

The complaint

Mr H complains about the quality of a car financed by MI Vehicle Finance Limited trading as Mann Island ('MI').

What happened

The background facts are well known to the parties so I will only summarise these briefly here.

Mr H was supplied a second-hand car on hire purchase from MI in September 2022. However, he is not happy with the quality of the car. In summary, Mr H initially complained to MI about:

- Air conditioning not working
- Grinding brakes
- Issues with cruise control
- Driver seatbelt unclipping
- Loose and missing trim on the car
- Rear seatbelt trim detaching
- USB connector not working/loose mic
- Whirring noise

Some of these things were initially repaired by the dealer – but some occurred afterwards and remained unresolved. MI offered Mr H further repairs in its final response, but Mr H is not happy with its offer.

Our investigator thought that MI's offer was more than he would have recommended in the circumstances so did not uphold Mr H's complaint.

Since then Mr H has identified other issues with the car including:

- Front passenger seat becoming detached from its base; and
- a fault with the injectors.

Mr H wants to reject the car for a refund, and said he has been asking for this from a very early stage. He has asked for the matter to be looked at by an ombudsman for a final decision.

I issued a provisional decision on this case as follows:

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

My role here is to resolve disputes informally – so I won't be commenting on everything put forward by the parties – I will focus on the matters I consider central to this complaint.

I note here that several issues have arisen post MI issuing its final response letter. However, these appear to be broadly connected with the issues Mr H initially complained about, or are issues which MI has been willing to investigate and give its view on while the matter has been with this service. So I am proceeding on the basis that these later issues are matters I can fairly and reasonably make a finding on here.

The 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.

I note that Mr H has referred to using the car for work – however, it appears that he entered into the finance agreement in a personal capacity and uses this car as his personal family vehicle. So I am satisfied that he was acting primarily as a consumer rather than a business here when he was supplied the car. In which case the Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”.

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the 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 mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA') says 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 goods.

MI supplied Mr H with a second-hand car. Here I note the car had travelled 57,975 miles and was around 6 years old at the point of supply. So it is fair to say that the reasonable person would accept that it is likely to require more repairs and maintenance than a newer, less road worn car. However, I have also seen the description for the car in the advertisement and note that it is described as 'a stunning car' and in 'great condition' which would raise the expectations of the reasonable person as to the condition of the car as supplied and its freedom from certain defects. Furthermore while the price agreed here of £15,999 would be less than the new price, it is still a significant amount of money for a car in any event. I have taken all this into account when determining what is fair and reasonable in the particular circumstances here.

Mr H has provided a detailed and credible timeline of the issues he has had with this car since the start. One of the things that stands out for me is the highlighting of numerous safety issues within the first few weeks and months of use. These are:

- Driver seatbelt unclipping by itself – identified in the first week following supply.*
- Rear seatbelt trim plate becoming detached and causing injury to his son – identified 3-4 weeks following supply.*

- Front passenger seat base coming loose – identified within the first 6 months after supply.

Looking at the requirements around satisfactory quality, regardless of whether a car is second-hand it needs to be sold in a safe condition. From the evidence I have seen I am not satisfied that it was. I also think that based on these issues alone Mr H has a reasonable cause for rejection of the car. I will explain why.

The first issue with the driver seatbelt is clearly something that could be very dangerous. It was apparently highlighted by Mr H within days of taking delivery of the car on 5th September 2022 and was remedied shortly after. I can see the dealership confirm the following:

‘The issue with the seat belt not clicking fully in we have cleaned out the buckle and lube the internal mechanism , this is now operating as it should’

So my starting point here is there has been an apparent breach of contract (as in the car not being of satisfactory quality due to a significant safety defect) within 30 days of Mr H taking the car.

Mr H has then explained that after he took back the car he had cause to use the rear middle seatbelt for the first time on 1st October 2022. However, he says the plastic trim plate in the ceiling that holds the belt in place detached and fell into his sons face. Mr H is naturally very upset about this and has shown a picture of the detached plate, the unsightly hole in the ceiling of the car left as a result of this and the injury sustained to his son.

Although the detached part has a cosmetic role it is also a part the seat belt threads through the ceiling of the car. If this is improperly secured it poses a clear safety risk. While I don’t know the exact circumstances of said detachment what Mr H has said is credible and consistent and supported with photographic evidence. Furthermore, it seems plausible in light of the other issues Mr H identified with the car around that time which indicate a general theme around loose and missing internal trim – some of which clearly relate to significant safety features of the car.

It is quite clear that after this incident Mr H wanted to reject the car – he says he wrote to the dealer to express his desire to reject it on 3rd October 2022 but was told he had to accept further repairs which he didn’t really want. I can see in an email where Mr H does at one point accept repairs but he is clearly reluctant to, which is consistent with his account that he expressed a desire to return the car but was prevented from doing so.

I think it is arguable that in light of the provisions of the CRA and specifically the 30 day right to reject Mr H should have been allowed to reject the car when I am persuaded he asked to in early October 2022.

