

The complaint

Ms M complains that a car she acquired via a hire purchase agreement with RCI Financial Services Limited trading as Mobilize Financial Services wasn't of satisfactory quality. She asks to now reject it and end the agreement.

What happened

In September 2023 Ms M entered into a three-year hire purchase agreement with RCI for a used car. The car was an automatic, around three and half years old and had a mileage of around 22,600.

Ms M says she had to take the car back to the dealership on two occasions after acquiring it because the dealer hadn't dealt with dents and scratches on the bodywork that they had agreed to fix. And that she also had to take the car in for a noisy windscreen wiper which was replaced at no cost.

Ms M says that shortly after acquiring the car she had noticed there was an issue with the gear changes and that the car would jump gears and stall on occasions. She said that it was only when someone else commented on the gear changes that she realised there was a fault with the car.

Ms M raised the issue about the gear changes with the dealer in May 2024 and they took the car in and carried out reconfiguration to the car's onboard computer. The dealership said the car was taken for a test drive and no faults were noted. The car was returned to Ms M with the cost of the work covered by the dealership.

The car continued to have an issue with its gear changes and Ms M says she lost faith in it. Ms M says that arrangements were made with the dealership for the car to be collected by a roadside assistance company and taken back. She says she was advised by the roadside assistance company not to drive the car while she waited for it go back to the dealership.

Ms M has also explained that due to health conditions which limit her mobility she wasn't able to use public transport which meant that without the car it was difficult for her to get around.

The car went back to the dealership in June 2024. This time a fault with the crankshaft sensor was found and this part was replaced. The dealership says that the car was taken for a number of road tests and no faults were found. The costs of this repair were again covered by the dealership. They said the car was repaired and they asked Ms M to collect it, but she declined.

Ms M complained to RCI after the first repair to the car and asked to reject it. RCI declined her request. It said that Ms M had had the car for eight months and had been able to drive around 5,600 miles in it. RCI said the car had been fit for purpose at its point of supply and was now repaired. It said Ms M should collect the car.

However, RCI also acknowledged that Ms M had to take the car twice to the dealership for

the issue with the crankshaft sensor to be repaired. It said that £200 compensation for the distress and inconvenience cause to Ms M would be fair. RCI also said that it had noted Ms M had been supplied with a courtesy car for the two repairs.

Ms M disagreed with the response she received from RCI and complained to this service. Ms M said that RCI had delayed dealing with her complaint and having asked her for medical evidence then denied receiving it. She said the car wasn't fit for purpose and she wanted to reject it and end the agreement. Ms M said that she wanted to be reimbursed the monthly costs of the car as well as the costs she had incurred having to hire a replacement vehicle.

Our investigator didn't recommend that Ms M's complaint should be upheld. He said that while he accepted the car hadn't been as durable as would be reasonably expected, RCI had the right of one opportunity to repair and the car was now fixed. Our investigator said Ms M should collect the car and RCI had outlined her options in respect of how to end the agreement if she wanted to.

In respect of hire car costs, our investigator said the invoices provided by Ms M were for car hire after the car had been repaired and therefore it wouldn't be fair to require RCI to cover those. He said he thought the offer of £200 compensation for the car having to undergo two repairs was fair.

Ms M disagreed with our investigator's view. She said the car was clearly not fit for purpose and she had had to go back to the dealership on eight occasions for various issues. Ms M said she had left the car with the dealership in May 2024 expecting it to be repaired but it was returned to her with the same fault.

Ms M said that the dealership delayed taking the car back in June 2024 but had eventually done so and a fault was found. She said that the dealership's failure to repair the fault at the first visit allowed her to now reject the car. Ms M said that the dealership didn't keep her updated with what was wrong with the car but had expected her to pay the repair costs.

Ms M also provided a copy of legal advice she had received about her complaint. This states that the investigator's view had been based on a misunderstanding and misapplication of the law.

As the parties had been unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

When looking at this complaint I needed to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Ms M had been a regulated consumer credit agreement, then this service was able to consider complaints relating to it. RCI was also the supplier of the goods under this type of agreement and was responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 can be aspects of the quality of the goods.

Here the car was around three and half years old and had a mileage of about 22,600 so some wear and tear would have been suffered by its components and repair and maintenance issues would be expected to arise after a reasonable period of time.

I'd seen that Ms M had raised issues of the car requiring multiple trips back to the dealership when responding to our investigator's view. I understood from what Ms M had said that there had been a problem with a windscreen wiper and also dents and scratches with the car which the dealership had agreed to fix but which had then needed her to chase up. However, I hadn't seen that Ms M had made a complaint to RCI about these matters and she hadn't included them in her reasons for wishing to reject the car. I couldn't look at things that RCI hadn't been asked to consider, so while I accepted Ms M may have had difficulties with the dealership on other things to do with the car, I didn't consider them here. I also thought it was likely that Ms M had accepted the car's condition at its point of supply with the proviso they had been fixed by the dealership.

