

## **The complaint**

Mrs D complains that MI Vehicle Finance Limited trading as Mann Island ("MI") provided her with a car that was of unsatisfactory quality.

## **What happened**

Mrs D entered into an agreement with MI for finance to acquire a car in September 2023. The agreement was designed to run for 49 months. The car was around three years old with a mileage of 31,792, the cost of the car was £49,995. Mrs D made an advanced payment of £4,000 and borrowed £45,995 from MI. Under the agreement, Mrs D was required to make 48 monthly payments of £763.48, followed by a final payment of £25,954 if Mrs D wanted to keep the car.

In April 2024, around seven months into taking possession of the car, the car broke down and was recovered by a recovery service. The recovery service thought the car had an engine failure and was unable to fix the car by the roadside, so it was recovered to a garage. Mrs D then had her insurance company inspect the car and the outcome of the inspection was that the car wasn't roadworthy as it had suffered an engine damage.

Mrs D complained to MI about the quality of the car but it didn't uphold her complaint and so she referred her complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator thought MI had supplied Mrs D with a car that was of unsatisfactory quality and recommended that the complaint be upheld.

Mrs D accepted the investigator's view, but MI didn't. It queried the information the investigator relied on – specifically the opinions from the inspection of the car and said the inspection carried out by the third-party dealer shows the fault on the car wasn't present and developing from the time of sale. It asked for an ombudsman to review the complaint.

In her communication with the investigator, Mrs D has mentioned she wasn't made aware of the commission structure tied to her finance agreement. This point hasn't been considered as part of this complaint. Mrs D will need to raise this point directly with MI in the first instance.

## **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.

It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. I'm very aware that I have summarised in much less detail what has been submitted by the parties in this complaint. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mrs D or MI but reflects the informal nature of our service, its remit and my role in it.

Mrs D complains about a hire purchase agreement, so our service can consider complaints relating to it. MI is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

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.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mrs D acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, considering its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and *durability*.

I'd like to say at the outset that I'm satisfied Mrs D didn't wholly and predominantly use the car for business purposes. Mrs D has explained that she used it to buy and transport supplies for her business, it was also used for domestic and commuting purposes, and I find this reasonable.

#### *Was there a fault with the car?*

Both parties have had the car inspected independent of the other. Mrs D had the car inspected by the recovery service and her insurer; they have both provided reports saying the car has had an engine failure. The third-party dealer on behalf of MI has also inspected the car and the report of this inspection was that the engine has failed.

So, in this case, neither party appears to dispute that the car has a fault. What is left to decide is whether this fault makes the car of unsatisfactory quality, if I decide it does, I will consider how MI should put things right.

#### *Does the fault make the car of unsatisfactory quality?*

As stated above, the CRA says one element of satisfactory quality refers to durability and the expectation here is that goods will last for a reasonable amount of time. In this case, the car has suffered an engine failure which has meant it hasn't been driveable since it broke down in April 2024.

The car's engine is a key component that should be expected to last the lifetime of the car. Exactly what the lifetime of a car is will vary depending on a variety of things and it is difficult to put an exact expectation that would be applicable in every case. In this case the engine failed and when the car was inspected following Mrs D's insurer's instruction on 29 April 2024, the car had travelled 41,516 miles and I think that a reasonable person would consider this to be a premature failure. I say this because this car can be considered a high-end car which Mrs D was paying over £700 a month for, this is not an inconsequential amount and thinking about the mileage of the car and the age of the car, it should reasonably have been expected that the engine will last longer than it has done here.

The inspection done on behalf of MI says the engine failure was due to a blocked diesel particle failure (DPF) and that issue couldn't have been present at sale as Mrs D would have been unable to complete more than 9,000 miles with that issue. I have some concerns around the validity this report by MI – the report isn't signed and dated, and it raises some questions about its impartiality. Regardless of my concerns about the report, I'm not persuaded by its content that the fault was due to Mrs D's usage of the car. The failure of an engine is not in my view a fair wear and tear issue, so while I note the inspection carried out by the third-party garage suggests Mrs D's usage contributed to the fault, I've taken a different view to this. Mrs D has also explained that she used the car for combination of motorway, dual carriage way and shorter trips.

MI had the opportunity to instruct independent experts to inspect the car but chose not to do so. The inspection carried out on behalf of MI didn't include stripping the car as it says in response to the investigator's view, the report confirms the car was visually inspected and there is a quote for the cost of stripping the car if MI wanted to do this. I haven't seen any evidence that this was done.

