DRN-5516158

The complaint

Mrs A complains about the quality of a car she acquired under a hire purchase agreement with MI Vehicle Finance Limited (MI).

When I refer to what Mrs A and MI have said and/or done, it should also be taken to include things said and/or done on their behalf.

What happened

In June 2023, Mrs A entered into a hire purchase agreement with MI to acquire a used car. The car was first registered in December 2017. At the time of acquisition, the car had travelled approximately 67,181 miles. The cash price of the car was approximately £16,995 when Mrs A acquired it. There was an advance payment of around £5,000. The total amount payable under the finance agreement was approximately £20,918. The agreement consisted of 58 monthly repayments each of around £265 followed by a final repayment of £266.

Mrs A said that right before she could collect the car, it had failed its MOT as it needed additional work done. Once the work was done and the car was collected, she said she started to have issues right after, as the oil warning light was appearing on the dashboard. Mrs A said that in September 2023 the Control Module needed to be reprogramed and a sensor issue were fixed, but then further work was needed to the engine as she was told that it was a week away from suffering a catastrophic engine failure. The supplying dealership had the engine work completed, but she said they tried to charge her £2,500 for these repairs. Mrs A said she did not agree to pay as she told the supplying dealership that she never authorised these repairs, so they let her collect the car without paying for the work.

Mrs A said that from September 2023 to December 2023 she had driven the car for about 1,000 miles, but continued to experience ongoing issues with oil leaks which became progressively more frequent and severe over time, causing oil stains in her garage, driveway, and her employer's car park. This has led her to approach a third-party garage that completed some initial repair work at a cost of £263 to try and address the oil leak. But in February 2024 Mrs A said the oil leak had retuned, so that garage did a more in-depth diagnostics to determine the source of the leak and later completed this work. This had cost Mrs A £3,683.36.

Mrs A said that at that time of the repair the third-party garage told her that when the supplying dealership completed the repairs in September 2023, the engine must have been dropped causing several areas of damage. The third-party garage also said that incorrect grade of engine oil was used to, potentially falsely, increase the pressure within the engine and prevent further leakage. She said they also told her that there were missing bolts, engine parts not sealed correctly, and excess oil drainage way filled with sealant leading to oil leaks. Mrs A said that whilst the third-party carried out work to address the oil leak she was experiencing, they have not addressed the areas of damage to the engine they discovered, nor could they reassure her that this damage will not cause further problems in the future.

In summary, Mrs A said the car was not fit for purpose when it was sold to her. She said the car was fundamentally flawed at the point of sale and she believes that she should be entitled to reject the car. As such she raised her complaint with MI.

In July 2024, MI wrote to Mrs A. In this correspondence they said, that upon receipt of Mrs A's complaint, they contacted the supplying dealership, who confirmed that in September 2023 the timing chain and body control module were replaced. MI said that Mrs A provided them with an invoice from January 2024 for the timing chain oil seal totalling £263.38 and from February 2024 for the repairs to timing case cover, crankshaft seal, and oil seal totalling £3,623.36. So, they shared these invoices with the supply dealership who disputed any failed repairs by them, and did not feel they were liable for the reimbursement costs of these repairs. The supplying dealership said that, based on the supplied invoices from Mrs A, they can see that the third-party garage were replacing the rear crankshaft oil seal, a fairly common wear and tear item on the car in question. The supplying dealerships said that:

> ''*This seal lives at the back of the timing chain set up and all of the timing chain covers and chains have to be removed for access. They have merely fitted the new gaskets and cover as they should do with this job.*
>
> *The timing chain that was replaced is at the top of the engine and does not require access to the crank case at all. It is accessible through a hatch at the top of the engine block. The job that they were carrying our requires the gearbox removal, the flywheel and rear engine plate removal.*
>
> *This cannot be carried out without removing the top timing chain cover and gasket. They have decided, for whatever reason that the cover should be replaced. These can be susceptible to some wear from the chain set up over time. We also replace them on a regular basis during chain replacement.*
>
> *To summarise. They removed parts that were already replaced in order to carry out another job further in.''*

So the supplying dealership concluded that this was unrelated to the work carried out by them and their garage shortly after supply. And said that crankshaft oil seals only require replacement due to age and mileage as a wear and tear item. And the supplying dealership said that there was no time when they were involved with any repair that required the removal of the gearbox, or any other part that would interfere with the rear crankshaft oil seal.

In this July 2024 correspondence, MI explained that due to the car having been fully repaired without any prior authorisation from them, they were unable to complete their own investigation in order to determine if the issues were linked to a previous repair completed, or were present or developing at the point of sale. But despite them not being given the opportunity to inspect the car prior to the repairs Mrs A authorised at a third-party garage, they have offered the following as resolution:

> ''- Reimbursement of the repair costs paid totalling £3946.74 (£3,683.74 and £263.38)
> - Reimbursement of 1 monthly rental totalling £265.28 to recognise the time spent without access to the vehicle.
> - A payment of £150.00 for the distress and inconvenience caused throughout this process.''

And they said they will not be accepting Mrs A's request to reject the car as it has been fully repaired, and there is no evidence of any current faults with the car that would be deemed to

be their liability. MI said that Mrs A is free to refer her complaint to the Financial Ombudsman Service (Financial Ombudsman), but in the interim they will credit her account with the above redress.

