DRN-3596263

The complaint

Mrs C complains that she has been charged for excess mileage when her agreement with RCI Financial Services Limited ("RCI") was voluntary terminated.

Mrs C has been represented. But for clarity, I've only referred to her throughout this decision.

What happened

In February 2016, Mrs C entered into a hire purchase agreement with RCI to acquire a used car. The mileage of the car was 5,010 and the total repayable under the agreement was £18,636.65. Mrs C was required to make 48 monthly payments of £248.24 (after factoring in the initial deposit) and there was a final optional payment of £5,222.13 if she wished to buy the car at the end of the agreement.

The agreement entitled Mrs C to terminate the agreement at any time before the final payment was due. If Mrs C exercised this option, the agreement set out that RCI would be entitled to the return of the car and at least half of the total repayable under the agreement. This was £9,318.83.

As part of the agreement, Mrs C had an annual mileage allowance of 10,000. RCI said that if Mrs C exceeded this allowance, she would be required to pay 8 pence (including VAT) for every mile that she exceeded the allowance by.

In late September 2018, Mrs C contacted RCI and said she wanted to exercise her right to terminate the agreement early. RCI processed this request in early October 2018. Subsequently, the car was collected by RCI's recovery agents – who I'll refer to as B.

An inspection was carried out at Mrs C's property by B. It said the following damage, totalling £422.57, was outside of fair wear and tear:

1. Left hand front alloy wheel – rim damage - £55
2. Foglamp surround – gouged - £22.57
3. Front right door – scratched - £40
4. Central right post – scratched - £48
5. Rear bumper – dent - £53
6. Rear bumper – misaligned - £25
7. Left quarter panel – dent - £138
8. Front left door mirror housing – scuffed - £41

RCI noted that when the car was handed back, the mileage was 42,719. It said as Mrs C had the car for 32 months and so, she had a pro-rated mileage allowance of 26,667. It said because Mrs C had travelled 37,709 miles in the 32 months she had the car, she had exceeded her mileage allowance by 11,042 miles. RCI charged Mrs C £883.39, as she had exceeded the mileage allowance on the agreement. This was in addition to half of the total amount repayable under the agreement and the damage charges identified by B. In total, it said Mrs C owed it £1,305.96.

Following this, Mrs C contacted RCI and said she wanted to dispute the damage charges, as she felt they were all within fair wear and tear. She also said she wanted an explanation of when the damage occurred. RCI said it didn't cause the damage and said either Mrs C or a third party must have caused the damage. Mrs C later wrote to RCI in November 2018 to query the inspection report.

In February 2019, RCI passed the outstanding debt to a third party to collect the outstanding amount. I'll refer to the third party as "Q".

In September 2020, Q contacted RCI and said it hadn't responded to Mrs C's letter she sent it in November 2018. RCI said it had attempted to contact Mrs C following receipt of the letter and asked Mrs C to contact it, but it didn't receive any contact from her.

In March 2021, Mrs C complained to RCI. She said it broke regulations as it didn't respond to her complaint from 2018 and it passed the debt to Q, even though Mrs C was disputing it with RCI. Mrs C said RCI should compensate her £1,305.96 because of the regulations it had broken and the upset it had caused her. In April 2021, RCI asked Q to place a hold on any collection activity.

In May 2021, RCI rejected Mrs C's complaint as it was satisfied that the excess mileage and damage charges had been raised correctly. It said it had reduced the outstanding amount owed to £1,057.72 as it had collected a monthly payment after the voluntary termination had been processed.

Unhappy with this, Mrs C referred her complaint to this service. She reiterated her complaint about the damage charges. She said RCI didn't tell her why it reduced the debt to £1,057.72 until it responded to her complaint in May 2021. She said she also disputed the excess mileage charge and said RCI hadn't reviewed this complaint point.

Our investigator looked into the complaint. She said she didn't think Mrs C's hire purchase agreement clearly set out the charges for excess mileage on voluntary termination. She also said she didn't think the agreement or RCI's pre-contract information or conversations provided an adequate explanation about whether the excess mileage charge would be payable on voluntary termination. She said as a result of all this, she thought the requirements of the Financial Conduct Authority ("FCA") handbook CONC 5.2.5R hadn't been met. And she said she found that the agreement between RCI and Mrs C wasn't clear so she said she found RCI breached "*Principle 7*" of the FCA "*Principles for Businesses*". She said it wasn't fair and reasonable for RCI to charge Mrs C the excess mileage charge of £883.39.

Our investigator also considered the damages identified by B. She said six of the charges were applied fairly in line with the industry standard - The British Vehicle Rental & Leasing Association's ("BVRLA") fair wear and tear guidelines. But she said RCI should remove the charges for the front left door mirror housing and the misaligned rear bumper.

RCI responded and said it had removed the total outstanding amount of £1,057.72. And so, it said Mrs C owed it no further amounts.

Mrs C disagreed. She said she had complained about both Q and RCI. She queried why RCI continued to pursue a debt she had disputed and queried whether our investigator had considered the emotional upset caused. She said RCI should have refunded the overpayment she had made, rather than reducing the outstanding balance she owed. She asked whether the investigator had considered that Mrs C could have repaired the damage identified by B for a lesser cost. She also said RCI should provide evidence it had the repairs carried out. She said she had been threatened without justification.

