

complaint

Mr M complains that RCI Financial Services Limited ("RCI") will not accept his rejection of a car he took from it on hire purchase terms, after it proved to be of unsatisfactory quality.

background

Towards the end of 2014, Mr M was looking to buy a used car, and mentioned this to a motor dealer which I will call D Co. It found a car which another motor dealer had for sale. In December 2014, Mr M looked at this, had a test drive, and agreed to buy it from D Co if he could arrange finance. He asked D Co to attend to some minor faults, which it agreed, and arranged hire purchase finance with RCI. He took delivery of the car at the end of January 2015. The car was then seven years old, and had a recorded mileage of some 66,000 miles.

Within a few days, he noticed a number of issues with the car, the most serious of which were:

- the car pulling to the right (tracking issue),
- a worn wiper blade,
- no second key, which he says he had been promised, and
- no evidence of the full service history which he says he was promised.

During February 2015, he tried unsuccessfully to get all the issues he had found resolved with D Co, and when this failed, he said he wanted to reject the car. D Co refused to take it back and said he would have to speak to RCI. At the beginning of March 2015, he wrote to RCI saying he wanted to hand back the car and cancel his hire purchase agreement.

Following RCI's involvement, D Co attempted to deal with the issues. At the end of May 2015, RCI wrote to Mr M to say that:

- some of the issues, such as the wiper blade, had been resolved,
- some, like the car pulling to the right needed replacement parts. These had been ordered and would be fitted when available, and
- in the case of the remaining issues, D Co had been unable to find a fault.

It said that the time D Co had taken to reach this stage was outside its control. It passed on D Co's comment that the age and mileage of the car meant that it was likely to need some maintenance. It didn't accept Mr M's rejection of the car.

Mr M complained to this service. He said he should be entitled to reject the car because D Co hadn't repaired the car, and the assurances it had given him before he bought the car – that the car had a full service history and he would receive two keys – had turned out to be untrue. It appeared that the car had not been serviced in the previous four years. He also said that the car hadn't been given the 128 point check before sale that D Co promised would be carried out on all cars it sold. The repairs that D Co had said it would carry out still hadn't been done.

D Co supplied a statement that:

- Mr M, who was a qualified car mechanic, had test driven the car, and also inspected the underside on one of D Co's ramps, before deciding he would buy it,

- D Co told Mr M that the car had come to it from the other motor dealer without service books or a second key,
- it didn't tell him that the car had a full service history,
- it didn't promise to provide a second key. Nevertheless, it would provide a second key, and carry out the remaining repairs for which it now had the parts, if Mr M arranged to bring in the car. But Mr M had not responded to attempts to contact him, and
- D Co had not carried out its usual full pre-sale checks on the car, as it understood the other motor dealer had done this. It had merely done a lights, levels, and safety check.

Mr M responded that as a trained mechanic, he wouldn't have bought the car without a full service history. When he looked under the car before he bought it, he only inspected the brake pipes, nothing else. He had never been told that D Co had the parts it required and was ready to do the outstanding repairs.

Our adjudicator recommended that this complaint should be upheld. He said that for Mr M to be able to reject the car he had to show that it wasn't of satisfactory quality at the time of sale, or that it had been misrepresented to him, and that he had tried to reject it within a reasonable time after the sale.

There was considerable disagreement between Mr M and D Co about what actually happened before and after the sale. He didn't think the evidence available was strong enough to support Mr M's claim regarding misrepresentation of the second key and the service history. However, he did think Mr M should be able to reject the car because it was not of satisfactory quality, and he had tried to do this about a month after acquiring the car.

Mr M had complained about 17 different quality issues with the car, 12 of which were acknowledged by D Co. Mr M and D Co disagreed about the remaining 5. D Co admitted that it hadn't carried out a full inspection of the car before it was handed over. It had relied on the other motor dealer to do this. The lights, levels, and safety check it did carry out wouldn't have revealed the problems which appeared. Nor would Mr M's test drive and inspection.

The short time between Mr M taking delivery of the car, and the faults appearing suggested that they were present at the time of sale. And D Co, not itself having inspected the car, was not in a position to say they weren't present. The age and mileage of the car meant that it was likely to have some wear and tear issues. However at least one of the issues Mr M raised seemed fairly serious – that the steering was pulling to the right and a wheel was out of alignment.

