

The complaint

Mr B complains about a car acquired through a Hire Purchase agreement with RCI Financial Services Limited trading as Mobilize Financial Services ('RCI'). Mr B has had problems with the car and says these defects would've been present when the car was supplied.

He wants to reject the car. He said he's been impacted financially paying for a brand new car that he hasn't been able to use and enjoy as expected. Though he was kept mobile in courtesy cars when his car was being looked at for longer periods.

What happened

Mr B acquired the vehicle in January 2023. When it was supplied, it was brand new and cost £37,377.80.

I can see in March 2023, after roughly 1,500 miles had been travelled, Mr B was in contact with the manufacturer talking about the fact the local dealership was waiting for new carpets and information on the possible causes of water ingress. He provided photos showing mould in the footwells.

A message from the dealership group said the car had never been to the supplying dealer to put the issue right. The car had gone to another dealership in the group in April 2023 for water ingress tests, repairing the alarm and a steering column recall being carried out.

They said Mr B agreed to repairs, where the windscreen and near side wing sealant were replaced. The carpets and interiors were also replaced because of the mould, but because of delays in the delivery of components this took two to three months. They said no fault was found with the alarm, but a 'modification' from the technical team was carried out which resolved the issue.

A job card we have which spans from April 2023 to July 2023 confirms the water ingress issue and that the alarm had been 'false triggering'. They checked with the manufacturer and they 'swap[ped] interior lights over' and carried out a steering column recall. By the time of repair the mileage was 2,272 miles.

The dealership group says Mr B returned in August 2023 because the alarm was making excess noise. A wire was found to be adrift, and the dealership was advised by the manufacturer's technical team to replace the alarm, which was completed after a small delay due to parts being on order. A job card from this time shows the car had covered 3,168 miles.

Correspondence with the manufacturer indicated the leak issue couldn't be found. And I can see Mr B was messaging the manufacturer around mid-September 2023 to say he wasn't sure if the water ingress was resolved, but he would look out for further issues when there was rain. The manufacturer offered a service plan and £150 to reflect the problems he'd had.

Mr B wrote to the manufacturer two months later requesting to reject the car because of the mould returning. He complained to RCI at the same time outlining the problems with the car,

saying he'd contacted the manufacturer and the local dealership in the group. He said he'd lost faith after these issues returned and asked to reject the goods.

RCI wrote to Mr B at the end of February 2024 to say it wasn't able to respond to the complaint. So he referred it to our service. He provided photos showing mould had returned.

RCI responded to the complaint while it was with our service. It said all the repairs were authorised by Mr B and so he couldn't now reject the car. It said the dealer hadn't seen the car since or been made aware of any further issues. And if Mr B was unhappy with the car he could try to sell it.

The manufacturer said there was some sealant missing and the gap was sealed, the carpets were replaced in May 2023 and the alarm was rewired. They said the alarm was replaced in August 2023 and the leak couldn't be found. Mr B was offered a service plan to reflect the difficulties he'd faced. They said there haven't been any further visits, and as repairs had been authorised and rectified the faults, Mr B no longer had the right to reject the goods.

The investigator asked RCI to speak to the dealership about Mr B's visit in December 2023.

The dealership said they had only referred to the job sheets on their internal systems. They said they weren't aware of Mr B speaking with anybody about rejection on site but "*Mr [B] handed in a copy of a complaint letter he has sent mobilize to keep the dealer in the communication loop*". The dealership said Mr B had sought rejection, but they told him this needed to be directed to RCI, rather than the dealership.

They said they thought there had been no further fault to investigate at the time of this letter being handed in. But if the problem remains, then an appointment could be booked to investigate it.

The investigator thought there was clear evidence of a fault with the car which arose within the first few months and this fault has persisted. They said attempts were made to repair the issue. When the issue returned, and Mr B raised the issue with the dealership, and then with RCI, the fault wasn't rectified.

Because of this failed repair, they felt Mr B should be able to reject the car. They didn't think his payments up to August 2023 should be refunded because he was kept mobile in a courtesy car. But since then he's been using the car, albeit with it being damp and mouldy, so they recommended a 10% refund from August 2023 onwards. They thought the distress and inconvenience caused by all of this meant RCI should pay him £200.

Mr B accepted this. RCI said that any issues that had been found were repaired under warranty. It also asked for evidence of the visit in December 2023.

Mr B provided a record from his navigation software showing a 10 minute visit to the dealership. He says he discussed the mould having returned and his wish to reject the car.

RCI said it didn't have any evidence that the initial issue had returned. It felt that an inspection confirming the issue would be fairer.

RCI asked for the case to be reviewed by an ombudsman and so it has been passed to me to issue a final decision.

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'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Mr B acquired the car through a Hire Purchase agreement with RCI. Under this type of arrangement, RCI became the supplier of the car and is responsible if the goods aren't of satisfactory quality when provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

Mr B acquired the vehicle in January 2023. When it was supplied, it was brand new and cost £37,377.80.

Where goods are provided brand new, they should reasonably be expected to remain fault free for a considerable amount of time. Under the CRA they're expected to be free from even minor defects. If issues were to arise soon after acquiring the goods then these are highly likely to be the responsibility of the supplier.