I'd seen that the issues with the gear changes arose within a short time of Ms M having acquired the car. From the evidence and by the fact Ms M had been able to make use of the car I thought it was likely that these issues were intermittent. Ms M had spoken to the dealership about the fault with the gear changes in May 2024.

The first investigation of the car led to a software update. The legal advice provided to Ms M had said that a software update was a remedy to correct a fault with a car, and while that may be right, I didn't agree that requiring a software update in itself would be sufficient to say that a breach of contract had arisen entitling a consumer to reject a car.

The legal advice had also raised issues about whether the fault had arisen within or after six months of acquiring the car and on who the burden of proof lies. Here, Ms M said she had had issues within the first six months, and I had no reason to disbelieve her but in any event the crankshaft sensor was a part that would be reasonably expected to have a longer lifespan than around 30,000 miles. So, I thought it was fair to consider that this fault had been developing at the point of supply since the car wasn't as durable as a reasonable person would reasonably expect. This meant that the car hadn't been of satisfactory quality when Ms M had acquired it.

Having reached that view, I then looked at a fair remedy. While I appreciated under the Consumer Rights Act a retailer has a right to repair which if unsuccessful meant that a consumer may seek to reject, I didn't think that would be proportionate here. And as explained above, while I must take account of the law, I was not bound to apply it if I didn't think that would have a fair and just outcome.

I had reached this view because I'd seen that Ms M had been able to use the car in the eight months it had been in her possession, driving around 6,000 miles in it. And that the dealership had been able to fully repair the car (as I had no evidence this repair had been unsuccessful) within a short period (just over two weeks) of it first being brought into them. I thought the software update was a reasonable step for the dealership to have taken and that it appeared to have fixed the fault when test driven. It had been unfortunate that this hadn't corrected the problem but having undertaken this diagnostic, the fault with the crankshaft sensor then came to light. I had also seen that Ms M had been able to drive the car for around 590 miles in between the two repairs.

And although Ms M said the dealership spoke to her about paying for the repairs, neither had been invoiced so there has been no charge to Ms M.

I'd also seen that Ms M was provided with a courtesy car for both times the car was repaired, and that RCI had offered her £200 compensation to reflect the distress and inconvenience

dealing with the faulty car would have caused her. I thought the compensation offered was fair and I wouldn't ask RCI to increase that.

So, in all the circumstances and while I appreciated this would be of disappointment to Ms M, I disagreed that it would be fair and reasonable for her to now reject the car and end the agreement. The car had been repaired at no cost to her and she should make arrangements to either collect it or alternatively, as offered, for it to be delivered to her. RCI had also explained the options to her for bringing the agreement to an end should she wish to do so.

In respect of the hire car costs, while I accepted Ms M has a health condition which impacts on her mobility, the invoices provided were for periods after the car had been repaired. I didn't think I could reasonably require RCI to reimburse those costs.

I appreciated Ms M had been disappointed with RCI's handling of her complaint. But this service doesn't generally have a remit to look at customer service complaints because this doesn't fall under regulated activities. I understood her concern that she had been told medical information she had provided at its request hadn't been received when it had been signed for, but that wasn't something I would ask RCI to provide redress for.

So, for the reasons set out above I wasn't intending to uphold Ms M's complaint.

Ms M disagreed with my provisional view. She said that she felt I had taken sides with RCI. Ms M also said that she had raised the issues such as the faulty windscreen wiper with the car not as a reason to decline the car but to demonstrate the dealership's failures in dealing with things. She said that the gears had been faulty from purchasing the car and that they were noisy and the driving jolty and dangerous. She disagreed that the problem had been intermittent in nature.

Ms M said she had raised the issue about the gears many times soon after purchasing the car but was ignored until the dealership decided to look at them in May 2024. She said there had been no need to carry out the software remedy because the issue should have been clear to a mechanic. She said it should have been fixed on its first visit to the dealership.

Ms M said the car was with the dealership only for an hour when it was first investigated. And she said this wasn't sufficient time for the car to have been test driven and the noise it made was the same when it was returned to her. She said that the dealership delayed taking the car back until June and she had to use it.

Ms M queried how I could not adhere to the law and that due to its condition she had the right to reject it. She said she had given the dealership three opportunities in total to fix the car and it was only on the last occasion the car had been fixed.

Ms M said she was not provided with any courtesy cars and was forced due to her health conditions to hire and pay for them herself. She said that the compensation did not cover these costs, nor the distress caused.

I reflected on what Ms M had said and decided to change my view in respect of compensation that should be payable. I issued a second provisional decision along the following lines.

