brief, so it would not have been present since purchase.”

That is probably the same issue that Miss M reported in April 2024.

I have thought about MIVF’s argument that if this issue had really been present all along, then Miss M would have reported it earlier than April 2024. But I think that argument runs contrary to the way the statute is intended to operate. If the intent was that a consumer had to report something earlier than almost six months after the point of sale, then the statutory period would have been shorter than six months. So I think what is needed is some evidence that the fault was not present at the point of sale, not just an inference based on the consumer not having mentioned it earlier. I am therefore just persuaded that this fault was present all along, and that Miss M was entitled to exercise her final right to reject, because there had already been some previous attempts to repair the car.

Putting things right

My starting point is that MIVF should pay Miss M a refund of everything she has paid, but section 24(8) any refund may be reduced “to take account of the use the consumer has had of the goods in the period since they were delivered”. Since Miss M was able to drive the car for thousands of miles, I think that a deduction of 80% of her monthly payments is a fair deduction to reflect her use of the car. So I endorse the investigator’s proposed redress.

My final decision

My decision is that I uphold this complaint. I order MI Vehicle Finance Limited to:

- End the agreement with nothing further to pay;
- Collect the car from Miss M at no cost to her and at a convenient time;
- Refund her deposit of £2,000;
- Refund 20% of her monthly payments;
- Pay Miss M simple interest on each of the above refunds at the rate of 8% a year from the respective dates of payment to the date of settlement;
- Pay her £150 for her trouble; and
- Arrange to remove from her credit file any negative information about the hire purchase agreement.

If MIVF considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Miss M how much it’s taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if she is entitled to.

Miss M should refer back to MIVF if she is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept or reject my decision before 3 December 2024.

Richard Wood
Ombudsman