

The complaint

Mrs J complains RCI Financial Services Limited trading as Mobilize Financial Services (RCI) supplied her with a car that she believes wasn't of satisfactory quality.

Mrs J's husband is the representative on this case and he is also a user of the car but as the agreement is in the name of Mrs J, I will refer to her throughout this decision.

What happened

In March 2023, Mrs J entered into a 37 month personal contract purchase (PCP) agreement with RCI for a new car. The car's cash price was £19,279. She paid a deposit of £5,236. She was required to pay monthly instalments of £158 with a final optional payment of £10,506 should she decide to keep the car. As part of the agreement, she also agreed to purchase a service plan at a monthly cost of £9.99.

In June 2023, the car broke down and roadside assistance had to be called. Mrs J was told there was a fault with the nox sensor and she was advised it wasn't safe to drive the car and it should be taken back to the supplying dealership.

The dealership confirmed there were warning lights displayed on the dashboard related to the anti-pollution and nox sensor. They cleaned the sensor and advised Mrs J a software update would be released soon.

A short time thereafter around July 2023, both warning lights reappeared. Mrs J complained to RCI. The car was returned to the dealership in September 2023 and a similar repair was carried out – a clean of the nox sensor.

Despite these repairs, Mrs J reports the same warning lights continue to display intermittently. She doesn't believe the car is fit for purpose. She wants the agreement to end and for a replacement car to be provided on the same terms and conditions of this agreement.

RCI confirmed the car had been returned to the dealership on two separate occasions. However they said the car has been successfully repaired under warranty and during these repairs a courtesy car was provided. They disagreed to a rejection.

Unhappy with their response, the complaint was referred to our service. Our investigator recommended the complaint was upheld. He concluded there was a fault with this new car at supply meaning it wasn't of satisfactory quality. He said RCI should allow Mrs J to reject it and do a number of other things to put things right such as refund the deposit, pay £200 compensation, remove adverse information about this agreement from her credit file, etc.

Broadly speaking Mrs J agreed with the investigator's findings but believed RCI needed to do more to put things right. In summary she said:

- She was supplied with a faulty car through no fault of her own. It was a known manufacturer issue;

- There have been numerous trips to the dealership for repairs;
- The warning lights have continued to come on since September 2023 and she's provided photos to support the same;
- She's having to frequently put adblue into the car to get the warning lights to disappear. This is costing around £30 a month;
- In recent months the internal air blower controls stopped working meaning it was dangerous to drive the car with misted windows;
- If the car is returned, she would be left without one. The car is relied on heavily by their family given her husband's medical needs and they also act as carers for a relative;
- She would be at a financial detriment because she wouldn't be able to buy another car on similar terms as this agreement. RCI should provide an alternative car on the same terms or alternatively pay the difference in price for when she gets another car;
- This situation is causing significant inconvenience to both her and her husband.

RCI disagreed with the investigator's outcome. In summary, they've said:

- Engine management lights (EML) come on for various reasons especially in diesel cars which are susceptible for clogging when driving short trips or at low speeds. Consideration hasn't been given as to whether the warning lights is due to Mrs J's driving style;
- The picture provided by Mrs J shows the warning light when the car starts. The manufacturer user manual says these warning lights come on when the ignition is switched on but it goes off once the engine starts;
- There is no proof the repairs including the software update in September 2023 didn't fix the faults;
- There is insufficient evidence the faults remain.

In November 2024, I shared my provisional thoughts with both parties. I outlined that broadly speaking I agreed with the investigator's opinion and reasoning. I outlined I was satisfied that sufficient photographic evidence had been provided to show the same EML lights had come on since the repairs in September 2023 indicating the car remained faulty. So in addition to the investigator's recommendations for a resolution, I said as the fault first presented itself in June 2023 and I believe the car remains faulty, RCI should refund 10% of the monthly instalments paid to reflect impaired use.

Moreover, given Ms J's comments about the trouble and upset caused such as multiple trips to the dealership, car breaking down, the worry of not knowing if it will perform as expected, etc, I also said the compensation should be increased from £200 to £400.

In response, RCI asked for more evidence of the faults after the repair in September 2023. They said they had previously seen evidence which shows the EML were a normal part of starting the car and the user manual confirmed this. They said no additional evidence had been provided that showed a fault remained. Our service sent photos to RCI as provided by Mrs J which showed EML displayed. These photos were taken after September 2023. In a further response, RCI maintain there are no outstanding issues with the car. They said it was serviced in March 2024 and no issues were reported. Regarding the photos, they said they didn't know when they were taken and the EML are a normal operating procedure as per the manual and once the ignition starts, the lights go off.

In response to my provisional findings, Mrs J maintains the EML displays on an intermittent basis and she's provided photos of the times she has been able to capture it. She also said:

- If the car was rejected, a collection date would need to be agreed so she can ensure she had another car to use as this was the only vehicle in the household;
- The car could be collected when RCI had refunded the amounts as directed;
- RCI must provide a clear breakdown of the refunds and how it was calculated.

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.

Having done so, I've decided to uphold Mrs J's complaint.

I'm aware I've summarised this complaint in less detail than has been provided and I've done so using my own words. No discourtesy is intended by this. I want to assure Mrs J and RCI that I've reviewed everything on file. If I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this

Mrs J acquired a car under a regulated credit agreement. RCI was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that, under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

Mrs J was supplied with a brand-new car. So I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.

Based on the evidence presented to me which includes breakdown reports, pictures, job sheets and correspondence with the dealership, RCI and the car manufacturer, I find there were faults with the car. Namely faults with the toxic fume filter system and the nox sensor. Correspondence from the car manufacturer confirms this is a known issue with a published technical bulletin concerning the same. They've told Mrs J that while a fix is being worked on, a date of remedy can't be provided. Until that time, only a temporary fix is available, that is, to clean the nox sensor. So I don't believe it's fair nor reasonable for RCI to suggest the faults are down to Mrs J's driving style, there's no evidence to support this. I must also stress the faults first presented itself a few months after purchase and the car had travelled only around 3,000 miles.

