

The complaint

Miss D is unhappy that a car supplied to her under a hire purchase agreement with MI Vehicle Finance Limited ('MI') was of an unsatisfactory quality.

What happened

In December 2022, Miss D was supplied with a used car through a hire purchase agreement with MI. She paid a £1,000 deposit, and the agreement was for £16,800 over 48 months with 47 monthly payments of £336.58 and a final payment of £5,291.25. At the time of supply, the car was around three years and nine months old and had done around 48,000 miles.

Miss D said that she was having problems with the car overheating, and, in April 2023, she reported these issues to the supplying dealership. The dealership agreed that the car could be inspected by a third-party garage, who found issues with the head gasket, the turbo, the timing chain, and the turbo seals. These were then repaired by the third-party garage, with the cost being covered by the dealership. At the time these repairs had been carried out, the car had done 55,981 miles.

Miss D contacted the third-party garage in May 2023 as a warning light had come on and the engine was misfiring. Another repair was undertaken, but this didn't fix the misfiring problem and the car broke down with Miss D reporting that it was using excessive coolant. Miss D paid £73.80 for a diagnostic, followed by £120 for a replacement water pump. In August 2023, Miss D paid a further £570 for a replacement heat management system, oxygen sensor, and fuel injectors.

This, however, didn't resolve the problem, and the car broke down again. Miss D complained to MI who didn't uphold her complaint. Unhappy with this, Miss D brought this matter to the Financial Ombudsman Service for investigation.

Our investigator said it wasn't reasonable to expect to have to carry out repairs to the head gasket and turbo when the car had only done 56,000 miles. This made the car insufficiently durable and therefore of an unsatisfactory quality when it was supplied. The investigator also said that the repairs carried out with the authority of the supplying dealership failed, so Miss D should now be allowed to reject the car.

The investigator said that MI should refund the deposit Miss D paid, refund the £763.80 repair costs she incurred, and refund the monthly payments Miss D had paid since April 2023, less one payment for every 2,000 miles the car had travelled above 55,981 miles, to account for fair usage.

MI asked for evidence of the current mileage on the car, which Miss D said she couldn't provide as the car hadn't been used for an extended period, so the battery was dead and there was no power to the dashboard. MI then said that, if Miss D had approached them earlier, *"we would have been looking to have an independent engineer diagnose the issues she was experiencing. A garage which would be able to produce job cards/invoices."*

MI also said that the issues Miss D has complained about after April 2023 were different to the issues she was experiencing before the authorised repair. What's more, Miss D has refused to allow the dealership to inspect the car after September 2023. So, they've asked for this matter to be passed to an ombudsman 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.

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.

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. Miss D 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, MI 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 MI can show otherwise. So, if I thought the car was faulty when Miss D 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 MI to put this right.

In this instance, it's not disputed there was a problem with the car when it was supplied to Miss D. Work was carried out on 15 April 2023 at the cost of £3,256.26. Although this work was carried out at a third-party garage, it was authorised by the supplying dealership.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for MI – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault. The CRA is also clear that, if the single chance at repair fails, then Miss D has the right of rejection.

Although the supplying dealership didn't carry out the repair in April 2023, they did authorise this and cover the costs. As such, I'm satisfied this was the single chance at repair.

I've seen evidence that Miss D messaged the garage authorised by the dealership on a number of occasions between May and August 2023. In these messages, Miss D

complained about issues with a drivetrain warning light, the car misfiring, and that the car was using an excessive amount of coolant. These messages also show that the garage attempted to fix the car on a number of occasions.

Miss D has also provided proof that she paid £120 for a replacement water pump on 3 July 2023, £73.80 for an ECU diagnosis on 10 July 2023, and £570 for a replacement heat management system and O2 sensor on 15 August 2023 – a total of £763.80. Finally, Miss D has provided evidence to show that the car still has active fault codes.

Based on what I've seen, I'm satisfied the single chance at repair has failed. As the car still has ongoing issues, I'm also satisfied that Miss D should now be allowed to reject the car. However, in addition to allowing rejection, I think MI needs to take further action to put things right.

Putting things right

The evidence shows that, since April 2023, Miss D had had limited usage of the car. The MOT expired in September 2023 and wasn't renewed, so it also follows that the car couldn't legally be used after this date. The mileage figure in April 2023 was 55,981, which shows that Miss D travelled around 2,000 miles a month in the car before the repair attempt. As Miss D has been paying for goods she's been unable to use, it's only fair that MI refund all the payments she's made from April 2023 onwards. However, they should also be allowed to retain one payment from this refund for every 2,000 miles the car has travelled above 55,981 miles, to account for the limited use Miss D has had of the car since the attempted single chance of repair.

Miss D has provided evidence of the costs she's incurred in repairing the car / having the car inspected. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that MI reimburse / pay these costs.

Therefore, MI should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Miss D;
- remove any adverse entries relating to this agreement from Miss D's credit file;
- refund the deposit Miss D paid (if any part of this deposit is made up of funds paid through a dealer contribution, MI is entitled to retain that proportion of the deposit);
- refund the payments Miss D had made since April 2023, less one payment for every 2,000 miles (or part thereof) the car has travelled above 55,981 miles;
- reimburse Miss D for the £863.80 costs she incurred in having the car inspected and/or repaired, as detailed above; and
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Miss D made the payments to the date of the refund[†].

[†]If HM Revenue & Customs requires MI to take off tax from this interest, MI must give Miss D a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss D's complaint about MI Vehicle Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 8 January 2025.

Andrew Burford
Ombudsman