I apologised to Ms M for the error in describing the car originally as four and half years old when it was three and half years. However, this difference didn't materially affect my provisional view. I still thought a car of that age would show some signs of wear and tear such as the worn wiper. But, as the fault with the crankshaft sensor was one that shouldn't

have arisen in car of either four or three years old, my view hadn't changed that the car wasn't as durable as would have been reasonably expected.

Ms M disagreed with my description of the fault with the gears being intermittent. However, I had taken her description of the problem into account when reaching that view. The way she had originally explained the fault hadn't described a car that she had found very jolty and dangerous to drive from the start, but I could appreciate that the problem with the gears was likely to have gotten worse over time and through use. Ms M had said that at first, she hadn't really realised there was a problem, and it wasn't until March 2024, when someone else in the car had queried what gear the car was in, that she knew there was an issue. Ms M had also said that sometimes the car could stall. So, taking what Ms M had said into account, it had sounded likely that the gear issue was not constant but would on occasions slip or go into the wrong gear (the car was an automatic).

And while I understood Ms M had needed to drive the car, I thought if the car had been difficult and dangerous to use from the point of its supply that it would be reasonable to think that it's likely Ms M would have realised there had been a significant fault before March 2024. So, I thought it was likely the nature of this fault had gotten worse over time and Ms M had been able to make use of the car.

Ms M had said that she had raised the issue with the gears with the dealership before May 2024 and that they had three opportunities to fix the car. Looking at the evidence that had been supplied, I couldn't see that the dealership looked at this issue on three occasions. In Ms M's complaint letter to RCI, she had confirmed that the first time the car was booked in for the gears to be investigated by the dealership had been in May 2024. So, I still thought the dealership had had two attempts at repairing the car.

Ms M said that the problem with the car should have been obvious in May. I didn't have any expert evidence on that point and while that may be the opinion of mechanics Ms M had subsequently spoken to, I didn't have enough to be able to reasonably say that the dealership had been negligent in the way they had carried out the first investigation and attempted fix. I still thought it was more likely than not that they had tested the car and hadn't found a fault after running the software update and so returned it to Ms M considering the car to be repaired.

The car, however, had to be booked back in and I appreciated that there was then a delay in the dealership taking it back though I couldn't reasonably say that had been the fault of RCI. But I thought I hadn't properly reflected on that when considering compensation for Ms M. I'd seen that there had been around a month and not two weeks between the two repairs being carried out and that a part had had to be ordered.

Ms M had queried how I could put aside the law when reaching my decision about her complaint, but we are an alternative dispute resolution service, which meant that when considering what I think is fair and reasonable, I could take into account the relevant law but not necessarily be bound by it. I was sorry Ms M hadn't thought that I had been fair here, but I had looked at what had been said by both Ms M and RCI. I was still satisfied that the car had been fully repaired and that for Ms M to now reject it would be disproportionate. I also still thought running the software update first had been reasonable.

I must also apologise that I had said Ms M had received courtesy cars while the car was in for the repairs. This had been my confusion from some of the evidence provided. I accepted that the first repair had been for less than one day and the car was then returned, but it appeared that the second repair was for around one week with a part having to be ordered. However, the hire car invoices provided by Ms M were all for the period following the car's repair and for the reasons set out above, I didn't think it was fair to require RCI to reimburse

those. But again, I had looked at this when considering the fair level of compensation.

Ms M had raised that compensation of £200 was unfair given the level of distress and inconvenience caused to her dealing with the faulty car. Having re-considered this, I agreed. Ms M had been supplied with a car that wasn't reasonably durable and had to use it pending the fix. I accepted that driving a car with a gear change issue, even though this hadn't rendered the car unusable, would have spoiled her driving experience and this was a relatively new car which Ms M would reasonably expected to be able to enjoy driving. I also accepted that having to take the car in twice would have caused her inconvenience particularly when taking into account her health condition. I therefore thought that the total amount of £500 compensation would be fairer. This took into account that the car hadn't been repaired on the first visit and the second repair was delayed to the following month, Ms M had also been dealing with this fault for some time prior to the repair.

So, I intended to partially uphold Ms M's complaint in that I asked RCI to increase the compensation. However, I hadn't changed my view that to reject the car was disproportionate.

As set out above, I had reached this view because I'd seen that Ms M had been able to use the car in the eight months it has been in her possession, driving around 6,000 miles in it. And that the dealership had been able to fully repair the car.

Both Ms M and RCI have disagreed with my view.

RCI says that the compensation amount is excessive and that £300 would be a more usual and reasonable figure for this level of inconvenience and distress. It says it agrees that it would be disproportionate for Ms M to reject the car.

Ms M has written a lengthy response and I have summarised her points below. If I missed something out, then I don't mean any discourtesy by that, but I have addressed the points that I consider are important in respect of the findings and conclusions I have reached.

