

The complaint

Mrs P complains about the management and administration, by RCI Financial Services Limited trading as Mobilize Financial Services ("Mobilize"), of a hire agreement ("agreement") she entered into with it.

What happened

In October 2021 Mrs P entered into an agreement with Mobilize for a battery installed in a car, a car that was noted on the agreement.

Under the terms of the agreement, everything else being equal, Mrs P undertook to pay Mobilize £48.98 a month.

In the event that Mrs P wished to sell the car (in which the battery was installed) she agreed to complete a battery hire transfer document ("BHTD").

On 14 February 2023 Mrs P sold the car. On the same day Mrs P emailed Mobilize what she understood was a correctly completed BHTD.

On 8 March 2023 Mobilize emailed Mrs P to say that there were certain details missing from the BHTD. On the same day Mrs P confirmed to Mobilize the details of the purchaser (and subsequent purchaser) of the car.

On or around 10 March 2023 Mrs P received a letter from Mobilize querying why her agreement direct debit instruction had been cancelled. Mrs P says she ignored this letter given what she had advised Mobilize on 8 March 2023.

On or around 13 April 2023 Mrs P received a notice of sums in arrears letter from Mobilize.

On 14 April 2023 Mrs P called Mobilize about having received a sums in arrears letter from it.

On 21 April 2023 Mobilize called Mrs P regarding her arrears.

On 21 April 2023 Mobilize tried to contact the subsequent purchaser of the car by both phone and email.

On 2 May 2023 Mobilize called Mrs P regarding her arrears and to confirm that she was still liable for agreement payments of £48.98 a month.

Unhappy with the service she had received from Mobilize, Mrs P raised a complaint with it.

On 26 June 2023 Mobilize issued Mrs P with a final response letter ("FRL"). Under cover of this FRL Mobilize said that as it hadn't heard back from the subsequent purchaser her agreement remained *"live"* and she remained *"liable for the payments falling due [under it]"*.

However it went on to say that it accepted that its management and administration of the agreement after 14 February 2023 had been poor and for this it was prepared to remove arrears of £195.92 (4 x £48.98) from it and to remove any reference to those arrears with credit reference agencies. It also advised Mrs P that she had the option of settling the agreement in full on payment to it of £1,176.00.

Unhappy with Mobilize's FRL, Mrs P referred her complaint to our service.

Mrs P's complaint was considered by one of our investigators who came to the view that Mobilize needed to do nothing further.

Mrs P didn't agree with the investigator's view and so her complaint was passed to me for review and decision.

In March 2024 I issued my (first) 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.

I'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Secondly, I would add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

On entering the agreement Mrs P was advised of the following:

Selling your vehicle to the Motor Trade

For this purpose, Motor Trade means:

- *A motor dealer*
- *A motor vehicle auctioneer*
- *A motor vehicle insurer with whom you have settled a claim*
- *A motor vehicle dismantler (a salvage dealer)*
- *A finance company with a financial interest in the vehicle.*

The registered hirer must:

- *Enter the date of the hire transfer and the name and address of the motor trader.*
- *Sign and date the Registered hirer part of the declaration. The motor trader must also sign and date the New hirer section of the declaration.*
- *Return the completed form immediately to: [Mobilize at address].*

- ✓ *The registered hirer will remain liable for the battery and rentals until the new hirer signs a new hire Agreement with [Mobilize]. [Mobilize] will confirm in writing when this has been done. The registered hirer should not release the vehicle with the battery until [Mobilize] confirms the battery hire transfer is complete.*
- ✓ ...
- ✓ *[Mobilize] will acknowledge receipt of your notification of new hirer details by post within 3 working days and will send a new hire Agreement to the new hirer for signature using the new hirer's address provided on page 1 at the same time.*

Mrs P was also advised that she shouldn't release the car until Mobilize had *"confirmed that the transfer [had] been processed"* and until such confirmation had been received she would *"remain liable for the battery hire payments."*

The BHTD Mrs P completed, and returned to Mobilize, was headed: *"This form must be used to apply for transfer of responsibilities for battery hire from one hirer to another. Completion of this form will not complete the battery hire transfer; the new hirer will be required to sign a new Hire Agreement."*

Mrs P says that the position she now finds herself in, which is being liable for agreement payments for a battery that is in a car that she has sold on, is down to Mobilize's poor management and administration of her agreement after 14 February 2023.

