

The complaint

Mr W complains that a car supplied to him under a hire purchase agreement with RCI Financial Services Limited trading as Mobilize Financial Services (“MFS”) was of an unsatisfactory quality.

What happened

I issued a provisional decision on this complaint last month. In that decision I explained why I thought the complaint should be upheld and what MFS needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

In March 2022, Mr W was supplied with a new car through a hire purchase agreement with MFS. The agreement was for £21,442 over 49 months, with monthly repayments of £250.75 and a final optional repayment of £12,041.14. Mr W also part exchanged a vehicle to provide a deposit of £5,950.

Since being supplied with the car, Mr W has experienced a number of faults with it. He says that he has been able to drive the car without a key being present, he says that the cruise control randomly disengages, and he says the regenerative braking intermittently engages and disengages.

Mr W says that the issue with the cruise control was first investigated by the dealer in August 2022. Although the problem could not be replicated by the dealer’s testing, an adjustment was made to the brake pedal that was thought to be the likely cause of the problem.

Mr W first reported the problems with the regenerative braking in December 2022. In early February the wiring loom on the car was replaced to resolve the issue. But around a week later the problem reoccurred. Mr W wrote to MFS to say that he now wished to reject the car. MFS didn’t accept Mr W’s request so he brought his complaint to us.

Mr W’s car has remained with the dealer since the problems in February 2023. It appears that a repair to the battery management system was undertaken in July 2023. And more recently, since our investigator made her assessment, repairs have been made by another dealer to the brake pedal in order to resolve the cruise control issue, and to the key card to resolve the car being driven without a key being present issue.

Mr W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we’re able to look into complaints about it. The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should’ve been of a satisfactory quality when supplied. And if it wasn’t, as the supplier of finance used to purchase the car, MFS is responsible. What’s satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case

like this, this would include consideration that the car being supplied was brand new and so might be expected to be fault free for an extended period of time.

The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. So here I will consider when the faults can reasonably be considered to have occurred. If that is within the first six months it would be for MFS to establish that any faults were not present at the time of sale.

Mr W first reported problems with the cruise control system in August 2022 – just five months after the car had been supplied. And whilst the problems with the regenerative braking occurred later, the replacement of the wiring looms were attempted under the manufacturer's warranty suggesting that, at the very least, they suggested an issue with the durability of that component at the time the car was supplied.

So I am satisfied that the problems would indicate that the car was not of a satisfactory quality when it was supplied to Mr W. So I now need to consider what might be a reasonable way of putting that right.

Section 24(5) of the CRA says that a consumer who has the right to reject may only exercise this if after one repair or replacement, the goods do not conform to contract. This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs – in other words it's not a single chance of repair for the dealership AND a single chance of repair for MFS – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

There have been two repairs in respect of the regenerative braking failures - to the wiring loom and later to the battery management system. But I'm not persuaded the second repair took place with the knowledge, or consent, of Mr W. It took place after he has asked to reject the car. And more recently I have seen further repairs have been performed in respect of the cruise control system – again suggesting the initial repairs in August 2022 had been unsuccessful. So I do think it fair to conclude that the single chance of repair elapsed here.

The CRA is clear that, if the single chance at repair fails, as is the case here for the reasons explained above, then the customer has the right of rejection. However, this doesn't mean that the customer is required to reject the car, and they can agree an alternative remedy such as further repairs to the car. And that is what I am persuaded happened here at first. Mr W allowed an investigation, and attempted repair of the problems with the cruise control system. And then he allowed a repair relating to the regenerative braking.

But when the problems with the regenerative braking system reoccurred, because it seems the earlier repairs had failed, it would be reasonable for Mr W to reconsider his options and seek rejection of the car. I think those actions are entirely compatible with his rights under the CRA. Mr W told MFS in February 2023 that was what he wished to do, and I understand that remains his preference. I currently think that request was reasonable.

Mr W has been without his car since it was taken into the dealer in February 2023. And that was the point at which I think Mr W's request to reject the car should have been accepted. But I note that he was supplied with a hire car until June 2023. So I'm

currently minded that should be treated as the point at which rejection of the car occurred and any payments he has made to the agreement since the hire car was returned in June 2023 should be refunded to him. And I think the refund of those payments would reasonably compensate Mr W for any additional costs he might have incurred whilst he was without the use of his car.

