

complaint

Mrs M complains that Mi Vehicle Finance Limited have refused to let her reject a car.

background

In May 2017 Mrs M bought a second hand car with some 14,000 miles on the clock, although the sales and finance agreement says it had done only 8,000 miles. She funded this by means of a part exchange and a hire purchase agreement with Mi.

She says the car had numerous issues and she called the garage frequently. It kept fobbing her off and eventually agreed to look at the car at its next service. After the annual service, the problems with the car weren't fixed and she contacted Mi and said the car had the following issues with it:

- Automatic wipers unreliable.
- Rear heated windscreen broken.
- Car misfiring.
- Fuel gage not moving when filling up the car.
- Microphone unclear when talking.
- Parking sensors going off erratically.
- Steering making grinding noise.
- Moisture in the back left light.

Mi arranged for the car to be repaired by the garage, but Mrs M says that the car was still faulty when returned to her. It organised an independent inspection and this resulted in two reports which concluded:

- Upon testing the engine for 15 minutes, there was an intermittent metallic tapping noise from the fuel injector area. The inspector couldn't confirm the exact cause of the condition and stated that further diagnostics would require dismantling.
- The front and rear parking sensors displayed intermittent function.
- The top and bottom four elements of the heated windscreen did not work and clear the screen in an appropriate manner.

The inspector concluded that: *"On the balance of probability, the conditions would not have been developing at finance inception. From a strict engineering perspective, it's more likely these faults have presented in the last 1000 miles of use."*

Mi said that on the basis of the reports there were no grounds to uphold a rejection. Mrs M brought her complaint to this service where it was considered by one of our investigators who recommended it be upheld.

She saw that the inspector had presumed the car had only done 8,000 when it was bought and she asked if the correct mileage of over 14,000 had any bearing on the reports. The inspector concluded it didn't. She noted that Mrs M had been contact with the garage in the months after purchase and this had been confirmed by email acknowledgements. The record didn't show what the reason for the contact was, but it supported Mrs M claims she had been asking the garage to deal with the various faults. She thought this indicated they were present at the point of sale.

She also noted that the parking sensors were repaired by the garage before Mrs M bought the car and felt this indicated an underlying problem. She concluded that Mrs M had paid

over £17,000 for a relatively low mileage car and it was reasonable to presume it to be of a high quality. However, she didn't think this was the case and suggested that Mi should:

- cancel the agreement with nothing further to pay;
- collect the car at no further cost to Mrs M
- refund the deposit (including the value of her part exchanged car) and pay 8% simple interest from the date of payment until the date of settlement;
- remove any adverse information from Mrs M's credit file.

Mi didn't agree and supplied response from the garage. This disputed that the claimed faults existed and said the car had been examined by two third party garages to look at the misfiring and they found no faults. The garage said that the faults with the steering and moisture in the light hadn't been raised with it. It also disputed Mrs M's claims that she had not been given the help she requested.

I asked for copies of reports from the third party garages, but after some considerable time neither could be provided. Mrs M checked with one which said it had no record of examining the car.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Mi is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

It is clear to me that Mrs M is unhappy with the car and has encountered some problems, but I need to consider whether these were present at the point of sale. I have reviewed the invoices Mrs M has supplied showing the warranty work carried out. These show that strut rubbers were replaced to address the grinding noise connected to the steering. It also carried out diagnostics for the misfiring and this showed there was problem which was

traced to the injectors. These were removed and cleaned and a subsequent test showed they were satisfactory.

There is a note of Mrs M's concerns about the hands-free system, the fuel gauge not registering and the parking sensors going off intermittently. There is no mention of a repair for these issues. The automatic wipers were repaired and the battery was replaced.

Recently Mrs M has said that the car continues to misfire, the rear window demister doesn't work and the parking sensors still don't work properly. She also told us it had failed its MOT. The online records show that this was due to the front brake pads being too thin. It passed a second test two days later and the record shows that at the end of February 2019 it had done 33,895 miles. I would add for the avoidance of doubt that a MOT pass doesn't mean the engine was satisfactory.

In its response to the investigator's view the dealer said no fault was found with the wipers, though I note that the invoice shows it carried out some work on these. It believed the windscreen demister was caused by Mrs M's dog. It said Mrs M had told it that she put in small amounts of fuel and so that may be why the fuel gauge didn't move. The parking sensors were working as expected and it wasn't aware of the steering noise, even though an invoice shows this as being repaired. It added that it wasn't aware of the moisture in the rear light. Finally it said no misfiring fault could be found by it or two other independent garages.

I have some difficulty with this response given it contains a number of inaccuracies. However I am satisfied that the dealer did make some repairs.

Turning now to the independent report this confirms that: *"we would consider based on the available evidence and due to the nature of the faults. that the conditions identified would not have been a pre-existing defect for 14,000 miles. From a strict engineering perspective, it's more likely these faults have presented in the last 1,000 miles of use."* From this it seems there are some faults, but the engineer cannot say that they were present at the point of sale. The engineer has confirmed the incorrect mileage supplied made no difference to his conclusions.

The concern I have is with the misfiring engine. The invoice presented to me shows that work was done to the injectors on 15 December 2017 and that the engine tested ok after that. But the independent report dated 13 February 2018 says that: *"the vehicle requires checking to the fuel injectors in particular cylinder 2."* It is clear there was an issue with the engine which hadn't been properly addressed by the December repair. The car had done some 1684 miles between the two events and this undermines the engineer's conclusions that the problem would only have arisen in the last 1,000 miles.

I am loathe to go against an independent report, but I have to take into account all the evidence and it seems that there was a problem with the injectors in late 2017 which wasn't fully resolved. Given Mrs M's testimony, which I consider to be credible, I believe she was having problems in the months after she acquired the car. I have taken into account the arguments put forward by Mi and I have some sympathy with its point of view. However, I believe that on the balance of probability the car was suffering a problem at the point of sale.

my final decision

My final decision is that I uphold this complaint and I direct Mi Vehicle Finance to:

- cancel the agreement with nothing further to pay;
- collect the car at no further cost to Mrs M;
- refund the deposit (including the value of her part exchanged car, assuming there was no outstanding finance on it) and pay 8% simple interest from the date of payment until the date of settlement;
- remove any adverse information from Mrs M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 April 2019.

Ivor Graham
ombudsman