

The complaint

Mr W complained about the quality of a new car he acquired under a hire purchase agreement with RCI Financial Services Limited trading as Mobilize Financial Services ('Mobilize').

When I refer to what Mr W and Mobilize have said or done, it should also be taken to include things said or done on their behalf.

What happened

In August 2023, Mr W acquired a brand-new car through a hire purchase agreement with Mobilize. The cash price of the car was £31,130. Mr W paid a deposit and/or part-exchange of £5,939.18. The total amount payable was £36,408.99, with 47 monthly payments of £364.17, one payment of £364.16, followed by a final payment of £12,989.66.

Mr W said that on 23 December 2023, having driven 4,350 miles in the car since collecting it, the car displayed warning lights and subsequently lost all engine power within a few minutes. Breakdown assistance was required at the roadside and the mechanic who attended found fault codes relating to electrical power issues but could not replicate the codes or the fault under roadside testing. The car was taken to the supplying dealer and inspected. The dealer was also able to see the historic fault codes but, like the roadside mechanic, was unable to replicate the codes or the fault under testing.

On 15 January 2024, with 500 further miles driven, the car again lost all engine power, this time on a smaller local road. On this occasion the loss of power occurred a few seconds after the warning lights appeared. The car was returned to the supplying dealership again and was inspected for a second time on 19 January 2024. As on the previous occasion the dealership was able to read the historic fault codes but was unable to replicate the codes or the fault during the inspection.

On 25 January 2024, Mr W complained to Mobilize and the supplying dealership to say that he considered the car was of unsatisfactory quality and unsafe and explained that he was intending to reject it.

On 30 January 2024, Mr W wrote to Mobilize and the supplying dealership and confirmed he was rejecting the car.

On 27 February 2024, Mobilize issued its final response to Mr W's complaint. It said that the dealer had driven the car extensively during road testing but had been unable to identify an underlying fault or reproduce any fault codes. Mobilize further stated that for Mr W's complaint to succeed he would need to prove that there was an inherent manufacturing defect at the point of sale and, based upon the evidence, Mobilize did not consider that to be the case. As a result, Mobilize would not accept Mr W's request to reject the car and therefore it was not upholding the complaint.

Mr W was unhappy with this response and arranged an independent inspection of the car. The independent inspection took place on 27 March 2024 and a copy of the inspection

report was provided to Mobilize. Having reviewed the report, Mobilize declined to change its original decision not to uphold Mr W's complaint.

Mr W was unhappy with this response, so he referred his complaint to the Financial Ombudsman for investigation on 7 April 2024.

Our investigator concluded that, on balance, there was sufficient evidence to determine that there is an underlying fault with the car, that the car was not of satisfactory quality when supplied and that Mobilize needs to do something to put things right for Mr W.

Mobilize didn't agree with the investigator. It said:

- Identifying a fault is necessary before Mr W can exercise his right to repair or reject and even if a fault were identified the appropriate remedy would be repair.
- Diagnostic Trouble Codes (DTCs) are used to identify and diagnose any mis-happenings in a car, are caused by several factors and are not indicative of a manufacturing defect.
- It was wrong for the independent engineer to conclude that there were historic fault codes stored on the car's system when his diagnostic scan confirmed no related fault codes across the monitored systems.
- As it has not been possible to replicate a fault under testing at any point there is no evidence of a fault and therefore it can't uphold Mr W's complaint.

Because Mobilize didn't agree, this matter has been passed to me to decide.

After reviewing the case I issued a provisional decision on 25 July 2024, where I explained my intention to uphold the complaint. In that decision I said:

"What I've provisionally decided – and why

In reaching my decision 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 reached the same overall conclusions as our investigator.

If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations, any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time.

Mr W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we can investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr W entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. In this case I believe that the relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their

general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr W took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Mobilize to put this right. The car Mr W was supplied with was brand-new, with a cash price of £31,130, and therefore I think a reasonable person would expect it to be of a higher quality than a cheaper and/or previously used car. I think it would also be reasonable to expect the car to last a considerable period of time before any problems occurred, and it would be reasonable to expect it to be free from even minor defects shortly after it was acquired.