Mrs D has provided evidence of her service history, and she has maintained the car and serviced it in accordance with the manufacturer's requirements. In fact, the most recent service was about a month before the engine failed and the garage that serviced the car confirmed there was no issues noted from its service, no warning lights for DPF were on. It is reasonable in the circumstances that the service would likely have picked up an issue with a blocked DPF at that stage, but nothing was noted. Mrs D has maintained the car and has said no DPF light came on before it broke down. I think it is reasonable to think she would have taken the car in for checking had the DPF light come on, I think it is less likely she would have ignored the warning particularly as her monthly repayments weren't insignificant.

Mrs D had the car for around seven months and had done less than 10,000 miles in it before the engines suffered catastrophic failure. As explained above the engine is a key component expected to last the lifetime of the car, and I wouldn't expect a car that has done around 41,000 miles to suffer this type of fault.

Overall, I'm satisfied that when considering the requirements of the Consumer Rights Act 2015 around durability, the engine was not sufficiently durable. And consequently, the car was not of satisfactory quality when supplied to Mrs D.

#### How MI should put things right

Mrs D has said she has stopped making the monthly payments towards the agreement. MI has confirmed that it took possession of the car and sold it for around £33,000. As the car has been sold, I can't ask MI to repair the car for Mrs D which would have been the appropriate remedy here. So, MI needs to treat April 2024 as when Mrs D was entitled to reject the car and the agreement also ended on that date.

As Mrs D is entitled to reject the car, she will also be entitled to her deposit of £4,000 which she paid towards the agreement so MI should refund the deposit paid.

The inspection carried out on behalf of MI have pictures attached that show the car in quite a poor condition, with mud and dirt all over the upholstery and a headrest has been ripped. There is clearly damage shown in these pictures and MI has confirmed other damage like a broken windscreen even though this isn't visible from the report provided. I'm mindful that when Mrs D's insurer inspected the car on 29 April 2024, that report said the car was in good condition for its age. I have also asked Mrs D for her comments about the damage to the car and she has said when the car left her possession and was recovered, there was no damage.

It isn't clear what happened or how that level of damage appeared on the car, so I have to decide here on balance what I think was more likely than not. Mrs D has a report close the time the car broke down, so I think it would have seen the car at the most recent state Mrs D used it. MI's report was carried out after the car was recovered in August 2024, more than three months after Mrs D reported the fault. As this report isn't dated, I don't know when the inspection was carried out. Given the time difference between both reports, I'm more persuaded by the report from the insurer which confirms the car was in good condition. MI took many months trying to arrange the collection of the car and an independent inspection. I think it could have acted more swiftly than it did and there won't have been such a considerable time lag between the car breaking down, being held at the garage and when MI took possession of the car. I'm more persuaded that the car was in good condition at the time of the incident in April 2024 and I don't think it is fair in the circumstances to hold Mrs D responsible for the damage.

It also appears Mrs D incurred storage costs for the time MI didn't take sufficient action to recover the car sooner. Had it done so, she'd likely not have incurred these costs, and I think it is fair MI refunds these costs to Mrs D. MI should also be liable for any recovery costs Mrs D incurred because of the fault with the car.

I don't think any refund of payments are due before April 2024, as I can see that Mrs D was able to use the car without any issues prior to it breaking down in April 2024. Also, it was fair for Mrs D to stop using the car in April 2024 due to the breakdown and so, she isn't liable for any payments after that date.

Mrs D has suffered trouble and upset due the inconvenience she experienced from being without a functioning car. Mrs D has also explained how much of an impact the delay has had on her life, while she was pregnant and dealing with other health issues. I think in recognition of this, MI should pay Mrs D £350 for the trouble and upset it has caused.

### **Putting things right**

To put things right, MI should;

- Treat the agreement as ended from April 2024 with nothing further for Mrs D to pay.
- Refund Mrs D's advance payment of £4,000 that was paid towards the car. \*
- If Mrs D made any payments after April 2024, these should be refunded to her.
- Add 8% simple annual interest to the amounts above, from the date of payment to the date of settlement†.
- Refund the storage costs incurred by Mrs D, once she has provided evidence such as an invoice for these costs.
- Refund any recovery costs of the car if Mrs D incurred this and provides evidence.
- Pay Mrs D £350 for the trouble and upset caused.
- Remove any adverse information from Mrs D's credit file.

† HM Revenue & Customs requires MI to take off tax from this interest. MI must give Mrs D a certificate showing how much tax it has taken off if he asks for one.

\* If any of this deposit or part-exchange value includes a contribution from the dealership, manufacturer or MI, this amount can be deducted from the amount refunded to Mrs D.

**My final decision**

For the reasons given above, I uphold this complaint and direct Mann Island Finance Limited trading as Mann Island to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 18 June 2025.

Oyetola Oduola  
**Ombudsman**