

## The complaint

Mr M complains RCI Financial Services Limited trading as Mobilize Financial Services (RCI) supplied him with a car that he believes wasn't of satisfactory quality. He also complains the car was misrepresented to him and the dealership caused damage to the car during repairs.

Mr M is represented by his daughter but for the purposes of this decision, I will refer to Mr M throughout as he's the agreement holder.

## What happened

Both parties are fully aware of the background to this complaint so I won't repeat them again. Instead I will focus on the reasons for my outcome in this decision.

In December 2023, I issued my provisional decision. I said:

*Was the car misrepresented?*

*Mr M complains the car supplied wasn't the one that he ordered or wanted. He said he decided to get a new car with the same manufacturer following a letter sent to him about newer versions of the car being available and an associated press release about it. He has provided copies of the same which I've read.*

*Under section 56 of the Consumer Credit Act 1974, the finance provider (RCI) can be held responsible for antecedent negotiations (what was said) by the broker before the consumer enters into a finance agreement. For obvious reasons, I wasn't party to the conversations between Mr M and the dealership but I've carefully thought about what was likely to have been discussed based on the evidence available to me.*

*I accept Mr M's testimony that he wanted and intended to get this newer model of the car that he had seen and read about. He has told our service the car had an updated manufacturer car emblem and additional features such as automated windscreen wipers. The dealership said the only difference was the car emblem and it would've been subject to a higher interest rate.*

*If acquiring the newer version of the car was a key part of Mr M's decision making, I believe it would've been reasonable for him to have made this clear to the dealership before entering into the agreement however there is insufficient evidence or testimony for me to say he did so.*

*It would appear he received correspondence about the newer version being available and he had read a press release about it. However based on Mr M's testimony, I'm not persuaded he had made his intentions clear to the dealership. For example, he hasn't indicated he specifically told the dealership he wanted this newer car or he had referred them to the press release he had seen. On balance, I find it's most likely Mr M assumed the car he ordered would've been one of the newer ones and if that's the case I can't fairly hold RCI or the dealership responsible for such an assumption.*

*Having looked at the agreement, there isn't enough evidence to suggest the car that was ordered wasn't the car that Mr M received so I can't say there was a breach of contract (not as described).*

*I've also thought about whether the car was misrepresented to him by the dealership. For this to happen, I would need to be satisfied the dealership had firstly made a false statement of fact and that had induced Mr M to buying the car. In this case, there isn't enough evidence to say there had been a false statement of fact therefore I haven't gone on to consider whether it induced him. Having carefully thought about everything, I can't reasonably say the car was mis-represented to Mr M.*

*Was the car of satisfactory quality?*

*Mr M acquired a car under a regulated credit agreement. RCI was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.*

*The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that, under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.*

*Mr M was supplied with a brand new car. So I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.*

*Within days of acquiring the car, Mr M had complained the reverse camera, cruise control, speed limiter and heated seats were not working as they should. After three trips to the dealership and an initial replacement of a suspected broken fuse, the fault was eventually identified and the wiring loop was replaced under warranty in March 2023. In light of the same, it's evident there was a fault with the car and RCI accepts this.*

*I've already outlined about the expectations of a new car. I don't believe a reasonable person would expect to experience such a fault so soon after acquiring a brand new car. Therefore I find the car wasn't of satisfactory quality meaning there was a breach of contract. One of the points Mr M feels strongly about was he was denied the right to exercise the short term right to reject the car. He says he requested the same within days of acquiring it and he repeated his request on later occasions but this was denied. He also complains the short term right to reject wasn't clearly outlined to him.*

*The investigator has already set out the short term right to reject and referred Mr M to the relevant law so I won't repeat it again. Based on the timeline of events and evidence I've seen, I accept Mr M initially requested to reject the car during the relevant timeframe (within 30 days). However as explained by the investigator, if the consumer agrees or asks for a repair- a waiting period starts on the day of the request and ends the day the car is returned. I'm satisfied by Mr M returning the car on each occasion for it to be looked at and fixed, this demonstrates he was willing to accept the repair rather than rejection so I can't say the dealership acted unfairly by doing so.*

*I note the fault was identified around three months after supply and the repair took place within a reasonable period of time once identified. Although not an ideal situation, I don't find*

*the time taken was wholly excessive given the time to wait to receive the relevant part for the repair to be carried out. I find the repair was a fair and proportionate course of action.*

