

The complaint

Mr H complains that a used car supplied by RCI Financial Services Limited (trading as Mobilize Financial Services) under a finance agreement was misrepresented and of unsatisfactory quality.

What happened

Mr H acquired this car with a hire purchase agreement (HPA) in March 2022. He did a pre-purchase HPI search and noticed a mileage discrepancy in the MOT history – just over 51,000 miles was recorded in 2020 whereas the car's odometer showed around 15,600 miles at the point of sale. He asked the supplying dealer about this and the salesperson said the MOT tester must have recorded the wrong numbers and this would be corrected.

Not long after he collected the car Mr H had problems with the gearbox and a coolant leak and the supplying dealer replaced the gearbox mount and the radiator in April 2022, at no cost to him. When Mr H took the car for a service, about a year later, and he noticed the mileage recorded at the 2020 MOT was unchanged. The dealer said it contacted the 2020 MOT tester but they didn't have records dating that far back and offered to take the car back and clear the finance.

Mr H didn't think that was fair - as he'd lose his deposit and all the payments made toward the finance. But he's concerned the mileage discrepancy will impact adversely on his ability to sell the car and its re-sale value. He wants the MOT mileage record corrected and he also thinks it's possible the car may have been "clocked". Given the problems with the gearbox and radiator plus a mis-aligned headlight, he believes it may have been in an accident in the past as well. He's also unhappy that the dealer said the car had three previous owners instead of four. And it failed to honour offers made in 2022 of an extended warranty and two free services - the dealer had no record of the offer when Mr H mentioned it, although one service free was provided as a goodwill gesture.

RCI says the 2020 MOT mileage was recorded incorrectly due to an administrative error by the MOT tester. Mr H knew about this before sale so he wasn't misled about the car's actual mileage. And, in any event, the dealer offered to buy the car back but Mr H refused. RCI considers Mr H accepted the repairs offered in April 2022 and these were successful - there were no issues found with the gearbox and radiator at the most recent service – so it shouldn't have to do anything else.

Mr H referred the matter to our service and one of our investigators considered the evidence. In summary, she said she couldn't be certain what was said at the point of supply but she didn't think it likely there was a misrepresentation. She thought other records of the car's mileage suggest the discrepancy in the MOT history was due to human error and the dealer's offer to buy the car back was reasonable in the circumstances.

She suggested Mr H could get an expert to check the car if he's still concerned it may have been "clocked" and she explained we couldn't look into the offers of two free services and an extended warranty in this complaint against RCI as these were made by the dealer after the point of supply. She was satisfied the April 2022 repairs were successful and Mr H accepted

that at the time but she acknowledged he probably experienced some distress and inconvenience. She was satisfied these faults were probably present when the car was supplied and she found it fair RCI should pay Mr H £150 compensation and, if any adverse information was recorded on Mr H's credit file, this should be removed.

RCI accepted the investigator's recommendations but Mr H didn't agree. He asked for an ombudsman to review the matter. In summary, he said he doesn't understand why we can't require RCI to rectify the mileage discrepancy. He thinks this should have been done before the car was supplied. He feels misled into making the purchase, as he brought the issue to the dealer's attention before sale, and the salesperson convinced him they would sort it out. He's happy to keep the car but he wants this resolved and he may go to the police about the mileage. He also felt insulted that investigator referred to rectifying his credit file.

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.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Both parties have provided fairly detailed submissions so I'm going to have to summarise things in my decision. The rules of our service allow me to do this. I want to assure both parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. I'm going to concentrate however on what I consider is key to reaching a fair and reasonable outcome.

I should also make it clear at the start that the Financial Ombudsman Service provides alternative dispute resolution which is free to complainants. I'm not a regulator. I don't have the power to tell RCI how to operate on a day to day basis and it's not within my remit to punish a financial business or any individual. My job here is to look at all of the information available about this particular complaint, without taking sides, and consider the merits on a fair and reasonable basis.

