

complaint

Mr S complains about a car he obtained through a hire purchase agreement with RCI Financial Services Limited ("RCI"). He had problems with the car within one month of having it and would like to hand the car back and receive a refund of what he has paid.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 7 January 2016; a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mr S's complaint should be upheld and what RCI should do to remedy the situation. I invited further comments from the parties before I reconsider the complaint and issue my final decision.

In summary, RCI asked that I reconsider my decision as it doesn't agree that it would be appropriate for Mr S to be allowed to reject the car. It says that the decision does not take into account that Mr S settled his finance agreement in full 2 months after it started. It feels that the fact Mr S settled the finance agreement whilst the car was at the dealership waiting for the part to arrive, shows that he was happy with his purchase and intended to keep the car.

RCI also agreed with comments made by the car manufacturer who say that the car was originally off road for a prolonged period of time and so it agreed the refund 3 monthly payments and £200 as a gesture of goodwill. It doesn't think the fuel gauge should form any part of the decision as the fuel gauge was not found to be faulty by the dealership. It did not think that it was fair or reasonable to award £500 for hurt feelings. As he has settled the agreement it wants the associated costs to be assessed.

Mr S agreed with the provisional decision and has nothing further to add.

further proposals

In view of the additional points raised and that Mr S now owns the car I asked both parties to comment further before I issue my final decision. I proposed that Mr S should be able to return the car and receive a full refund of the amount paid including any deposit. But as he has had some usage of the car between May and February 2016, I am now proposing he receives a refund less 50% of the amount he would have paid under the HP agreement for 9 months, the amount to be discounted as Mr S has not had full usage of the car. 50 % of the monthly payments would be £55.84 a month and so I propose that £502.56. should be deducted.

I also asked RCI to comment on whether there was a failed first repair.

Mr S was prepared to accept this and provided further details about the failed repair and explained why he settled the finance agreement. He provided further evidence about the fuel gauge.

RCI were not happy with this and pointed out that it provided cars to keep Mr S mobile during the repairs. It therefore felt compensation should be reduced and he should not be

partly compensated for monthly repayments. If the car is to be returned it is asked for it to be returned free from any damage apart from fair wear and tear commensurate with its mileage. If the vehicle is damaged this cost should be taken into account when deciding on the amount refunded to Mr S. It also requested that the car be signed over ahead of the payment. RCI Financial Services Ltd would action the refund payment within 2 working days of notification that the vehicle has been handed back. There was an initial failed repair, but this did not inconvenience Mr S as the car was in for repair anyway.

my findings

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

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same overall conclusions as set out in my provisional decision, for what are essentially the same reasons.

payment for the car

Mr S says that he settled the agreement in full as no one knew when the vehicle would be repaired and he had been told that he was not entitled to compensation. He decided to pay off the car as he was legally advised it would not affect any claim and he felt he was minimising his claim by doing this. I accept what Mr S has said about this. I am still of the view that the car was not of satisfactory quality when it was supplied to Mr S as I would not expect a new car to experience these problems so soon after purchase. RCI says that as Mr S paid for the car in full after two months he must have been happy with the car. But just because he paid for the car in full, does not mean that the car was of satisfactory quality when it was supplied or that Mr S is not entitled to reject it. The relevant legislation states that where defective goods were sold a consumer can seek to reject those goods. Having considered the full circumstances here, which include RCI's recent submissions, I still find that Mr S should be allowed to reject the car and receive a refund of what he has paid including any deposit. Furthermore, if he had known about the failed repair at the time it happened, then he may not have paid for the car. This information was not provided until many months later when Mr S threatened legal action.

He has had some usage of the car between May and February 2016, it is fair and reasonable that he receives a refund less 50% of the amount he would have paid under the HP agreement for 9 months; the amount has been discounted as Mr S has not had full usage of the car. 50% of the monthly payments would be £55.84 a month and £502.56 should be deducted.

I note that RCI says he was provided with a courtesy car, but Mr S was without his new car for three months and I accept what Mr S says about the unsuitability of the courtesy cars offered. It is fair and reasonable to reduce the payment by £502.56.

original repair

I note that the original repair failed and that Mr S was not told about this at the time. The car remained at the dealership for further repair. This information only came to light when Mr S threatened legal action and the information was only provided to this service very recently. If this had been known at the time, then possibly this complaint may have been resolved quicker with Mr S being given a new car earlier on. It may have affected his decision to settle the HP agreement.

fuel gauge

Mr S says the fuel gauge is still not working and has provided a photograph that appears to show a problem. Although a third party garage carried out a diagnostic test, I accept this was not 100% conclusive and that the garage wanted to drive the car for 200-300 miles to further assess the fault. I find, on balance that there is still a problem with the fuel gauge as evidence by the photograph.

compensation

I note the representations by RCI about compensation and that it feels £500 is not fair and reasonable. I find that £500 is fair and reasonable. Mr S was without his new car for three months. During that time, the dealership attempted to repair the car. This failed and Mr S was not informed of this until much later. A second repair was eventually successful. If this had been known about at the time, the complaint may have been resolved quicker. I also accept that there is a problem with the fuel gauge which has also inconvenienced Mr S. £500 compensation is fair and reasonable for the distress suffered.