Ms M says that a fair resolution to her complaint is for her to reject the car and end the agreement and for RCI to refund her the £7,000.00 deposit plus the monthly payments which she has paid since October 2023 to April 2025, at £133.16 per month, which amounts to an overall total of £9,530.04.

Ms M says she had to take the car back due to bodywork issues with the car not being addressed as promised by the dealership. She says it was then that she raised the car stalling and the gears being noisy but was ignored.

Ms M says several other people noted the car's issues when changing gear. She says she was advised it could be dangerous. Ms M also says when she took it in to be investigated in May 2024 the dealership had said at first that there was no one available to look at it and after only being there for a short time she was then contacted to it. Ms M says she doesn't believe any work was undertaken or that the car was taken for a test drive. She says that the car had the same fault when she picked it up.

Ms M says there was then a delay by the dealership in taking the car back, during which time she had no option but to use it.

Ms M has raised disappointment and concern about the level of communication between herself, the dealership and also with RCI and the lack of information being provided to her about what was happening with the car. She is also distressed about the lack of customer service provided in respect of her health conditions and RCI's handling of her medical

information.

Ms M says she is entitled to reject the car as RCI had one opportunity to fix it and didn't. She says the fault was evident and the dealership should have repaired it when the car went in for repairs in May 2024. Ms M says I should apply the Consumer Rights Act to her complaint.

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 have reflected on what both RCI and Ms M have said and looked again at the evidence and the conclusions I reached based on that. While I appreciate this will be of disappointment to Ms M, I haven't changed my view.

I still don't think it's likely that the gear changes were as prominent an issue when Ms M acquired the car for the reasons I have already set out above. I've seen that Ms M says she first raised the gear problem with the dealership when the car went back in for some work shortly after she had first acquired it (there was work required on the windscreen, wiper etc) but was ignored. I don't know what was said by Ms M to the dealership at that time, but I note that she didn't then take any further action until around March 2024 when someone else raised the gear changing issue with her. So, I think it's reasonable to say that this shows the car was driveable and that the issue with the gear changes was likely to have deteriorated over time rather than being a constant problem. I don't think I have enough evidence to say that the dealership was aware of an issue with the gears from around September 2023.

Ms M doesn't believe that the dealership attempted any type of repair in May 2024. When evidence is contradictory or missing then I have to consider what I think is the most likely thing to have happened, and here I'm still satisfied that the dealership carried out the software update and undertook a test drive. I don't have enough evidence to reasonably say that the dealership ignored Ms M's complaint about the car and did nothing at all with the car when it was left with them. I still think the reconfiguration of the car's onboard computer was a reasonable step in repairing the car.

I accept the first repair was unsuccessful and that there was a delay in the repair carried out in June. I have taken this into account when looking at the distress and inconvenience caused to Ms M. I also accept she has a health condition which means a car is important to her. However, I still think it's important to take into account that the car was fully fixed at that second repair. The level of compensation I have found to be fair is because of the impact all of this would have had on Ms M when dealing with the faulty car.

I appreciate Ms M feels I have been unfair by not finding that she is entitled to now reject the car. But, as set out above, I don't have enough evidence to say that the fault with the car was obvious and that the dealership were negligent in not spotting what the problem was straight away. And while I also appreciate what the Consumer Rights Act 2015 states, I am not necessarily bound by it if I think the outcome would be unfair. Here, I think a strict adherence to one attempt to repair only and then the car can be rejected is disproportionate.

Ms M has raised that the dealership and RCI didn't keep her properly informed about what was happening with the car. I don't think I can fairly say RCI was responsible for any poor communication from the dealership. And customer service isn't something I can necessarily take into account as it isn't a regulated activity. However, the amount of compensation I think is fair does acknowledge that Ms M experienced frustration and distress when having to deal

with the faulty car.

So, taking into account that Ms M was provided with a car that wasn't as durable as reasonably expected, that there were two repairs and she has had to drive a car that had a fault for some time, I think £500 compensation for that is fair and reasonable. However, due to the length of time she was able to use the car, the mileage she undertook while it was in her possession and that it is now repaired, I don't think it's proportionate for her to reject it and for the agreement to be unwound.

Putting things right

For the reasons set out above, I'm partially upholding Ms M's complaint in that I'm asking RCI to pay her £500 compensation for the inconvenience and distress caused by having to deal with the faulty car, including the spoiled driving experience due to the problems with the gear changes over a period of time. However, I'm not asking RCI to take the car back, and wind back the agreement.

My final decision

As set out, I'm partially upholding Ms M's complaint.

I'm asking RCI Financial Services Limited trading as Mobilize Financial Services to pay Ms M £500 compensation for the inconvenience and distress caused by having to deal with the faulty car, including the spoiled driving experience due to the problems with the gear changes over a period of time. I'm not asking RCI to take the car back, and wind back the agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 20 May 2025.

Jocelyn Griffith
Ombudsman