Our investigator responded and said Mrs C would need to raise a separate complaint against Q if she was unhappy with its actions. She said damage charges could still be applied by a lender, even if it didn't have any repairs carried out before it sold a car. So she said she couldn't say RCI was obliged to carry out repairs to the car.

Mrs C said our investigator hadn't considered the emotional upset she had suffered for three years.

Our investigator said Mrs C hadn't paid the outstanding amount RCI had pursued her for and so, she had no financial loss. She also said Mrs C hadn't evidenced harassment from RCI chasing the debt. She said creditors were entitled to take reasonable steps to recover money owed to them and this in itself wouldn't be considered as harassment.

Mrs C said RCI hadn't contacted her for three years as it knew its behaviour was unacceptable. She said she wanted the ombudsman to consider compensation for the emotional stress caused. She said RCI had unfairly instructed Q to collect an incorrect amount. She said this was unreasonable and was harassment.

As Mrs C remains unhappy, the case has been passed to me to decide.

Our investigator correctly advised Mrs C she'll need to raise a separate complaint against Q if she is unhappy with its conduct. So this decision won't comment on Mrs C's complaint about the way in which the debt was collected by Q or any of its actions.

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.

I've read and considered the whole file and acknowledge that Mrs C has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of our service allow me to do this.

Mrs C complains about a hire purchase agreement. Entering into consumer credit contracts such as this is as a lender is a regulated activity, so I'm satisfied I can consider Mrs C's complaint against RCI.

In this case, there's no dispute that RCI shouldn't have charged Mrs C for the excess mileage charges it said were chargeable upon voluntary termination of the agreement. Both parties also agree that RCI shouldn't have charged Mrs C for two damage charges B calculated for damage to the front left door mirror housing and the misaligned rear bumper. As these charges aren't disputed, I've not commented on them as part of this decision.

Instead, I've concentrated on the outstanding dispute points in this case. These are whether RCI was entitled to charge Mrs C for the remaining six damage charges. And whether it should compensate Mrs C for any distress and inconvenience caused to her.

Damage identified by B

The terms and conditions of Mrs C's hire agreement explain that Mrs C had an obligation to keep the car properly maintained. They said Mrs C was responsible for any loss or damage to the car, regardless of whether the loss or damage was her fault.

When reaching my decision, I'm required to consider relevant industry guidance. Here, relevant guidance includes the guidelines on fair wear and tear published by the trade body, the BVRLA. This guidance is generally intended for the return of new cars at the end of the first leasing cycle. RCI is a member of the BVRLA.

Left hand front alloy wheel

In relation to alloys, BVRLA guidance says:

"Dents on wheel rims and wheel trims are not acceptable.

Scuffs up to 50mm on the total circumference of the wheel rim and on alloy wheels are acceptable.

Any damage to the wheel spokes, wheel fascia, or hub of the alloy wheel is not acceptable."

I've looked at the photograph provided for the left hand front wheel alloy where damage was identified by B. The photograph shows damage and scuffing in excess of 50mm. In light of this, I'm satisfied RCI is entitled to charge Mrs C for the damage to the left hand front wheel alloy as it falls outside of fair wear and tear.

Foglamp

In relation to lamps and lenses, the BVRLA guidance says:

"Minor scuff marks or scratches up to 25mm are acceptable. Holes or cracks in the glass or plastic covers of lamp units are not acceptable".

I've looked at the photograph provided for the foglamp where damage was identified by B. The photograph shows damage and scuffing in excess of 25mm to the plastic cover. In light of this, I'm satisfied RCI is entitled to charge Mrs C for the damage to the foglamp as it falls outside of fair wear and tear.

Front rear door and c post rear scratches

The BVRLA says for scratches to bumpers and the body and paint of a car:

"Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out. A maximum of four surface scratches on one panel is acceptable".

I've looked at the photographs for both of the areas where scratches were identified. These show there is a noticeable scratch on the door and a scratch on the c post. For both scratches, the primer is showing. As a result of this, I think it's fair for RCI to charge Mrs C for the damage to both these areas as it falls outside of fair wear and tear.

Rear bumper and left quarter panel dents

In relation to paintwork, body, bumpers and trim, the BVRLA guidance says:

"Dents (up to 10mm) are acceptable provided there are no more than two (2) per panel and the paint surface is not broken. Dents on the roof or swage line on any panels are not acceptable."

I've looked at the photographs for both of the areas where dents were identified. Both photographs show a zebra board demonstrating the extent of dents. The photographs show clear distortion where the dents are. I'm satisfied the dents in both areas are in excess of 10mm and so, I think it's fair for RCI to charge Mrs C for the damage to both these areas, as it falls outside of fair wear and tear.

Overall, I think RCI are entitled to pursue Mrs C for £356.57 which represents the damage that falls outside of fair wear and tear. This is the total damage charges - £422.57 - less the two charges both parties agree should be removed totalling £66.