There seems little doubt that Mr W has suffered some distress and inconvenience in being supplied with a car that was not of a satisfactory quality. So I intend to direct MFS to make an additional payment of £300 to Mr W to compensate him for that inconvenience.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Both Mr W and MFS have replied with some additional information. Although I am only summarising here what each have said, I want to reassure Mr W and MFS that I have read, and carefully considered, their entire responses.

Mr W largely agrees with my provisional findings. But he has provided me with information about other costs that he has incurred during the time he has been without his car. In brief those additional costs can be summarised as being in relation to;

- Administration costs charged by the hire car provider following two traffic fixed penalty notices (that were later cancelled by the issuer).
- The insurance costs of a replacement car being higher due to any no claims discount still being applied to the original car that was stored at the dealership awaiting further investigations.
- Additional fuel costs incurred due to hire cars being petrol fuelled.
- Initial hire costs for a courtesy car
- The costs of insuring two cars whilst the first car remained under investigation.

In total Mr W says those additional costs amount to £973.08.

MFS says that it doesn't agree with my provisional findings. In particular it has highlighted three areas that it says suggest incorrect interpretation of the technical information it has provided. It says that no failures with the cruise control function have been identified. It thinks the system is working as designed, with the cruise control disengaging when the brake pedal is activated. It says there is no correlation between the replacement of the wiring loom and battery management system and any problems with the regenerative braking. In fact it says that there have been no confirmed concerns about the braking system. And it points out that Mr W's hire car was returned in June 2023 as he had failed to comply with the terms of the car rental company who refused to supply him with another vehicle.

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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr W and by MFS. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I have thought carefully about the comprehensive representations that have been made in response to my provisional decision. Although they have not led me to conclude that I need to make changes to those provisional findings I do think it would be helpful for me to comment further on some of the matters that have been raised. And I have made some revisions to the compensation that MFS needs to pay. It seems that I should naturally follow a path of considering what MFS has said – that is whether or not the complaint should be upheld – and then looking at Mr W's comments about the redress that would be appropriate.

I agree with MFS that there isn't any direct evidence that the dealers who have looked at Mr W's car have experienced the problems he's described with the cruise control and regenerative braking systems. But that doesn't lead me to a conclusion that those problems simply do not exist. Mr W has provided consistent reports of those problems to a number of parties, including the original dealer, MFS itself, the car breakdown service provider, and in his dealings with us. And that testimony has been supported, from time to time, by error codes shown in the car and by the repairs that have been attempted to various components.

I do not agree with MFS that any reported problems with the cruise control system simply reflect its intended operation. I agree that the system should disengage when a brake pedal has been pressed. But that isn't what Mr W has said has happened. He has reported the system disengaging without any actions being taken by the driver. And that seems to me to be consistent with the potential faults with the brake pedal to which repairs (or perhaps adjustments) have been made on at least two occasions.

In February 2023 a main dealer undertook repairs to the wiring loom on Mr W's car. It said those repairs were in relation to a fault code of DTC1B1208 amongst others. And when Mr W says he faced problems with the regenerative braking system once again, and requested breakdown assistance, the report from the provider shows that same fault code as having reoccurred. My understanding is that, the repair ultimately completed to correct that problem was the replacement of the battery management system. I think that makes it clear that the initial repair attempt here was not successful.

I would expect, where a car is off the road as a result of it not being of a satisfactory quality when it was supplied (as I have concluded was the case here) that a replacement vehicle would be provided. And, subject to the comments I will make below, that seems to have been something that was arranged for Mr W with a national hire car provider.

But that arrangement ended in June 2023. MFS says that Mr W breached his hire agreement, and so the company would not supply any further hire vehicles to him. I think I should first set out my understanding of how Mr W breached that hire agreement. His hired car was involved in an accident and could not be driven. I understand that Mr W was

instructed to wait with the car until it was recovered. But he left the car, arranging for someone else to remain with it until recovery, as he had an urgent appointment to attend.

It is entirely the choice of the car rental company to whom it will offer a car. And whilst I don't find Mr W's actions after the accident to have been unreasonable, the company did. It decided that it could no longer offer its services to Mr W. But I don't think that prevented MFS from offering alternative transport to Mr W. It could have provided a courtesy car from the dealer that was repairing Mr W's car. Or it could have made arrangements with another car rental company. So I don't consider Mr W's actions were such that they removed the expectation that MFS would keep him mobile whilst his car was off the road.