Mr H brings this complaint to our service because RCI supplied this car under a HPA. And I'm looking at RCI's obligations arising out of that finance agreement in this decision. I'm required to take relevant law into account and I'm satisfied that includes the Consumer Rights Act 2015 (CRA) here.

Satisfactory quality

Under the CRA, RCI was required to ensure (amongst other things) that the car was of satisfactory quality at the point of supply. The quality of goods are satisfactory if they meet the standard a reasonable person would expect, taking into account any description of the goods, the price and all the other relevant circumstances. So, it's usually reasonable to take the car's age, price and mileage at the point of supply into account. This car was four years old, cost just under £20,000 and it had over 15,500 miles on the clock. I think a reasonable person would accept a vehicle like this is likely to have some parts that were worn and would need repairing or replacing at some stage but Mr H had a reasonable expectation that the car would be relatively durable.

I can see the problems with the gearbox and radiator appeared not long after supply. And I agree with the investigator it's more likely than not these issues were present at the outset. The CRA says a purchaser has the short term right to reject faulty goods but that must be

exercised within the first thirty days of purchase. I've seen nothing to show that Mr H did so. After the first 30 days (as far as it's relevant here) the CRA allows for a price reduction or a final right to reject goods, if there's been one repair or replacement and there's still a problem.

I'm satisfied that Mr H accepted the repairs offered here (which were undertaken at no cost to him) and it looks as if they were successful – the gearbox was checked at the 2023 service and no issues were found. So, I can't reasonably conclude that these issues mean the car is of unsatisfactory quality now.

RCI accepted the investigator's view that Mr H should be paid £150 compensation for the distress and inconvenience he's likely to have experienced because the car was supplied with these faults present. I understand a courtesy car was provided so Mr H was kept mobile while his car was repaired. It looks as if he had to take the car back several times for investigations and repairs however and I think £150 seems reasonable compensation for the distress and inconvenience caused.

Sometimes consumers stop making payments in this situation and adverse information, such as late or missed payments, are reported to credit reference agencies and the investigator indicated in her view that RCI should remove any such adverse information from Mr H's credit file. I'm sorry to hear Mr H felt this insulting, as he made all of his finance payments and no such information was recorded. It follows there's no need for me to require RCI to remove this in his case.

I understand Mr H is concerned now that the problems with the gearbox and the radiator, taken with a misaligned headlight identified at an MOT, suggest the car was in a serious accident in the past meaning it's of unsatisfactory quality. I've spoken to Mr H and explained that I don't think there's currently enough evidence to safely conclude that's likely. I asked if he would like more time to obtain further evidence (which could include a report from an independent technician, for example) but he didn't wish to do so. He wanted me to go ahead and make my final decision on the evidence available.

Was the car "clocked"?

There's no dispute that the mileage recorded at the 2020 MOT doesn't match the car's odometer reading at the point of supply. I'm satisfied that Mr H knew about this discrepancy before he agreed to acquire the car and take out the finance so I can't reasonably conclude he was misled about that.

I think Mr H seems to have been prepared to accept this was an administrative error at the outset but he's concerned now the car may have been "clocked" – meaning the mileage recorded at the 2020 MOT was accurate. I think that's unlikely. I'm satisfied the mileage recorded in the car's service history is consistent with the odometer readings. And I consider it's more likely than not the higher mileage recorded at the 2020 MOT was a typographical error. I don't think such mistakes are uncommon – according to the DVSA website it receives over 14,000 requests a year for correction. And it looks as if the MOT tester here probably reversed the first two numbers - so over 51,000 miles was recorded instead of just over 15,000.

Weighing up all of the evidence I'm not persuaded it's likely this car was "clocked" and I think the odometer reading is probably accurate.

misrepresentation

I'm satisfied that RCI was required, under the CRA, to ensure that the car was described

accurately at the point of sale and I can consider any representations made by the dealer, during the course of pre-sale negotiations, in this complaint against RCI - under section 56 of the Consumer Credit Act 1974.

For the reasons set out above, I think the mileage on the odometer at the point of sale was probably right and I'm not persuaded Mr H was misled about that - or that the car's mileage was mis-described.

