

complaint

Ms A complains about a new electric car she acquired through a hire purchase agreement with RCI Financial Services Limited. She says she was told that the car would achieve 130 miles on a full charge but she soon realised this was not possible. She says she only received around 70 miles from the battery and has sought to return the car and cancel the finance agreement.

background

Ms A acquired a new electric car and the cost of the purchase was covered, mostly, by a hire purchase agreement with RCI. She says that when buying the car she was assured it would achieve 130 miles from a full charge of the battery but she has not achieved anywhere near this mileage. Ms A returned the car to the dealership who supplied the car and also contacted RCI to complain.

RCI did not uphold Ms A's complaint and said that the achievable mileage of the vehicle was dependant on a number of different factors and the miles per charge figures should be used for comparison purposes only. It found there was no fault with the vehicle so did not accept Ms A's request to reject the car.

Ms A then referred her complaint to our service where it was considered by an adjudicator. The adjudicator ultimately upheld the complaint and set out what she felt RCI should now do to settle the complaint. RCI accepted some of the recommendations by the adjudicator, but not all. As the complaint could not be resolved informally it has now been referred to me for final consideration.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find that Ms A's complaint should be upheld, for broadly the same reasons as the adjudicator has already set out.

Ms A acquired the car through a hire purchase agreement with RCI. As the provider of the hire purchase agreement RCI is liable for the quality of the vehicle and that it meets its description. RCI is also liable, under section 56 of the Consumer Credit Act for any representations made by the credit broker who arranged the finance and car for Ms A.

There is no dispute about the quality of the car and there is nothing to suggest it is faulty. However, Ms A says she was misled when she purchased the car and RCI is therefore responsible for this. RCI's response to Ms A was that it was not present when she bought the car and it could not therefore comment on what was discussed. I am disappointed by this approach as it is reasonable, and expected, in cases such as this for RCI to contact the supplying dealer, who was acting on its behalf, to establish exactly what was discussed.

Ms A says she was told she would achieve 130 miles from a full charge of the battery but says she achieved nowhere near this. She raised this with the dealership shortly after taking possession of the car and in the circumstances here I find her submissions plausible. Ms A has also provided a copy of a text message that she received from the manufacturer which states:

'...We have now responded to RCI advising we believe the Zoe was miss-sold and we are also contacting the regional director. We will be in touch when we have any further news. Regards X X Customer Support Manager.'

The manufacturer's letter to Ms A of 3 February 2014 states that the supplying dealership should have discussed the varying mileage that could be achieved from a fully charged battery and what would affect the range of the battery. It also however states:

'In our opinion the Dealer were negligent in selling the car to you without the correct information and qualification process.'

I have not seen anything to demonstrate Ms A was informed of the significant variance in the achievable distance from a full battery charge and on the balance of probabilities I find that she was misled before agreeing to buy the car. Had Ms A been correctly informed about the realistic achievable distance she could get from the car on a full charge I think she would not have proceeded with the purchase.

Ms A returned the car swiftly to the supplying dealership and the mileage on the car was at that time only 101 miles. She also raised this with RCI and had it investigated this case sufficiently it should have accepted Ms A's request to reject the car.

I think it would be fair and reasonable for Ms A to reject the car as she would not have agreed to buy it if she had been correctly informed. Ms A should not therefore be expected to pay what was outstanding on the finance agreement and the agreement should be cancelled with nothing further owed.

As Ms A has had virtually no use from the vehicle I also think it would be unreasonable to expect her to pay towards the hire purchase agreement. I know that Ms A did stop making the repayments but any repayments that were actually made to the hire purchase agreement should be refunded in full, with interest. Ms A should also receive a refund of her deposit and any part exchange value that may have been used. This again should include interest. As the agreement should be cancelled from outset any adverse information that may have been recorded on Ms A's credit file should also be removed.

It is not clear if Ms A has a separate agreement for the car's battery but if she does this should be treated the same was as the hire purchase agreement for the actual car.

Ms A has also provided details of correspondence she has received from debt collectors about unpaid penalty notices that have been issued in relation to the car. Ms A returned the car to the dealership in November 2013 and RCI says it repossessed the car from the dealership in March 2014. In my view, RCI should have taken the car back from the dealer sooner than it did. As I have explained above, Ms A was entitled to reject the car and RCI should have accepted this when Ms A first raised it.

Notwithstanding this however, RCI accepts it repossessed the car in March 2014 and it should have been obviously clear to RCI that Ms A was no longer the registered keeper of the vehicle.

As the owner of the vehicle, and having repossessed it and taken possession of it, RCI should have ensured the appropriate action was taken to remove Ms A from the vehicle's registration. Had it done this then Ms A would not have been sent the penalty notices. RCI's

failure to amend the registration or registered keeper details have resulted in Ms A receiving the penalty notices and subsequent contact from the appointed collection agents.

I have noted what RCI says about it selling the car possibly before one of the penalty notices was received by Ms A but this is in my view completely irrelevant and of no concern to Ms A. Ms A should have been removed from the vehicle a considerable time before the car was sold at auction and as I have already found, it was RCI's error that has resulted in the penalty charges not being sent to the correct party.

Although RCI agreed to cover the cost of one the notices it has refused to cover the cost of the second and higher penalty notice. This is completely unreasonable in my view and RCI should cover the cost of both penalty charge notices, along with any associated costs attached to them. Ms A has already paid the first charge so when reimbursing her for this RCI should also add interest to the refunded amount.

As the correct registered keeper is still unclear it is possible that Ms A will receive further penalty notices. If she does, RCI should meet the cost of these notices. RCI should also take whatever action is necessary to ensure the car's owner/keeper history is accurate.

Finally, I consider that being misled at outset, RCI not accepting her rejection request and receiving the penalty notices would have caused Ms A a certain amount of distress and inconvenience. She has had to endure the threat of bailiffs calling over the Christmas period as she has not been able to pay the higher penalty charge and this could have been avoided had RCI done what it should have done. In the circumstances here RCI should also pay Ms A an additional £250 for its failings and for the distress and inconvenience this has caused her.

my final decision

My final decision is that I uphold this complaint and I direct RCI Financial Services Limited to:

1. cancel the hire purchase agreement with nothing further owed;
2. refund any deposit or part exchange amounts paid towards the hire purchase agreement;
3. refund all of the repayments Ms A made to the hire purchase agreement;
4. refund the £277 cost of the first penalty notice;
5. refund the £640 cost of the second penalty notice;
6. cover the cost of any future penalty notices Ms A receives for the car;
7. take whatever action is necessary to correct the car's ownership/keeper history;
8. remove any adverse information from Ms A's credit files; and,
9. pay an additional £250 for the distress and inconvenience caused.

Interest at 8% simple per year should be applied to points 2, 3 and 4 above and should be calculated from the date of each payment until the date of settlement. Should RCI consider tax should be deducted from the interest element of the award it should provide Ms A with a tax deduction certificate so she can reclaim the tax if she is eligible to do so.

If settlement is not made within 28 days of Ms A accepting this decision interest should also be applied, at the same rate, to point 9 above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms A to accept or reject my decision before 16 February 2015.

Mark Hollands
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