However, even if I put aside the issue with the rear seatbelt I note that a few months later Mr H said he discovered the front passenger seat was coming away from its base shortly before he was due to take the car on a family holiday. This again is consistent with the theme that the car was sold in a condition where the internal fixings were damaged or loose. Mr H has provided a credible video showing the issue – and it appears to be a safety issue that would render even a second-hand car of unsatisfactory quality. I appreciate MI has not fully looked into this issue to rule out the causes – but considering the other trim issues it stands to reason that this is likely something not caused by Mr H misusing the car or usually expected wear and tear but a point of sale fault or issue around durability that a

reasonable person would not expect to have occurred (particularly as it was identified within the first 6 months of purchase).

Although the issue with the front passenger seat was not identified within the first 30 days from supply I note that it is a likely breach of contract which comes after an opportunity to repair the car (for the initial seat belt issue amongst other things). So in line with the CRA Mr H has the option to forgo repair and elect his final right to reject.

In summary, I consider the issues around the seatbelts and front passenger seat give rise to either the short term right to reject, or the final right to reject under the CRA. So on the face of it Mr H should have been able to reject the car previously but was apparently refused this opportunity.

In deciding what is fair and reasonable here I have also looked at the other issues Mr H has complained about which occurred at an early stage. I think some are arguably down to reasonably expected wear and tear in a second-hand car. However, considering the description of the car as 'stunning' and 'great condition' I think that having issues with the air conditioning and cruise control so soon after supply are not what a reasonable person would expect. Furthermore, although the issues with missing or loose trim (apart from those I have mentioned prior) and USB connection are arguably cosmetic and more minor – the expectation around the car based on the description (including listing the USB connection as a feature) does mean that these things have more weight in the overall assessment of satisfactory quality than they would otherwise.

So I think that looking at what is fair and reasonable here – aside from the safety issues mentioned previously there is an argument to say other factors (individually or cumulatively) have rendered the car of unsatisfactory quality shortly after purchase and gave Mr H the right to reject the goods either because he was still within the timeframe to assert the short term right to reject, or because (due to previous repairs) he was able to exercise the final right to reject.

I note that Mr H has also described later issues with the injectors and service messages relating to the '4x4' system. I think it is arguable, considering the mileage Mr H has travelled in the car since the point of supply (in excess of 15,000 miles) and the overall age and mileage of the car that these later issues are down to reasonably expected wear and tear. However, I don't consider I need to look into these issues in more detail– because ultimately I am satisfied that Mr H had the right to reject the car much sooner for other reasons – and I am satisfied that he has been unfairly prevented from doing this.

I know that MI has offered to take the car back to look at carrying out inspections and further repairs – but I don't think that is a fair resolution here in accordance with the remedies afforded to Mr H in the CRA. While I do accept that continuing to drive the car and having repairs carried out to it (which Mr H appears to have done) is not necessarily consistent with rejection I do understand that Mr H has explained he has had to continue using the car as he depends on it. And as I have mentioned – he was unfairly denied his right to reject at an earlier stage in any event. If Mr H had no other option than to continue using the car for his work and family then I do not consider it fair and reasonable for him to lose the right to reject it as a result.

Mr H has travelled notable mileage in the car since he has had it. So I don't consider it fair to refund him any of his payments to date. I note there does not appear to be a deposit or part exchange here so I will not be directing the business to refund in this respect.

Mr H says he has had repairs carried out to the engine for £800. I don't think it fair he should bear this cost if he is not going to benefit from it going forward so if he is able to produce an invoice and proof of his payment for the work I am likely to direct MI to pay this in my final decision. I know Mr H has also paid out for servicing and some other maintenance but I don't consider it fair to refund him for this because of the significant mileage he has covered and the likely cost of upkeep for a second-hand car during the period of use in any event.

However, I do recognise that Mr H has not had the experience he should have had with the car. With various things not functioning as they should and impacting his ability to use the car as intended (for example he has said that the loose seat on the front passenger side impacted the use of that seat). I appreciate this is a second-hand car and that some issues are cosmetic so would not have had significant impact on his overall use though. This is not a science but all in all I think a 5% refund of his payments to date would be a fair way of remedying this.

I also think that Mr H has been caused distress and inconvenience with the quality issues with the car – with inconvenience contacting the dealer and MI and also ongoing concern about the safety issues. I can't make an award for personal injury to his son here as Mr H is the eligible complainant - but no doubt the issue caused Mr H alarm. Overall, I think a £300 award for distress and inconvenience is fair here and in line with the awards set out on our website.

I know that Mr H has considered court action and has involved lawyers. This service is informal and free to use so I don't consider Mr H should be reimbursed for any legal costs or his own time in preparing his case.

If Mr H does not agree with my decision he is of course free to choose to pursue court action if he wishes. Or he can come to some other arrangement with MI based on its offer to take another look at the car. However, I hope the parties can use my decision as an opportunity to draw a line under this and move forward in a positive way.

