

The complaint

Miss F complains about the quality of a car she acquired under a hire purchase agreement with RCI Financial Services Limited (RCI).

What happened

In December 2020, Miss F entered into a hire purchase agreement with RCI to acquire a brand-new car. The cash price of the car was around £31,630. Miss F's monthly repayments on the agreement were around £454 over a 48-month period. There was also a final repayment – customer option of around £13,834. In addition to these, Miss F selected an optional service plan for which she was paying approximately £5 a month.

Miss F has told our service that shortly after she acquired the car, she started to experience issues with it. Below is a list of issues Miss F said she had experienced, plus a short summary of when she said that these were first noticed or brought to the attention of the service department:

- Heating/aircon loud noise at beginning of its operation and leaking air vent – Miss F said that the noise was there from day one in January 2021;
- Car charger issues – within the first month of purchase;
- Key batteries not lasting long enough – Miss F said that she has replaced the batteries many times on both, the main key and the spare key;
- Grill – Miss F said that she was under the impression that her car would come with a different grill;
- B Mode not working properly causing the car to jolt forward – started only a few months after its acquisition;
- Rust on the undercarriage of the car - spotted in September 2021;
- Breaks squeaking – initially checked in September 2021, and were lubricated on many occasions but Miss F says they are still squeaky;
- Mobile phone application issues (being unable to use certain functions) – Miss F said that the application has last fully worked in September 2021;
- Active Braking System not working properly due to an issue with the sensor – first noticed and reported to the dealership in September 2021;
- Steering Wheel was damaged/scratched whilst the car was in for a service;
- Cabin filter needed replacing in January 2021;
- Tyre pressure gauge issues – Miss F said this was showing incorrectly prior to the last car health check that was completed in April 2022;
- Driver's side handle getting stuck in an outward position – approximately started to happen mid-2022;

Overall, Miss F was unhappy with the car and felt that a lot of the above issues were not fixed, so she raised a complaint with RCI.

In April 2022, RCI wrote to Miss F. They said that her car was booked into the dealership on 12th April 2022 to investigate the noise when heating is on and the rust under the car. And following inspection, the dealership found that the rust under the car is normal surface rust so not a concern. They also said that the dealership was unable to replicate any noise in

relation to the heating and that they were also unable to replicate the issue with the brakes' squeal. RCI said that the dealership did, however, offer to remove and clean the breaks, but as this would not be covered under the terms of the warranty, this offer was declined. RCI said that the dealership's investigation found that the air-conditioning needed re-gassing which was completed at no cost to Miss F and two replacement batteries for the key cards were provided. RCI also offered £150 to Miss F as a gesture of goodwill for the inconvenience this matter has caused her. RCI went on to say that, if Miss F is looking to come out of the finance agreement, she may wish to consider selling the car and settling the finance agreement in full.

Miss F was not happy with this, so she referred her complaint to our service.

Our investigator thought that the car had developed a fault, and it was of unsatisfactory quality when supplied. More specifically, he thought that the car was not of satisfactory quality at point of supply due to faults with the front sensor and the wireless charging. But he was of the opinion that the faults had now been repaired under warranty at no cost to Miss F. And he felt that the £150 offered by RCI to Miss F for the distress and inconvenience was fair and reasonable. He did however partly uphold the complaint and asked RCI to reimburse Miss F for any additional cost she incurred when obtaining courtesy cars whilst her car was being repaired.

RCI agreed with the investigator.

But Miss F disagreed and thought that she should be able to return the car without having anything further to pay.

So, the complaint has been passed to me to decide.

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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. But I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

Miss F acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. RCI is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality. The Consumer Rights Act 2015 (CRA) covers agreements such as the one Miss F entered into. Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered to be of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other

relevant circumstances. I think in this case, those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The 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.

In Miss F's case the car was brand-new, with a cash price of around £31,630. So, I think a reasonable person would expect it to be of a higher quality than a cheaper and/or previously used car. I think it would also be reasonable to expect the car to last a considerable period of time before significant problems occur, and it would be reasonable to expect it to be free from even minor defects shortly after it was acquired.

Miss F thinks that she should be entitled to reject the car. And if that is not an option, she thinks that RCI should fix all outstanding issues and provide her with a correspondence that indicates all issues have been resolved.

The CRA sets out that Miss F has a short term right to reject the car within the first 30 days if the car is of unsatisfactory quality, however, she would need to ask for rejection within that time. Miss F would not be able to retrospectively exercise her short term right of rejection at a later date.