I appreciate, as does Mobilize, that its management and administration of Mrs P's agreement after 14 February 2023 was poor. For example, it took 22 days (rather than say 3 working days) to advise Mrs P that her submitted BHTD was incomplete and it didn't try and make contact with the subsequent purchaser of the car for 36 days after it could have done. But I'm not persuaded that this is the reason for the position Mrs P now finds herself in.

Mrs P didn't complete the BHTD correctly. But furthermore she released the car against what, in my view, was clear instructions not to do so until Mobilize had confirmed to her that it was in receipt of a new (battery) hire agreement signed by the purchaser, or subsequent purchaser. And in my view this is the reason for the position Mrs P now finds herself in.

Following the investigator's view Mrs P submitted, amongst other things, that:

- Mobilize, by its actions or inactions, put it in breach of its regulatory obligations to treat her, as a customer, fairly – in particular consumer outcomes 1 and 6
- Mobilize had confirmed, on more than one occasion, that she had no further liability, confirmation that she fairly and reasonably relied upon
- as a result of relying on the above, her ability to have herself released from the battery hire agreement by engaging with the purchaser, or subsequent purchaser, was frustrated, compromised and weakened
- the requirement not to release the car until certain formalities had been completed and concluded constitutes an *"unreasonable contract term"*

I've reviewed the requirement that Mrs P agreed to which says she wouldn't release the car until certain formalities had been completed and concluded. And having done so I'm not persuaded this constitutes an unreasonable or unfair term. First, such a term isn't uncommon in contracts such as the one Mrs P entered into. Secondly, it's a term that fairly and reasonably protects Mobilize from being put in the position where a debtor seeks to be released from an agreed liability without a third party having agreed to take that liability on.

I'm also satisfied that what Mobilize required Mrs P to do, and what it requires other consumers to do with similar agreements, doesn't breach outcome 1 and 6 of the regulator's fair treatment of customers requirements. In other words, I'm not persuaded that Mobilize doesn't put the fair treatment of customers central to its corporate culture or that what Mobilize required Mrs P to do, and which she didn't do, constitutes an unreasonable post sale barrier.

Mrs P says that as a result of fairly and reasonably relying on Mobilize's confirmation that she had no further liability, her position has been frustrated, compromised and weakened.

First, based on contact notes provided by Mobilize, I'm not persuaded that Mrs P was ever told she wouldn't be liable for any further agreement payments. In my view what Mrs P was told by Mobilize was that she wouldn't be held liable for agreement arrears that had accrued as a result of its poor management and administration of the agreement to date. So in my view I think Mrs P should have reasonably understood, from what Mobilize had told her and the agreement terms and conditions she agreed to, that if Mobilize was unsuccessful in securing a new and signed agreement from the purchaser or subsequent purchaser then she would be liable for any further agreement payments.

Secondly, even if I wasn't of the above view, I'm simply not persuaded that Mobilize's poor management and administration of the agreement has frustrated, compromised or weakened Mrs P's position. In other words, I'm simply not persuaded that the position Mrs P might have found herself in, had she understood that Mobilize would be holding her liable for agreement payments going forward sooner than she did, would have been any different to the position she is in now.

Having said all the above, which I appreciate Mrs P will be disappointed with, I do think that Mobilize should compensate her something for its poor management and administration of her agreement post 14 February 2023.

Having thought about this point very carefully I'm not persuaded Mobilize's offer to remove arrears of £195.92 and to remove any reference to those arrears with credit reference agencies goes far enough. In my view the distress and inconvenience Mrs P suffered as a result of RCI's management and administration of her agreement between February and May 2023 warrants payment of a further £100. I've come to this conclusion having had regard, amongst other things, to the number of calls made by RCI to Mrs P chasing payment in ignorance of what Mrs P had said and sent it previously and the number of calls Mrs P had to make to Mobilize to clarify and explain things.

Mobilize responded to say it accepted my (first) provisional findings.