In this case, Mr B experienced issues with the car within the first couple of months and roughly 1,500 miles. He evidenced the mould growth in the footwells and was in contact with the manufacturer about that at the time. He says the dealership was waiting for new carpets and looking into the causes of the water ingress. A job card a few weeks later confirms the issue, and that the alarm had been going off while it was being looked into.

So it's clear at this early point there was evidence of some kind of fault with the car – and given how quickly this cropped up, and the nature of the issue, this was almost certainly an issue with the car at the point of supply that made the car not of satisfactory quality.

This was fixed by July 2023, by which time the car had done 2,272 miles. For the water ingress, this included replacing the windscreen, resealing where there were gaps, replacing seat components and replacing mats. For the alarm issue, the wiring terminals were adjusted. This seems to be the first time the car was repaired.

These repairs needed to be effective such that the goods then conformed to contract. If the car didn't conform to contract after that, then Mr B would have the right to reject the goods.

Mr B said the faults persisted. But when the car was looked at again in August and September 2023, the issue complained of couldn't be found.

At this point the alarm was replaced because of faults that were found with that. The fact this replacement was required would arguably have given Mr B the right to reject the vehicle at this point – with the car not confirming to contract further to earlier attempts at repair. However his correspondence with the manufacturer showed he wanted to keep the car if possible. And Mr B seemed to give the dealership plenty of opportunity to put things right.

Mr B wrote to RCI in December 2023 explaining that the previous repairs hadn't worked and the issues with mould and water ingress remained. He said he now wished to reject the car.

RCI didn't initially respond to the complaint in the time required, but when it did respond to the complaint in May 2024, it simply said all repairs had been successful and so it wouldn't allow the rejection.

When the complaint was referred to our service we asked Mr B for evidence of the issues and he sent us photos evidencing the mould issues time stamped in April 2024.

I don't know what efforts, if any, RCI went to, to try to obtain information about Mr B's complaint before responding to it. However at the time it responded, Mr B seems to have had evidence he could have provided.

This evidence shows the car was in essentially the same condition as it was prior to the first set of repairs. This indicates that the initial repairs were not successful.

Given the extent of the problem in April 2024, I'm persuaded the issues are likely to have been there prior to that as well. And given the car had been provided brand new, I wouldn't expect the car to still be experiencing this sort of issue. Even if the car hadn't already been through one set of repairs, this issue arising at this point would still make the car not of satisfactory quality.

RCI has focused on questioning the nature of a visit Mr B made to the dealership in December 2023. Mr B provided a record from his navigation software showing the trip he made to the dealership which shows he was at the dealership for 10 minutes.

The investigator asked RCI to contact the dealership to ask about this visit. The dealership said not a lot went on, however Mr B passed on a copy of a complaint letter and the dealership told him that he needed to direct the complaint to RCI.

I think it's highly unlikely that Mr B went to the dealership, in the car he had an issue with, and gave the dealership a copy of a letter outlining the problems that he continued to have with the car, but somehow did not speak to the dealership about any of the issues. Or that the dealership - without knowing what it was about - would have advised on what he needed to do next by directing his complaint to RCI.

Essentially Mr B has evidenced that he visited the dealership for about 10 minutes. The dealership has confirmed that they were provided with a complaint letter which they said needed to be directed to RCI. I find it inconceivable that this conversation didn't entail the issues Mr B was complaining of – and this would have been an opportunity to resolve the issue which wasn't taken.

However, if issues remained at this stage then Mr B would have been entitled to reject the car. I acknowledge the fact the dealership didn't investigate the issue at this stage, however I don't think that changes things here.

Given the extent of the issues as evidenced in April 2024, this condition was likely developing over a longer period of time. Mr B's consistent pattern of complaining about issues, along with providing corresponding evidence, and wanting issues to be resolved as opposed to trying to reject the goods (until December 2023), I'm persuaded on balance the ingress and mould issues had returned by December 2023.

What's been demonstrated is that water ingress and mould were an issue in April 2023 and April 2024 – and I'm persuaded that the issue remained between those dates. Mr B gave the dealership a number of opportunities to correct issues with the car, despite repeated issues, and ultimately I don't think he would have complained about water ingress without reason.

The repairs completed in July 2023 failed within nine months according to the photographs provided, within five months according to his complaint to RCI and the dealership, or within one or two months according to his initial return to the dealership after the first attempt at repair. Either way I would not expect a car this new to require repeated repairs in the time it has. As the initial repairs have ultimately failed Mr B is now entitled to reject the car.

Putting things right

I understand the car may have recently been serviced, but I don't think this highlights anything that changes things here. I think the investigator's suggestion of refunding the deposit, 10% of payments since August 2023 and £200 for the distress and inconvenience caused is fair.

In summary, RCI should now:

- Collect the car at no expense to Mr B
- End the agreement with nothing further to pay
- Refund 10% of his monthly payments from August 2023 onwards
- Refund his deposit of £4,347.38
- Pay 8% simple interest on the above refunds from the date of any payment to the date of settlement*
- Pay Mr B £200 compensation to reflect the distress and inconvenience caused**

* If RCI considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

** If RCI does not pay this compensation for distress and inconvenience within 28 days of the date on which we tell it Mr B 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.

My final decision

My final decision is that I uphold Mr B's complaint against RCI Financial Services Limited trading as Mobilize Financial Services.

RCI Financial Services Limited trading as Mobilize Financial Services needs to settle the complaint in line with what's outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 March 2025.

Scott Walker
Ombudsman