*Repairs to the wiring loom were carried out in March 2023 under warranty, at no cost to Mr M which is in line with what I would expect. From my understanding each time the car was returned, he was provided with a courtesy car so he was kept mobile thereby minimising the inconvenience.*

*Mr M has told our service since these repairs, he hasn't experienced any further faults. So it appears the repair fixed it. In light of the same, it wouldn't be reasonable for me to say RCI should now allow rejection of the car if it's performing as it should. If there was evidence the repair had failed or there were additional faults which meant the car wasn't of satisfactory quality, Mr M may be able to exercise his final right to reject the car but there isn't any evidence to say that has happened in this case. Therefore I won't be saying RCI should allow rejection.*

*I've taken into account Mr M's testimony about the worry and inconvenience this situation has caused including multiple trips to the dealership. I'm sorry to hear the car wasn't performing as it should. RCI said it's willing to offer £250 as a goodwill gesture. Given what has happened, I wouldn't agree this is a gesture of goodwill but instead compensation for the impact of Mr M being provided with a faulty car. Had they not already offered compensation, I would've said they needed to do so. That said, I find the amount of £250 is fair in the circumstances and I won't be saying RCI need to pay anything more.*

#### *Damage caused to the car during repair*

*Mr M complains after the car was repaired, it was returned to him in an unsatisfactory condition. He reports there was grease, dirt marks and scratches around the dashboard and to the exterior paintwork. The dealership said they were unable to say whether this was caused by them but it would benefit from them giving it a valet and polish.*

*I haven't been provided with photos of the condition of the car before it went in for repair. However from my understanding there are photos of the alleged damage as reported by Mr M and they have been provided to RCI and the dealership. As I haven't seen the same, I can't say what it shows. But in RCI's response to the complaint, the dealership said "It is hard to know if any scratches were there when the car came in but it would certainly benefit from us giving it a full valet and polish". Given these comments it would suggest there were some marks to the car which the dealership are willing to resolve via a valet and polish which would suggest the marks are minor and can be readily rectified.*

*This was a brand new car which had only travelled around 500 miles when it was returned to the dealership for repair in March 2023 and it had only been in Mr M's possession for a limited amount of time as it had been back and forth to the dealership as a result of it being faulty. On balance, I believe the marks to the car as reported by Mr M were most likely to have been caused by the dealership and as agents of RCI, they should put it right.*

*Whilst in their care, I would expect the dealership to keep and return the car in a reasonable condition. They've offered a valet and polish and in the circumstances I find this to be fair, proportionate and likely to resolve the issue.*

#### *Summary*

*Taking everything into account, I find there is insufficient evidence the car was misrepresented to Mr M. However I find the car wasn't of satisfactory quality when supplied but repairs have been carried out which has fixed the fault. I consider the £250*

*compensation offered by RCI is fair to compensate him for the trouble and upset caused. As already offered, RCI should also arrange for the dealership to valet and polish the car as I believe they caused some marks during repair.*

*I appreciate Mr M may be disappointed by my decision but I hope he accepts my reasons for doing so. I understand in recent times he's been suffering with poor health so I would like to wish him a speedy recovery and future good health.*

#### *Response to the provisional decision*

RCI confirmed the dealership are willing to complete the valet and polish in the event Mr M accepts the final decision. They said the dealership are willing to contact him directly about it. They also said the £250 compensation has already been paid by the manufacturer.

Mr M maintains his stance. He comments the parties concerned should've done more to make him aware of his rights in terms of rejection and it was dealership's responsibility to correctly identify the car he wanted. He doesn't believe the £250 is enough given the stress and inconvenience caused. He also mentions a situation with the same dealership concerning his wife's car.

#### **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 thank both parties for their comments which I've carefully thought about. Having done so, I don't find I've been provided with new information that would change my overall outcome. Additionally I can't comment on a matter involving Mr M's wife. I can only consider the individual circumstances in this complaint.

As the compensation has already been paid to Mr M, RCI don't need to pay anything further. Meaning the only element to be put right is the valet. If Mr M decides to accept this final decision, I encourage him to contact the dealership directly to arrange this.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

#### **My final decision**

For the reasons set out above, I've decided RCI Financial Services Limited trading as Mobilize Financial Services (RCI) should arrange for the car to be valeted and polished by the dealership.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 February 2024.

Simona Reese  
**Ombudsman**