My provisional decision

I uphold this complaint and direct MI Vehicle Finance Limited trading as Mann Island to:

- accept rejection of the car – collecting this at no further cost to Mr H and ending the finance agreement;*
- pay Mr H for the repairs to the engine (on the basis the costs are suitably evidenced as I have discussed above);*
- refund Mr H a 5% refund of each monthly payment he has made to date;*
- pay Mr H 8% simple yearly interest on all refunds from the date of payment to the date of settlement;*
- pay Mr H £300 for the distress and inconvenience caused.*

If MI considers it should deduct tax from my interest award then it should provide Mr H with a certificate of tax deduction.

I asked the parties for their responses. I have summarised these as follows:

Mr H broadly agrees with the decision. He has provided evidence to show the engine repair cost £240 and would like to reclaim this. He also thinks it fair he gets back £140 for some of the initial servicing he had done on the car considering the payments he has made for the

car overall, his £600 legal fees, and the unreceipted fixes of £80 for the wheel bearing and £60 for the seat.

MI says:

- it disagrees that the car is primarily used as a family car and points out Mr H's colleague had used the car;
- the car was supplied used and the cosmetic issues regarding trim would have been noticeable upon a visual inspection;
- in regard to the seatbelt trim being detached and passenger seat base coming loose the car didn't have these concerns on delivery and there is no evidence to confirm an inherent fault is the cause versus something that happened while in the customers possession;
- if the customer has covered a substantial amount of mileage between the engine repair and now there is an argument he has benefitted from the repair and it would be unjustified to refund this in full; and
- given the mileage the consumer has covered it would argue the customer has not had any impaired use of the car.

In response to what MI said Mr H has provided further information to explain that he uses his car for work but that primarily it is used as a personal car. And that his partner is the other person who occasionally uses the car for commuting but happens to work with him. He has also provided an up to date mileage reading to show he has travelled 28,975 miles in the car.

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.

MI has questioned Mr H's use of the car and indicates it is a business vehicle. I think it is clear to me that Mr H does use the car for work trips. However, from what Mr H has said and explained most of the mileage appears to relate to personal use. He has also explained a misunderstanding that MI had about his colleague using the car. So I am willing to accept that the car while used for business is 'mainly' for purposes outside of that – I don't think MI has proved otherwise. And therefore the Consumer Rights Act 2015 applies here. However, it is worth noting that even if I accepted MI's submission on this I don't consider it would make a difference to my decision in any event. I say this because other relevant law would apply and also imply a term into the contract between MI and Mr H that the car should be of 'satisfactory quality'. It would also give him access to the remedy of rejection – which I think is a fair remedy here in the circumstances as I have said above, particularly in light of the safety issues discussed above.

In relation to MI's point about defects being discoverable by a visual inspection I agree some cosmetic issues ought to have been revealed by this. However, I don't think the non-cosmetic issues (including those relating to safety) I have outlined in my provisional findings would be revealed by a visual inspection. Nor do I think any visual inspection would reasonably have been that detailed considering the description of the car. So I don't think this submission changes things here.

Furthermore, while MI suggest certain issues are not inherent faults I consider matters on the balance of probabilities. Here I note Mr H's credible testimony and how soon after supply many of these issues came to light. I also consider there no evidence Mr H misused the car and note that when certain issues were inspected (like the unclipping seat belt) there was no suggestion that Mr H had caused this. There is also an overall consistent theme relating to loose parts in different areas of the car that suggests to me a wider underlying issue present or developing at the point of sale. So I am not minded to change my findings on what are likely inherent faults here.

I note MI's submission about Mr H's notable use of the car and I accept that his use is above average for the time he has had it. To reflect his high mileage, and be fair to MI:

- I am not recommending that Mr H get the costs of the minor repairs or services he is claiming
- I am only recommending a relatively small amount of compensation for impaired use but otherwise MI is retaining all Mr H's payments

I still don't think Mr H should pay for every repair that he has made to the car here as some of this will relate to future benefit. So I am directing MI to pay for the engine repair. I think this is fair despite Mr H's significant mileage considering it is actually a lot less than first thought (£240 rather than £800) and noting I am not agreeing to refund Mr H for the other costs he is claiming. I note MI's points about the engine issues and potential causes relating to wear and tear from ongoing use – but I also note that had MI taken the car back when it should have Mr H would never have had to keep using the car and deal with this issue. All things considered MI should fairly pay for this.

I know MI has questioned whether Mr H should get compensated for impaired use at all considering his mileage but my direction is for a low amount considering his ongoing high usage. Furthermore, whatever mileage Mr H chooses to do it can't be argued that the car was working as it should have been throughout that time due to certain inherent faults. So I think a relatively small amount to reflect this is still fair.

Putting things right

MI should put things right as set out below for the reasons explained here (and incorporating my provisional findings as set out above).

My final decision

I uphold this complaint and direct MI Vehicle Finance Limited trading as Mann Island to:

- accept rejection of the car – collecting this at no further cost to Mr H and ending the finance agreement;
- pay Mr H £240 for the repairs he has paid out for to date;
- refund Mr H 5% of each monthly payment he has made to date;
- pay Mr H 8% simple yearly interest on all refunds from the date of payment to the date of settlement;
- pay Mr H £300 for the distress and inconvenience caused.

If MI considers it should deduct tax from my interest award then it should provide Mr H with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 17 January 2024.

Mark Lancod
Ombudsman