Mrs A remained unhappy, so she referred her complaint to the Financial Ombudsman.

Our investigator considered Mrs A's complaint and was of the opinion that MI's offer was already a fair and reasonable resolution to her complaint. And, as there was no evidence that the repairs have failed, the investigator did not think that Mrs A should be entitled to reject the car.

Mrs A did not agree, so the complaint has been passed to me 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered good industry practice at the relevant time. Mrs A acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. MI is the supplier of goods under this type of agreement and is responsible for dealing with complaints about their quality.

I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching, what I think is, the right outcome. This reflects the informal nature of the Financial Ombudsman as a free alternative to the courts.

Also, I can only consider the actions/inactions of MI and only the aspects they are responsible for, and I cannot look at certain actions and/or inactions of the supplying dealership, which Mrs A said she is unhappy about. So, in this decision I have focused only on the aspects I can look into. And I am only looking at the events that have been raised by Mrs A with MI, the ones they had an opportunity to address in their correspondence sent to her in July 2024.

I should also explain that I know that Mrs A has made reference to other cases. But we provide an informal dispute resolution, our decisions do not create binding precedents. Whilst there may be similarities between complaints, all complaints are considered on their individual facts and merits. Here I make my decision based on what I think is fair and reasonable considering the all the circumstances – including relevant laws and regulations – of this particular complaint.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mrs A entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and

mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mrs A's case the car was about five and a half years old, with a cash price of around £16,995. It had covered around 67,181 miles. So, the car had travelled a reasonable distance, and it is reasonable to expect there to be some wear to it because of this use. I would have different expectations of it compared to a brand-new car. As with any car, there is an expectation there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. And with second-hand cars, it is more likely parts will need to be replaced sooner or be worn faster than with a brand-new car. So, MI would not be responsible for anything that was due to normal wear and tear whilst in Mrs A's possession. But given the age, mileage and price paid, I think it's fair to say that a reasonable person would not expect anything significant to be wrong shortly after it was acquired.

First, I considered if there were faults with the car. Based on the job sheet from when the repairs were completed shortly after acquisition by the supplying dealership, I can see that it had repairs done to the electronic body module and the timing chain. And from the job sheet provided by Mrs A from the third-party garage, it is clear the car needed work to address the engine oil leak from the front and rear timing case covers. So overall, I think the car was faulty. But just because a car is faulty does not automatically mean that it was of unsatisfactory quality when it was supplied.

In usual circumstances, next I would make a finding on whether I think the car was of unsatisfactory quality. However, in this decision I do not think I need to make a finding on this. I say this because, even if I did find that the car was unsatisfactory quality at the point of supply, I think the resolution provided by MI is already fair and reasonable.

I know that Mrs A thinks that she should be entitled to reject the car. In summary, she feels that way as she has lost faith in it and she believes that some of the faults have not been fixed. But the CRA sets out that Mrs A has a short term right to reject the car within the first 30 days, if the car is of unsatisfactory quality, not fit for purpose, or not as described, and she would need to ask for the rejection within that time. Mrs A would not be able to retrospectively exercise her short term right of rejection at a later date.

The CRA does say that Mrs A would be entitled to still return the car after the first 30 days, if the car acquired was not of satisfactory quality, not fit for purpose, or not as described, but she would not have the right to reject the car until she has exercised her right to a repair first – this is called her final right to reject. And this would be available to her if that repair had not been successful.

From the available evidence on this case, it seems that all the issues with the leaking oil faults in question have now been rectified. I say this because I have not seen enough evidence to be able to say that, most likely, the repairs that have been completed have since failed. And the repairs have been carried out without any cost to Mrs A, as MI were happy to refund the money Mrs A paid for the repairs. As such, I cannot say that it would be fair or reasonable for Mrs A to be able to reject the car.

Mrs A has told us, in great detail, how this situation has impacted her and how it has caused her a great deal of distress and inconvenience. So, I have taken everything she said into consideration including the impact this situation had on her, but I think the overall redress offered by MI, mentioned above, is a fair and reasonable resolution to her complaint. I might have been inclined to also ask MI to add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement, but I have considered that

MI agreed to refund the amounts she paid for the repairs within a reasonable time. And in addition to the £150 compensation, they also agreed to the reimbursement of one monthly repayment, which more than covered the time she was without a car during the repairs, even though she did have access to some courtesy cars during that time. So overall, I do not think it would be fair and reasonable to ask MI to pay anything further than what has already been offered by them.

While I sympathise with Mrs A for the difficulties that she is experiencing, based on all the information available in this case, I do not think there is sufficient evidence to say Mrs A should be allowed to reject the car. And the redress offered is fair and reasonable considering the specific circumstances of this complaint.

My final decision

For the reasons given above, I direct MI Vehicle Finance Limited to:

- Reimburse £3946.74 to Mrs A for the repairs she paid;
- Reimburse one monthly repayment (£265.28);
- Pay Mrs A £150 compensation.

If the above has not already been done.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 27 May 2025.

Mike Kozbial
Ombudsman