I think the crux of Mr H's complaint is that he says the dealer told him the discrepancy in the MOT mileage history would be rectified after sale, but this didn't happen. For me to uphold this part of the complaint, I'd need to be satisfied that it's likely the supplying dealer told Mr H something that wasn't true and that untrue statement induced him to accept the car and take out the HPA.

Like the investigator, I'm satisfied Mr H probably did raise the mileage discrepancy with the dealer at the outset - there's evidence the dealer contacted the 2020 MOT tester after that but they didn't have records going back to 2020 and the recorded mileage wasn't changed. I can't be certain what the dealer told Mr H exactly at the point of supply. But, even if I were to accept the dealer guaranteed the mileage record would be fixed, I'm not persuaded it's likely this statement induced Mr H to accept the car and take out the finance. I say this because I'm satisfied Mr H knew the about the mileage discrepancy when he agreed to make the purchase. And, if this issue was of particular importance to him, I think it would have been reasonable to check that it was resolved before sale - or soon after collection. Mr H doesn't seem to have reviewed the car's MOT history for some time however - until the next service was due - which suggests it wasn't a major concern.

More recently Mr H told us the dealer also said (at the point of supply) the car had three not four previous owners. I can't be certain what was said at the relevant time but, even if I were to accept what Mr H says, I'm not persuaded that this statement is likely to have induced him to accept this particular vehicle either. I say this because I think it's fairly easy to check how many people have owned a vehicle previously - by looking at the registration document or a HPI search. And, if this was of particular importance to Mr H, I'd reasonably expect him to have raised it much sooner.

I realise Mr H may feel this is unfair and I'm holding him responsible for checking what the dealer said was right - but that's not the case. As I explained above, in order for me to find misrepresentations were made, I'd have to be satisfied not only that Mr H was told something untrue *but also* that he reasonably relied on this when he decided to acquire the car and take out the finance. Like most car buyers, I think Mr H probably took a number of factors into account when he chose this particular vehicle. And, if fixing the mileage discrepancy and the number of previous owners were significant factors in his decision, I'd reasonably expect him to have raised these issues much sooner.

I understand from Mr H that the offers of two free services and an extended warranty were made around the time the repairs were undertaken. This was after the car was supplied and, as the investigator explained, it's not something I'm able to reasonably hold RCI liable for.

I understand the dealer has offered to take the car back now and clear the finance. I appreciate Mr H doesn't think that's fair - he says he'd lose his deposit and payments made towards the finance. For the reasons I've explained above I can't fairly find Mr H is entitled to reject this car now. But, even if I was minded to find RCI should take the car back, I would be likely to consider it fair that Mr H pay for the use he had of the vehicle and I'd be unlikely to award a refund of any monthly payments in the circumstances here. I leave it to Mr H to decide if he wants to take up the dealer's offer.

According to the Gov.UK website, administrative errors at an MOT must be corrected within 28 days and it's necessary to contact the DVSA with relevant evidence (such as an emissions printout or service receipt) after that. Mr H may wish to consider contacting the DVSA for more information about this.

Finally, when I spoke to Mr H, he suggested the HPA may have been mis-sold at the outset. I can't see that this has been raised previously with RCI so I'm unable to deal with it in my decision. It's open to Mr H to contact RCI about this however and, if he's unhappy with the response, he may be able to bring another complaint about that to our service.

I realise my findings are likely to come as a disappointment to Mr H. I have no doubt he's been stressed and frustrated by what happened and I'm sorry if he feels let down. Mr H is not obliged to accept what I have said however, in which case it remains open to him to pursue the matter by any other means available.

My final decision

For the reasons set out above, my decision is I uphold this complaint and I require RCI Financial Services Limited (trading as Mobilize Financial Services) to pay Mr H £150 compensation for distress and inconvenience.

If RCI does not pay the £150 compensation for inconvenience and distress within 28 days of the date on which we tell it that Mr H accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

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.

Claire Jackson
Ombudsman