Miss F purchased the car in December 2020. Shortly after, she started to experience problems with the car. The dealership fixed some faults, but Miss F said that several of the faults are still present, so, she would like to reject the car. Miss F may have spotted some of the faults within the first 30 days. But even if I accept there were faults which made the car of unsatisfactory quality, Miss F only had a short term to reject the car within the first 30 days, and only if she expressed her wish to do so. I've not seen any evidence which shows that she expressed her wish to reject the car within that time and later she did exercise her right to repair.

The CRA says that, if the car acquired wasn't of satisfactory quality, or not as described, then Miss F would still be entitled to still return it after 30 days, but she wouldn't have the right to reject the car until she has exercised her right to repair – this is called her final right to reject. So, Miss F doesn't have an automatic right to return the car if there's a fault. For me to conclude that Miss F can now exercise her right to reject the car, I would need to see that the car wasn't of satisfactory quality, and that RCI's one attempt at the repair has failed.

Considering the age and mileage of the car, and the faults Miss F experienced with the charging of the car and the Active Braking System not working properly (due to issue with the sensor), I think a reasonable person wouldn't consider it reasonable for the car to have such faults of such significance so soon after acquisition. So, I don't think the car was sufficiently durable. For this reason, I don't think the car was of satisfactory quality.

In September 2021 the dealership diagnosed the car and this time the above-mentioned faults were fixed, and the car was returned to Miss F in October 2021. I've not seen enough to say that most likely the two faults mentioned above have reoccurred. Considering that the repair appears to have been successful, I don't think it would be fair and reasonable for Miss F to be able to now exercise her right to reject the car.

I have considered that Miss F thinks that the fault with the Active Braking System is still present in the car, but based on what I've been given I can't say that most likely this fault is still present.

Miss F also said that there are many other faults that are still not fixed. So, I've considered what she has told our service and I've taken into consideration the evidence that has been

provided such as what RCI have said and the inspection report commissioned by Miss F. I will cover each alleged fault one by one below.

Heating/aircon loud noise at beginning of its operation, leaking air vent, and a cabin filter needed replacing

Miss F sent us a video of the noise she is referring to and a picture of, what appears to be, liquid coming from the air vent. RCI said that the dealership's investigation found the air-conditioning needed re-gassing which was completed and in January 2021 the cabin filter was replaced. In the video that Miss F gave us there still seems to be a small popping sound, so I've considered whether this is a fault. The report Miss F provided said that the noise in question was evident only momentarily after switching on the heater, but when all settings and temperatures were checked it was confirmed they were operating satisfactorily. And the report said that in their opinion this was a characteristic of this model of car. It also said that AC refrigerant has been re-gassed by the supplying dealer and when the car was compared to one of the same model this same noise was present. I know Miss F said that when she drove a newer model of her car the noise wasn't there but based on that alone I can't say that most likely there is a fault with her car. Newer models can have different systems, the car could've been a different specification to her model, or even, this aspect may have been improved since, but that doesn't automatically mean that her car has a fault. So based on all the available evidence I can't conclude that most likely there is a fault with the heating and cooling system in the car in question.

Key batteries not lasting long enough

Miss F said that she has replaced the batteries on many occasions, but there can be many reasons for batteries not lasting long enough and based on what I've been given I can't say that, on balance, there is a fault with the main key and/or the spare key of the car.

Grill

Miss F said that she was under the impression that her car would come with a different grill, but I've not been presented with any evidence that would allow me to say that the supplying dealership told her that the car would come with a different type of grill.

B Mode not working properly causing the car to jolt forwards

Miss F has provided our service with a video, where she said that her dash cam captured showing that the car speeds up slightly from 14mph to 17mph. She said this is the only evidence she can get of the car jolting forwards. But this evidence is not enough for me to say that most likely there is a fault with the car's 'B' mode. From the video I can't tell if it is the system working properly or not and I can't tell what causes the car to accelerate or to slow down. Plus, I considered that the report provided by Miss F said that when the car was road tested in 'B' Mode this allowed the car to slow down and stop without applying the foot break. So based on everything I can't say that most likely there is a fault with the car's 'B' mode.

Rust on the undercarriage of the car

Miss F provided our service with a link to a video where an older model of her car is shown and that one has no rust in the spots, she believed that her car does. I've looked at the video but I don't think this is evidence that Miss F's car shouldn't have rust in the area in question. Different cities, climates or even times of day and where a car is driven can have impact on the amount of corrosion a car has. RCI have said that the dealership was of the opinion that the rust under the car is normal surface rust of no concern. The inspection report that Miss F provided to our service only mentions slight surface corrosion and it concluded that it is part of normal in-service usage and that it requires no rectification. So, taking everything into

consideration, I can't say that most likely the rust evidenced on the undercarriage of the car makes it not durable.