Mrs C said she could have repaired the damage identified by B for a lower cost than RCI had charged. She also said RCI should provide evidence it had carried out the repairs.

I've thought carefully about this, but it would be down to Mrs C to carry out any repairs for any damage caused to the car whilst she had it, before the car was collected by B. She didn't do this.

In addition, it is down to RCI to decide whether it will repair the car or instead absorb the impact of the damage to the sales price of the car. I don't think the damage charges are excessive and neither do I think they're disproportionate to the damage that has occurred. So, I don't think RCI did anything wrong when it didn't provide Mrs C with an opportunity to repair the car after handing it back. And neither do I require it to provide Mrs C with evidence it made any repairs or the sales price of the car, if it decided not to carry out the repairs.

Does RCI need to do anything further to put things right?

Mrs C has said RCI pursued her for an incorrect amount, it passed the debt to a debt collection agency, it caused her emotional stress and it should have refunded the additional monthly payment it collected to her directly, instead of removing it from her outstanding balance.

I've thought about all of these issues and whether I think RCI needs to do anything to put things right. Whilst I think RCI made some errors, I'm not asking RCI to do anything further, as I think it has already done enough to put things right. I'll explain why.

After the car had been collected by B, RCI wrote to Mrs C and let her know she owed it a total of £1,305.96. This was correct at the time because the excess mileage charges totalled £883.39 and the damage charges totalled £422.57. So it was pursuing her for the correct amount at the time. However, on or around the same day the voluntary termination was processed, Mrs C's statement of account shows a Direct Debit payment of £248.24 was debited from Mrs C's account. This shouldn't have been debited as the voluntary termination had been processed. RCI's system notes also show it was aware there was an overpayment on the agreement when it issued the letter to Mrs C.

I can see that the statement of account shows the same day a payment was debited from Mrs C's account, the payment was credited to Mrs C's hire purchase account. Following this, the amount was deducted from Mrs C's outstanding damage charges and so, the outstanding charges reduced from £1,305.96 to £1,057.72. Mrs C says this amount should have been paid to her directly instead of being reduced from her outstanding charges. I agree and I think RCI should have refunded this amount directly to Mrs C, instead of deducting it from her outstanding charges.

With regards to RCI passing Mrs C's account to Q, I don't think RCI has acted unfairly. This is because when Mrs C contacted RCI in November 2018, RCI attempted to contact her in December 2018 to address her concerns and it left a voicemail for Mrs C to contact it. It didn't hear back from Mrs C and so, it instructed Q to collect the debt on its behalf. So I don't think RCI has acted unfairly because at the time, it hadn't received contact from Mrs C and she had an outstanding amount owing towards her balance.

Mrs C says because RCI pursued her for this outstanding debt, she was caused emotional stress due to the unreasonable behaviour of RCI which was harassment.

This service has already explained why we can't consider the actions of Q and so I'll focus on the actions of RCI only. In addition, this service isn't the regulator. The FCA is the regulator and so, this service doesn't have the power to fine or punish businesses.

Bearing this in mind, I've thought carefully about whether I think RCI caused Mrs C distress and inconvenience. Having done so, I accept that RCI likely caused Mrs R some distress and inconvenience. But I'm satisfied some distress and inconvenience is expected when pursuing a complaint. In this case, I don't think RCI's actions amounted to harassment given it attempted to call Mrs C and when it didn't receive payment, it passed the account to Q. I've seen no suggestion that RCI continuously and unreasonably contacted Mrs C. And so, I don't think RCI harassed Mrs C.

In addition, I accept that the amount RCI had told Q to pursue Mrs C was incorrect as all parties agree a significant amount of the charges shouldn't have been charged to Mrs C. I also note that it doesn't appear Mrs C made any attempts to make any payment to RCI for any of the charges and instead disputed all the charges. Having said this, I appreciate it's likely to have been stressful for Mrs C to receive notification that she owed charges in excess of £1,000 when this should have been around £350.

Overall, having considered what's happened, I don't think RCI should have deducted the additional payment debited from Mrs C's account towards the outstanding charges she owed

it and I think RCI likely caused Mrs C some distress and inconvenience when it pursued her for an amount higher than she owed.

The total amount RCI pursued Mrs C for was £1,305.96. Of this, £883.39 represented the excess mileage charge. And this service is satisfied two of the charges totalling £66 should be removed. This means Mrs C's remaining outstanding liability would be £356.57. However, RCI also retained an additional payment of £248.24 made towards Mrs C's agreement to reduce the total amount of charges she owed. Taking this into consideration, this means that Mrs C would have an outstanding balance of £108.33 to pay towards the damage charges.

However, as a resolution to this complaint, RCI has already written off this outstanding amount. Having thought about this and any distress and inconvenience likely caused to Mrs C, I think RCI acted fairly and reasonably by writing off the remaining £108.33 and I think this represents fair compensation for the errors it made. So it follows that I don't require RCI to do anything further.

My final decision

My final decision is that I'm satisfied that what RCI Financial Services Limited has already done to put things right for Mrs C is fair and reasonable in all the circumstances of her case. So I'm not requiring it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 18 January 2023.

Sonia Ahmed
Ombudsman