

## **The complaint**

Mr B complains that a car he acquired under a hire purchase agreement (“agreement”) with MI Vehicle Finance Limited (“MI”) was misrepresented to him by the selling dealership and he would like to be fairly and reasonably compensated for this ‘fact’.

## **What happened**

In December 2020 Mr B entered into an agreement with MI for a six year old car costing £17,000 and which had an odometer reading of 54,910. Under the terms of the agreement, everything else being equal, Mr B undertook to make an advance payment of £5,000 followed by 59 monthly payments of £248.12 and 1 payment of £249.12 – making a total repayable of £19,888.20 at an APR of 9.2%.

In 2023, and for reasons not material to this complaint, Mr B tried sell the car. However, he says he was unable to do so because of a category N marker registered against it, something that wasn’t brought to his attention at the time of sale.

In April 2023 Mr B complained to MI about not being advised, at the time of sale, that the car had a category N marker registered against it.

In May 2023 MI issued Mr B a final response letter (“FRL”). Under cover of this FRL MI said that given Mr B had added approximately 50,000 miles to the odometer between December 2020 and April 2023 it was prepared to:

- accept the return of the car for onward sale (by it or its agents)
- treat the agreement as settled/repaid
- pay Mr B anything the car achieved (on sale) over and above the current agreement balance
- write off anything the car achieved (on sale) under and below the current agreement balance
- pay Mr B £100 compensation

Mr B’s complaint was considered by one of our investigators who came to the view that as well as the above MI should:

- refund Mr B the £5,000 deposit he had paid together with interest
- remove any reference to the agreement with credit reference agencies

In August 2023 Mr B confirmed the car’s odometer reading was 113,850.

In August 2023 MI confirmed that to settle matters it was prepared:

- to accept the return of the car
- to treat the agreement as settled
- pay Mr B £2,607.23

In August 2023 the investigator considered Mr B's complaint further and came to the view that MI's August 2023 offer was, in all the circumstances, fair and reasonable.

Mr B didn't agree and so his complaint was passed to me for review and decision.

In October 2023 I issued a provisional decision on this case. In summary I said:

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

*It's not in dispute that the car was sold to Mr B as being clear of any insurance write off markers, when in fact it was subject to a category N marker. It's also not in dispute that had Mr B been advised the car was subject to a category N marker he wouldn't have purchased it. So all I'm required to do in this case is to decide what MI should have to do to fairly and reasonably compensate Mr B for being sold a car that had been misrepresented to him and one which he wouldn't have purchased had it not been.*

*The point in dispute, when it comes to compensation, is how much MI should be able to retain of the agreement payments made by Mr B for the use of the car by him between December 2020 and now.*

*My role is to consider all the evidence presented by both parties and reach a fair and reasonable decision based on the facts of the case. We provide an informal complaints handling service and this is reflected in our approach. It also means that although I need to have regard to the relevant law I'm not bound by it and I can come to a different outcome to what a court might come to. I would also point out that calculating what a consumer should have to pay for the fair usage of a car in a case like this isn't an exact science.*

*Having considered...*

- *the miles Mr B has added to the odometer between December 2020 and now of approximately 60,000 miles (or 23,000 miles a year)*
- *the annual mileage allowance recorded in the agreement of 18,000*
- *the agreement term (of 60 months)*
- *how far into the agreement Mr B is currently (circa 34 months)*
- *the price paid for the car*
- *the current value of the car*
- *that the car, everything else being equal, would have some value at the end of the agreement*

*...I'm satisfied that the monthly payments made by Mr B represents a fair sum for him to have to pay for usage of the car.*

*So this means that I'm satisfied that MI can fairly and reasonably retain these monthly payments, but the deposit paid by Mr B should be returned to him together with interest.*

*So in summary this means that in the particular circumstances of this case I'm of the view that MI must:*

- *collect the car at no cost to Mr B (as already agreed)*
- *end the agreement with nothing further to pay (as already agreed)*
- *remove any information recorded with credit reference agencies in respect of the agreement*

- *refund to Mr B the deposit paid by him of £5,000 together with interest*

Mr B responded to my provisional decision to say he accepted it and MI responded to it to say it had nothing further to add.

### **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.

As Mr B has accepted my provisional decision and MI has confirmed it has nothing further to add, I can confirm that I see no good reason to depart from my provisional findings and I now confirm them as final.

### **My final decision**

My final decision is that MI Vehicle Finance Limited must:

- collect the car at no cost to Mr B
- end the agreement with nothing further to pay
- remove any information recorded with credit reference agencies in respect of the agreement
- refund to Mr B the deposit payment he made of £5,000 together with interest at 8% simple per year from the date of payment to the date of settlement\*

*\* HMRC requires MI Vehicle Finance Limited to take off tax from this interest. If Mr B asks for a certificate showing how much tax has been taken off this should be provided*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 December 2023.

Peter Cook  
**Ombudsman**