

The complaint

Mr D is unhappy with the compensation offered to him by MI Vehicle Finance Limited ('MI') after rejecting a car that had been supplied to him under a hire purchase agreement.

What happened

In July 2022, Mr D was supplied with a used car through a hire purchase agreement with MI. He part-exchanged a car that he had previously been supplied with; and was unhappy with due to faults that had developed. The part exchange price cleared the existing finance, so no additional deposit was put down. However, Mr D was charged £1,500 for the mileage he'd done in this car. This, along with the cost of a warranty, were added to the sale price.

The new agreement was for £50,260 over 49 months, with 48 payments of £961.46 and a final optional payment of £20,996 if Mr D wanted to keep the car. At the time of supply, the car was just over three years old, and had done 30,185 miles.

Mr D was unhappy with the quality of the car that had been supplied to him by MI. In February 2023 he complained to MI about this, as well as stating that his signature on the sales invoice had been forged; and that a mileage charge and undisclosed warranty charge had been added to the final sale price, and he was unaware of these at the time.

MI responded to the complaint in April 2023. They said that Mr D had been aware of the mileage charge and warranty, but these hadn't been broken down on the invoice, or on any other documentation Mr D had been supplied with. They also said that they were unable to find any fault with the car when it was inspected in March 2023 but, because the car had subsequently broken down, they had agreed to allow Mr D to reject it.

As such, MI unwound the agreement, and they offered him £200 for the inconvenience that had been caused. However, because Mr D had done 10,000 miles since the car was supplied to him, MI didn't refund any of the payments Mr D had made.

Mr D wasn't happy with MI's response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, although the amounts weren't broken down on the sales invoice, Mr D was aware of the amount he was paying for the car. And, as this was more than the advertised price, then she was satisfied Mr D was aware there were additional things he was paying for over and above the price of the car i.e., the £1,500 mileage charge for the car he handed back in part-exchange and the warranty.

The investigator also said that section 24(8) of the Consumer Rights Act 2015 allowed MI to make a deduction for usage when the car was rejected. So, given the mileage Mr D had done in the car between supply and rejection, the investigator said MI had acted fairly by not refunding any of the payments he'd made.

The investigator said that a warning message had appeared on the car in August 2023 - this message said a fault had been detected but the car was ok to still be driven. And Mr D had

been able to continue to drive the car until it broke down in March 2023. Given this, she thought that the £200 MI offered in compensation for this was reasonable, and she didn't recommend they paid anything more.

Finally, the investigator said that the documents Mr D said his signature was forged on didn't form part of the agreement. As such, this wasn't something we are able to consider.

Mr D didn't agree with the investigator. He didn't think that the key elements of his complaint had been assessed correctly, but he didn't expand on why he thought this was the case, or what he thought hadn't been considered. However, he did ask for an ombudsman to review his case and make a final decision.

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. Mr 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.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here. I note Mr D has complained that his signature has been forged on sales documents. While I appreciate his concern about this, it's not our role to determine whether a signature is genuine, nor do we have the expertise in this. If Mr D believes his signature has been fraudulently used, this is a legal matter, and something best dealt with by the police/courts. As such, I won't be considering this as part of my decision.

Mr D was able to use the car while it's been in his possession. Because of this, I think it's only fair that he pays for this usage. Our usual approach in these matters is to say that a financial business is able to keep the payments made by the customer, while the car was in the customer's possession and available to be used. However, for completeness, I've also thought about what I consider to be fair usage.

I've seen that Mr D had a mileage allowance of 8,000 miles a year under the agreement he signed with MI, and any mileage that exceeded this would be charged at 9 pence per mile (including VAT). The agreement also explained that this allowance would be pro-rated if the car was returned before the agreement ended.

While the agreement wasn't terminated early, and the mileage charge doesn't come into effect, I consider this to be important as it indicates the mileage Mr D expected to do. He was in possession of the car from July 2022 to April 2023 – a period of around nine months. As such, it would be reasonable to have expected him to have travelled around 6,000 miles. However, it's not disputed that, when the car was returned to MI, it had done around 10,000 miles since supply.

Given that Mr D has substantially exceeded the mileage that would be expected of him under the agreement, and that this would impact the value of the car, then it's only fair that this is taken into consideration when looking at what is a fair usage charge. Other factors include the age of the car, the amount financed, and the term of the finance. While there is no set formula for a fair usage payment, taking all of the above into consideration, I don't consider it to be unreasonable or unfair that MI retained the full payments made. Which, as I've already said, is in line with our standard approach in circumstances like this.

As such, and while I appreciate this will come as a disappointment to Mr D, I won't be asking MI to refund any of the payments he's made.

Turning to the mileage charge and warranty costs, I've seen that the car Mr D was supplied with was advertised at £47,500, and the agreement he signed on 19 July 2022 was for £50,260. As such, the agreement was for £2,760 more than the car was being sold for. It's my understanding that this is the same amount as the mileage charge and warranty cost.

While it's not disputed that there was no breakdown on the sales invoice, MI have said the dealership made Mr D aware of these costs. I haven't seen anything to show me that Mr D raised the issue of the additional £2,760 when he signed the agreement, and I think he would've done so had he not known what this amount was for. I'm therefore satisfied it's more likely than not that Mr D was made aware of the mileage charge and warranty cost. As such, I won't be asking MI to refund any of this money.

So, for the reasons stated above, I'm satisfied MI acted fairly and reasonably and I won't be asking them to do anything more. If the £200 compensation they offered hasn't yet been paid, it's now for Mr D to decide whether to accept this.

My final decision

For the reasons explained, I don't uphold Mr D's complaint about MI Vehicle Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 February 2024.

Andrew Burford
Ombudsman