Breaks squeaking

RCI said that the dealership was unable to replicate any noise in relation to the brake squeal at the time. Miss F has provided our service with a video showing the brakes making some minor but evident noise. I've considered the age and mileage of the car when this issue was raised with the dealership in September 2021, alongside the fact that brakes are subject to wear and tear. And Miss F's report said that minimal wear to the visible pads was consistent with the indicated mileage the car had travelled at the time. So overall I don't think Miss F's car was faulty at the point of supply – or that this means it wasn't durable - because of the intermittent noise of the brakes being heard as I think it's most likely this is just due to normal wear and tear.

Mobile phone application issues (being unable to use certain functions)

Miss F said that since September 2021 her mobile car application is not working properly. The inspection report she has provided did confirm that the application was not communicating with the car. It said there was no specific reason for this and that it could be that the car requires a software update, or it could be that Miss F's mobile phone is not compatible with the application. Technology changes from time to time, so I can't say that most likely this issue is down to a fault with the car as opposed to something that is generally required as part of the ongoing maintenance of the car.

Tyre pressure gauge issues

Miss F said this was showing incorrectly prior to the last car health check that was completed in April 2022. The report she had provided said that the tyre pressure monitoring system confirmed that the tyre pressures were too high, therefore requiring adjustment to be within manufacturer's specification. It said that when the car is in use, the tyre pressure will undoubtedly increase as the tyre temperature increases as a result of normal in-service usage and, as per the owner's handbook, needs to be checked on regular basis. The report also concluded that the tyre pressure monitoring light did not appear on the dashboard indicating the system was working correctly. Based on all of the above I can't say that most likely there was any fault with this system.

I understand that later, while Miss F's complaint was at our service, she said that a warning light on the dashboard for the tyre pressure had come on. She also told us that this issue has now been repaired at the beginning of 2023. But this issue has occurred a long time after Miss F had acquired the car. So, I can't say that most likely this issue was present or started to develop at the point of supply.

Driver's side handle getting stuck in an outward position

Miss F sent our service a photo that shows that the handle is getting stuck in the open position. Miss F said that this approximately started to happen mid-2022 at which point she already had the car for approximately a year to a year and a half. So, I can't say that most likely this issue was present or started to develop at the point of supply or that this makes the car not sufficiently durable.

I know that Miss F was also unhappy with a couple of other aspects, so for completeness I will cover these off below.

She mentioned that when her car was in for servicing the steering wheel was damaged/scratched, but this has now been rectified for her and it is not something that RCI is liable for.

Miss F has told our service that, as a side note, when she drove the car, she left her house with 27% battery and normally she uses about 6% when commuting to work. But after a few minutes of her arriving at work, the battery had depleted to 8%. She said this has never happened before and that she had to go and charge the car during her lunch break. I've considered this but I've also considered that the report she had provided to our service said that, if there were issues with the battery storage, there would be a warning light displayed on the driver's information panel to confirm that the battery performance was not within manufacturer's specification. Also, I've considered that there are many things that can affect the battery usage and I've not seen any evidence that shows that most likely the battery is not functioning correctly. Miss F has also told our service that this issue has not reoccurred.

Overall, I don't think Miss F has demonstrated that the repairs previously completed have now failed, therefore giving her the right to reject the car. So, while I sympathise with the situation Miss F finds herself in, I don't think I can reasonably require RCI to allow her to exercise her right to reject the car.

As I said above, most likely, the car was not of satisfactory quality at the time of supply and this matter caused Miss F a lot of distress and inconvenience when trying to resolve it. I think it was also very stressful for her when the car was giving her issues with the charging and the issue she experienced with the sensor linked to the Active Braking System. And I know she had to bring the car to the dealership's service department more than once for repairs, among other reasons, to have the steering wheel replaced. So, I don't think she would've needed to do some of those things had RCI supplied her with a car that was of a satisfactory quality at the point of supply. But I think RCI offer of £150 in compensation fairly reflects the distress and inconvenience caused to Miss F.

Furthermore, while the car was being fixed, she needed to source a courtesy car for which she has incurred expenses. Had the car been of satisfactory quality she wouldn't have incurred these expenses, so I think that it is fair and reasonable that RCI refund her the cost of the courtesy car she incurred during that time upon production of evidence for these expenses.

My final decision

For the reasons given above I think RCI Financial Services Limited's should:

- Refund any costs Miss F incurred for courtesy cars while her car was repaired, plus add 8% simple interest per year to these refunds, from the date of each payment to the date of settlement;
- Pay Miss F £150 in compensation for the distress and inconvenience caused if this has not yet been paid.

If RCI Financial Services Limited considers tax should be deducted from the interest element of my award, they should provide Miss F with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 19 June 2023.

Mike Kozbial
Ombudsman