I do not think it fair and reasonable for interest to be added on these figures.

my final decision

My final decision is I uphold this complaint and require RCI Financial Services Limited to;

- Within 7 working days arrange with Mr S for the car to be inspected and returned to them. The car is to be free from any damage apart from fair wear and tear commensurate with its mileage. If the car is damaged this cost should be taken into account when deciding on the amount refunded to Mr S.
- The car is to be inspected with Mr S present and the inspection report agreed at the time of inspection.
- No reduction is to be made for problems with the fuel gauge.
- Mr S agrees to sign over the car ahead of the payment and once the car has been inspected.
- RCI Financial Services Ltd agrees to refund payment within 2 working days of notification that the car has been handed back.
- RCI Financial Services agrees to refund Mr S the price paid for the car, including any deposit less £502.56. which represents 50% of the monthly payments
- Pay Mr S £500 compensation for distress and inconvenience,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 April 2016.

Clare Hockney
ombudsman

complaint

Mr S took out a hire purchase agreement with RCI Financial Services Limited (RCI) to fund the cost of a new car. He had problems with the car within one month of having it and would like to hand the car back and receive a refund of what he has paid.

background

Mr S took possession of a new car on 30 May 2015. On 30 June 2015, the car suffered a major failure, broke down and was taken to the main dealer. The car was in repairs for approximately three months. Mr S wants to reject the car. Mr S says he was given courtesy cars but they were unsatisfactory.

RCI agreed to refund three monthly payments and offered £200 compensation. Mr S did not think this was fair and wants to reject the car.

The adjudicator who considered the complaint did not recommend it be upheld. She thought RCI's offer was fair and reasonable and the car has now been fixed.

Mr S did not accept the adjudicator's conclusions and asked for the complaint to be reviewed. He also says the car has still got faults. Mr S says that the fuel gauge is not acting properly; he believes this issue was there from the start and is due to a failed repair. The car went for a diagnostic test in December 2015 but this didn't show any faults. Mr S was told that the garage would need to drive the car for around 200 miles to detect the fault. Mr S did not agree to this.

my provisional findings

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

The car failed after it had been driven approximately 700 miles. It took three months to repair and I find that the fault was significant. The car required a new Body Control Module. It was a new car and was a month old. I find it was not of satisfactory quality when supplied. In coming to this conclusion I have taken into account the fact that the car was new, had driven only around 700 miles and the significant fault developed in the first month.

The legislation says that where goods are not of satisfactory quality the consumer is entitled to repair, replacement or rejection of the goods. In the circumstances I think that he should be entitled to reject the car. This was a new car and it was not reasonable to only offer the option of a repair. The repair also took many months leaving Mr S without his new car. Whilst he was provided with a couple of courtesy cars, he faced a period of two weeks without a car. I accept that these cars were not suitable, one was too big for Mr S's wife to drive and the other was not an automatic. I do not agree that repairing the car, refunding three month's payments and offering £200 is fair and reasonable.

The car has also suffered recent trouble and I note the diagnostic tests have not been able to detect a fault. This possible later fault does not change my provisional findings that the car was not of satisfactory quality when supplied and Mr S was entitled to reject it.

RCI should therefore cancel the hire purchase agreement and cancel anything further that is owed. Mr S has had limited use of the car as it failed after one month but he has had some use since May. RCI provided two courtesy cars, but I accept that these were not suitable and did not make up for the loss of his new car. Mr S has been able to drive the car recently, despite the problem with the gauge; I therefore think it reasonable for him to pay half the monthly payments. RCI should therefore refund half the repayments that have been made to the hire purchase agreement. It should also refund any deposit Mr S paid towards the car.

RCI should add interest to the refunded sums above at 8% simple per year from the date of each payment until the date of settlement.

Mr S has also suffered hurt and upset. He has faced many months of worry, had to send numerous letters to RCI. Recently, he has also had problems with the fuel gauge. In the circumstances, I find that £500 should also be awarded for hurt feelings.

my provisional decision

Subject to any further evidence or representations received from Mr S, or RCI Financial Services Limited I propose to uphold this complaint. I am minded to direct RCI Financial Services Limited to;

1. cancel the hire purchase agreement with nothing further owed;
2. take back the car, at no cost to Mr S;
3. refund any deposit paid;
4. refund half the monthly repayments made to the hire purchase agreement; and,
5. pay Mr S an additional £500. For hurt feelings

RCI Financial Services Limited should add interest to points 3 and 4 above. Interest should be calculated at 8% simple per year from the date of each payment until the date of settlement.