Almost all the other issues would have been apparent, and should have been fixed, if a reasonable inspection of the car had been carried out before sale. So the adjudicator thought that the car was sold in a condition that was not of satisfactory quality.

He said that Mr M should be able to return the car and be released from the hire purchase agreement without any financial penalty. He should also get back the value of his advance payments (£4,290) but not the monthly instalments he had paid.

RCI responded to say, in summary, that:

- whether or not a car is of satisfactory quality is to be judged at the moment of delivery. With a car of this age and mileage, defects can emerge at any time after sale because of normal wear and tear,
- the standard of satisfactory quality is what a reasonable person would regard as satisfactory quality, not the higher standard of a trained mechanic such as Mr M,
- D Co's tests and inspections did not identify any aspects of the car that were unsafe,
- the car wasn't used between Mr M test driving it in December 2014, and his taking delivery at the end of January 2015, for any purpose other than to prepare and assess it for Mr M,
- Mr M did not mention any issue with the alignment of the wheels or any pulling issue during his test drive or inspection. He only mentioned the engine management light being on and some bumper damage,
- Mr M was given the opportunity to inspect under the car. After that he confirmed he was happy to buy the car if the two faults he had mentioned were repaired, which they were,
- if the steering fault and pulling to the right had been present at the time of sale, Mr M, as a trained mechanic, would have noticed this during his test drive or inspection. Given the age and mileage of the car, it is probable that the various faults developed as a result of wear and tear, rather than being present at the time of sale,
- D Co has either carried out, or offered to carry out, repairs on all the faults it has been able to identify,
- the courts had previously held that in a car of this age and mileage, some minor defects could be expected to be present at the time of sale, or to appear shortly afterwards, due to normal wear and tear, and
- in this case the car was of satisfactory quality at the time of delivery. The faults which developed following purchase were the result of fair wear and tear directly linked to the age and mileage of the car.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

More than a month elapsed between Mr M test driving the car and it being delivered to him. During that time, it was returned to the other motor dealer for it to identify and repair what was causing the engine management light to come on. So neither RCI nor D Co is in a position to say how the car was used or driven throughout that time.

RCI's position is also weakened by the fact that D Co did not carry out its normal pre-sale checks on the car, but relied on the other motor dealer to have done so. No evidence has been supplied of what, if any, checks the other motor dealer carried out, or the results of these.

I also note that Mr M noticed, and complained about, the faults very soon – within a few days – of the car being delivered to him. So I conclude they were present at the time of delivery.

I accept that the satisfactory quality which can reasonably be expected to be present when a car of this age and mileage is sold is less than can be expected for a new car. The test of what is satisfactory quality must be applied in each case according to its own individual circumstances.

In this case, I have considered carefully all that Mr M and RCI have said and provided. Having done so, I find that the number of the faults, the seriousness of some (like the pulling to the right), and the short time after delivery that they appeared, leads me to the conclusion that the car was not of satisfactory quality when delivered. Mr M was entitled to reject the car, and did try to do so within a reasonable time of delivery.

I agree that Mr M is entitled to return the car and to be released from the hire purchase agreement without any financial penalty. RCI should return the value of his advance payment (£4,290) with interest from the date of payment until settlement. But RCI may retain the monthly instalments Mr M has paid, or which became due, before the date of this decision, as payment for the use Mr M has had of the car.

my final decision

My decision is that I uphold this complaint. I order RCI Financial Services Limited to:

1. arrange with Mr M for it to collect the car from him at no cost to him,
2. cancel Mr M's hire purchase agreement so that he has no further liability under it, and
3. refund to Mr M the advance payment of £4,290 he made under the agreement, together with interest on this amount at the yearly rate of 8% simple from the date it was paid by Mr M until settlement. ¹

RCI may retain all monthly instalments already paid, or due, as at the date of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 November 2015.

Lennox Towers
ombudsman

¹ HM Revenue & Customs requires RCI to take off tax from this interest. RCI must give Mr M a certificate showing how much tax it's taken off if he asks for one.