Mrs P responded to say she didn't accept my (first) provisional findings. In summary she said:

- the agreement terms and conditions placed no obligation on Mobilize to complete a battery hire transfer in such time as not to unreasonably prevent the resale of her car

- Mobilize didn't acknowledge receipt of her BHTD until 22 days after she had submitted it and took 36 days before it tried to make contact with the subsequent purchaser of the car
- the above created a substantial imbalance between her and Mobilize (the contracting parties)
- Mobilize make the resale of a car with a battery on hire impossible, forcing consumers into buying out their hire agreement instead
- the above is contrary to the requirement of good faith and to the detriment of the consumer
- contrary to what I concluded Mobilize informed her on more than one occasion that it would proceed to get the agreement terminated and proceed to get her released from all liability
- she acted on the above and took the decision not to pursue the subsequent purchaser of the car
- contrary to what I concluded she has suffered a loss

In April 2024 I issued my (second) 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.

Mrs P submits, amongst other things, that she was given assurances by Mobilize (over the phone) that it would...

- proceed to get the agreement terminated and to get her released "*from all liability*"
- the necessary processes would be completed and that she wouldn't "*hear from [it] again*"

...and she relied on these assurances in good faith. Mrs P also points out that under cover of its FRL Mobilize doesn't dispute these assurance were given to her.

When I concluded what I did, in my (first) provisional decision, I relied on contemporary notes provided by Mobilize in respect of the various calls that took place between it and Mrs P. But on reflection, and particularly in the light of Mrs P's response to my (first) provisional decision, I'm now of the view that to fairly and reasonably decide this case these call recordings need to be listened to.

Following my (first) provisional decision the investigator asked Mobilize to provide these call recordings. But despite a number of requests in this respect, and at least one assurance from Mobilize that these call recordings would be provided, they haven't been.

In the absence of these call recordings I've weighed up what Mobilize's contemporary notes say, what it's FRL said and what Mrs P submitted in response to my (first) provisional decision. And having done so I can confirm that I find Mrs P's submissions, as to what she was advised by Mobilize, to be both plausible and persuasive.

I still hold the view that Mrs P shouldn't have released the car until certain formalities had been completed and concluded. But whereas in my (first) provisional decision I was of the view that this failure was the sole (or at least the main) reason for the position Mrs P now finds herself in I no longer hold that view.

Taking everything into account I'm now of the view that had Mobilize...

- informed Mrs P within say a few days of 14 February 2023, rather than on 8 March 2023, that there were details missing from her submitted BHTD
- not advised Mrs P on the phone what she submits it advised her
- not left it till 21 April 2023 to try and contact the subsequent buyer
- not left it till 2 May 2023 to confirm that it was holding Mrs P liable for the agreement payments

...then Mrs P would have done what was ever necessary to get herself released from the agreement and, on the balance of probabilities, she would have been successful in doing so meaning she wouldn't have been liable to Mobilize for any further agreement payments.

Because of what I say above, I'm now of the view that Mobilize should do more to fairly and reasonably compensate Mrs P and to do that I find it should:

- cancel the agreement with nothing further for Mrs P to pay
- refund to Mrs P any payments she has made to the agreement since 11 June 2023 together with interest at 8% simple a year*
- remove any adverse information it has recorded with credit reference agencies in respect of the agreement
- pay Mrs P £100 for the distress and inconvenience this whole matter has caused her

** HMRC requires Mobilize to take off tax from this interest. If Mrs P asks for a certificate showing how much tax has been taken off this should be provided*

Mrs P responded to my (second) provisional findings to say she accepted them.

Mobilize responded to my (second) provisional findings to say it had nothing further to add to its previous comments.

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 Mrs P responded to my provisional findings to say she accepted them and Mobilize responded to them to say it had nothing further to add to its previous comments I can confirm I see no good reason to depart from those provisional findings and I now confirm them as final.

My final decision

My final decision is that RCI Financial Services Limited trading as Mobilize Financial Services must:

- cancel the agreement with nothing further for Mrs P to pay
- refund to Mrs P any payments she has made to the agreement since 11 June 2023 together with interest at 8% simple a year*
- remove any adverse information it has recorded with credit reference agencies in respect of the agreement
- pay Mrs P £100 for the distress and inconvenience this whole matter has caused her

** HMRC requires RCI Financial Services Limited trading as Mobilize Financial Services to take off tax from this interest. If Mrs P 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 Mrs P to accept or reject my decision before 12 June 2024.

Peter Cook
Ombudsman