So on balance I remain of the opinion that Mr W's request to reject the car, that he made in February 2023, was reasonable. So I will now move on to consider the information that Mr W has sent us about other costs he has incurred as a result of MFS not accepting his request to reject the car.

I think I should first of all say that it would be unusual for a situation such as this to not cause some inconvenience or additional costs to the consumer. And whilst my redress below will seek to address the direct losses that have been incurred it might not be appropriate for other, more indirect, losses to be addressed in that way. And whilst I accept that will leave Mr W feeling that he has not been fairly compensated, I am satisfied that what I am directing MFS to do is fair and reasonable for both parties.

As I said earlier, I think it would be reasonable for Mr W to be kept mobile whilst his car is off the road. I can see that he was required to pay, and not reimbursed for, two days car hire when his car broke down again in late February 2023. I haven't seen anything to make me think that those costs shouldn't be met by MFS.

In April 2023 Mr W was reported to have contravened a bus lane restriction on two occasions, and a penalty charge was issued each time. In line with its normal agreement the car rental company levied an administration charge of £35 on Mr W for each offense. Mr W was later successful in appealing those penalties and so no penalty charges were payable. But the administration charge from the car hire company remained. Mr W says that, if he had been in his own car, he wouldn't have incurred those administration charges so they should be met by MFS.

I am not persuaded by his argument. I think the link between Mr W's car being off the road, and the administration charges being incurred is too remote. It could just as easily be argued that if Mr W hadn't contravened the bus lane regulations (and I note that the issuing body didn't conclude the penalty charges were issued incorrectly) the administration charges wouldn't have arisen.

I note Mr W's concerns about the additional fuel costs that he has incurred, particularly on some longer journeys that he undertook. I think that his calculations have some flaws particularly in that the charging costs he has used as the basis of his calculations appear to be using his domestic electricity supply. But given the length of some of the journeys he would have needed to use commercial charging facilities at a far higher price. And of course there would have been the inconvenience of the additional time needed for charging as compared to the relatively quick petrol refills that he was able to use. So on balance I don't think it reasonable to make any award for any additional fuel costs.

Mr W chose to purchase an alternative car in October 2023. He says that he was unable to benefit from any no claims discount on that car's insurance since his original car was still insured. He has said that the additional premium should be refunded to him. Again, I'm sorry to tell Mr W that I cannot agree that would be a fair approach. An insurer's pricing will take

many factors into account. I don't think it reasonable to apply a simple approach of saying that any no claims discount that might have been available would have had the impact of reducing the insurance cost by a set amount. For example it is very likely that the fact Mr W was insuring two cars at that time might have reduced the cost of the insurance he was paying on the second car.

But Mr W was asked to keep his original car insured whilst it was under investigation – and more importantly following the time that I think he should have been allowed to reject it. I do think that it would be reasonable that he be compensated for those insurance costs – costs he would not have needed to pay had the car no longer been his responsibility. But I am mindful that Mr W was provided with an insured hire car until June 2023, so I think that is the point at which his insurance liability should end. Mr W has provided us with details of his insurance costs. So applying those costs pro-rata would mean he has paid insurance costs of £331.85 that should now be refunded to him.

Putting things right

In order to put things right, as set out above, MFS should;

- End Mr W's hire purchase agreement with no further payments required from Mr W and arrange for the collection of the car either from Mr W or the dealer.
- Refund any payments made by Mr W under the agreement since the hire car he had been provided with was returned on 13 June 2023.
- Refund to Mr W the deposit of £5,950 he paid on the agreement.
- Refund the initial two days' hire car costs of £102.55 paid by Mr W on 2 March 2023.
- Refund the insurance costs paid by Mr W on his vehicle following the point it should have been rejected. Those payments, on a pro-rata basis can be calculated to comprise £280.98 on 13 June 2023, and £50.87 on 22 May 2024.
- Add interest of 8% simple a year on any refunds above from the date the amounts were paid to the date of settlement. HM Revenue & Customs requires MFS to take off tax from this interest. MFS must give Mr W a certificate showing how much tax it's taken off if he asks for one
- Pay £300 to Mr W in respect of the distress and inconvenience he has been caused.
- Remove any adverse information recorded on Mr W's credit file in relation to this agreement.

My final decision

My final decision is that I uphold Mr W's complaint and direct RCI Financial Services Limited trading as Mobilize Financial Services to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 August 2024.

Paul Reilly
Ombudsman