Above, I've already set out the expectations of a brand new car. Having done so, I don't find a reasonable person would expect to experience such faults with a new car and especially so soon after supply. For these reasons, I find there was an inherent manufacturing fault with the car at supply meaning it wasn't of satisfactory quality so there was a breach of contract.

Where this happens and it's outside the short time to reject (30 days), the relevant law says there should be one opportunity to repair. I would expect the repair to be carried out at no cost to the consumer, within a reasonable period of time and without causing significant inconvenience to the consumer. That is what has happened here, repairs were carried out by the dealership in June and September 2023. Although RCI says the nox sensor was replaced in September 2023 and a software update was applied, the job cards provided don't support that. They confirm the nox sensors were simply cleaned. RCI's contact notes with the dealership confirms the manufacturer technical bulletin says the nox sensor shouldn't be replaced only cleaned and that's what has happened.

Despite these repairs, Mrs J says the fault remains and she's provided photographs to support this. Based on when Mrs J say they were taken and when they were provided to our service, I'm satisfied they were taken after the repair in September 2023 and they show both warning lights displaying on the dashboard. I note RCI's comments that the user manual says such lights appear when the ignition starts and having referred to the same, I agree. However I must point out, the manual also goes on to say if the warning lights stay on (which is what Mrs J says happens), the car should be driven carefully to an authorised dealer as soon as possible as there's a risk it will cause damage to the car.

I'm persuaded by Mrs J's testimony that on an intermittent basis the lights stay on even after the car starts which is likely to explain why it wasn't present during the service in March 2024. Overall I'm satisfied she has provided sufficient evidence to show the EML continue to appear on the car despite the previous repairs. As confirmed by the manufacturer's emails to Mrs J, the cleaning of the nox sensor is only a temporary fix not a permanent one so it's not surprising the warning lights will eventually reappear as is the case here. On balance, I'm persuaded the car remains faulty.

Given the timeline of events, the numerous repair attempts and no permanent remedy in sight, I can understand why Mrs J no longer wants any further repairs and wants to return the car. She says she's lost confidence in it and I can understand why.

I acknowledge her strong wish for a replacement car to be provided on the same terms but based on the quotes provided by a manufacturer approved dealership, that isn't possible and I can't compel them nor RCI to do so. Therefore I find the most fair resolution would be for RCI to allow Mrs J to exercise her final right of rejection.

Putting things right

Having determined the car wasn't of satisfactory quality at supply, repairs have failed and rejection should be allowed, RCI should end the agreement, collect the car, refund the deposit paid and remove any adverse information about this agreement from Mrs J's credit file.

Although it's clear there have been ongoing faults with the car, given the mileage covered by Mrs J (over 10,000 miles in March 2024), it's clear she's had use of it therefore it's fair she pays to reflect that. From my understanding for the times she's been without a car (because it's been in for repair), a courtesy car has been provided to her. For these reasons, I won't be saying RCI should refund the monthly instalments she's paid for the car and the service plan. Instead I find they should refund 10% of the monthly instalments paid since June 2023 (when the faults were first reported) to reflect the impaired use.

Mrs J has provided detailed comments as to why she believes she has been further financially disadvantaged by this situation. It's clear she feels strongly about this and I appreciate the situation she finds herself in. Working out how to put consumers back in the

position they would've been in had there not been a breach of contract isn't an exact science. However as a service, we try to put the consumer as close to that position as we can. Overall, I've taken a broad view in this case. Given I'm saying RCI should refund the deposit, refund 10% of the monthly payments paid from June 2023 with compensatory interest, amongst other things, I find this is a fair resolution in the circumstances.

I've carefully considered Mrs J's comments on the impact of this situation. This includes multiple trips to the dealership for repairs, extensive communication with the parties concerned, the car breaking down on more than one occasion, the worry about whether the car (which is relied on heavily) will perform as expected. Additionally, if she accepts this decision she will have to go to the effort of buying a new car and it's likely to be on different terms to that of this agreement. However I can't reasonably hold RCI responsible for that nor can I say they need to pay any potential difference in cost. Given these circumstances, I find RCI should pay £400 compensation to Mrs J for the trouble and upset caused.

I note Mrs J's comments about the collection of the car and the breakdown of refunds. If this final decision is accepted, as directed RCI should collect the car. It's not for me to tell them they must wait until Mrs J sources another one however I would expect them to liaise with her about the date they intend to collect it. Generally speaking, the car would need to be returned before any refunds are made, but essentially the order in which this happens, is down to RCI. It's not something our service gets involved with. Lastly, I would expect RCI to provide Mrs J with a breakdown of the refunds.

My final decision

For the reasons set out above, I've decided to uphold Mrs J's complaint.

To put things right, RCI Financial Services Limited trading as Mobilize Financial Services must:

- End the agreement with nothing further for Mrs J to pay;
- Collect the car at no cost to Mrs J;
- Refund the cash deposit and/or part exchange*;
- Refund 10% of the monthly instalments paid from June 2023 onwards to reflect impaired use;
- Pay 8% simple interest on the above refunds from the date of payment to the date of settlement*;
- Remove any adverse information about this agreement from Mrs J's credit file;
- Pay £400 compensation to Mrs J for the trouble and upset caused.

*If RCI considers tax should be deducted from the interest part of my award it should provide Mrs J with a certificate showing how much it has taken off, so Mrs J can reclaim that amount if she is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 13 January 2025.

Simona Reese

Ombudsman