I think there is sufficient evidence to conclude that most likely there is an intermittent fault with the car and the consequences of the fault as experienced by Mr W are total electrical failure while driving.

I acknowledge that Mr W was able to drive the car without any problems between August and 23 December 2023. However, based on the car being brand-new and having only been driven 4,350 miles when it first broke down, I think most likely the car is faulty and that fault existed at the time Mr W took delivery of the car. My reasons for this are broadly the same as our investigator's but I will summarise them briefly below.

There is a range of evidence which points to the car having an electrical fault. This includes images of warning lights and records of fault codes relating to the electrical system, as well as the roadside recovery report, the independent engineer's report and Mr W's submissions and records of events, all of which I find to be fair, reasonable and reliable.

The car's manual confirms that the combination of warnings displayed by the car, on the two occasions it broke down while Mr W was driving, indicate that the electrical circuit was overcharged or discharged. Additionally, the diagnostic report from the dealer on 19 January 2024 noted faults indicative of the 'circuit current above threshold' and 'supply faulty'.

I've seen a copy of the independent engineer's report, dated 5 April 2024. In this report, the engineer confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

The independent engineer's report states that whilst they could not replicate the fault during their inspection, they had no reason to doubt the two instances of electrical failure reported by Mr W, even though the fault codes had been cleared from the system prior to their inspection. The independent engineer had seen the RAC breakdown fault log and photos which supported Mr W's position. These included: a photo of the car stopped on the motorway on 23 December 2023, a photo of the electrical system warning from the second breakdown and a photo detailing historic fault codes generated by the car's system. The engineer's overall conclusion was that the car had intermittent faults which were causing 'a shut-down of the vehicle's electrical operations, resulting in a sudden and unexpected breakdown. This is clearly not acceptable and taking into account the time and mileage which has elapsed since purchase, it is reasonable to conclude that the underlying issues would have been present or in development at the point of sale.'

The independent engineer stated that the fault could not have been caused by driver behaviour. He also said that he considered it important for these types of issues to receive attention as soon as possible even if this requires further extensive diagnostics to be conducted. He said this is because electrical failures of this nature can lead to safety issues and the possibility of injury. This contrasts with what Mr W was being told by Mobilize and

the dealer, namely that because they could not replicate the fault under inspection, it could not be established that there was a fault and therefore Mr W should continue to drive the car.

I believe that Mr W acted appropriately and reasonably in deciding not to drive the car after the second breakdown in January 2024 and note that in doing so he was acting in accordance with the manufacturer's instructions in their own manual regarding what to do when the electric system warning appeared: namely 'Stop immediately, for your own safety, as soon as traffic conditions allow. Switch off the engine and do not restart it. Call an approved Dealer.'

Mobilize said that identifying a fault is necessary before Mr W could exercise his right to repair or reject the car, by which they seem to mean that there must be evidence of the fault being replicated under test conditions for it to be shown that the car is faulty. I don't accept this, and I believe there is sufficient evidence to show that most likely the car is faulty. I think that most likely if there was no fault with the car the supplying dealership would not have tried to replicate the intermittent fault and/or would not have been seeking guidance from the manufacturer. So overall I do think that on balance there is something wrong with the car.

Mobilize also said that DTCs are used to identify and diagnose any mis-happenings in a car, are caused by several factors and are not indicative of a manufacturing defect. Whilst this may be true, it doesn't mean that the car is not faulty and as I have already said it is my conclusion that there is sufficient other evidence to indicate that the car most likely does have an underlying fault.

Mobilize said they thought it was wrong for the independent engineer to conclude that there were intermittent/historic fault codes stored on the system when his report noted that 'the diagnostic scan confirmed no related fault codes across the monitored systems.' The independent engineer said that it is part of the normal testing process for diagnostic codes to be cleared before a car was subject to re-testing.

There is no dispute that the fault codes were not replicated during testing. However, I do not accept that this means that the car is not faulty nor that fault codes must be generated during inspection to establish that there is a fault with the car, and the engineer did see evidence from Mr W that the codes were there previously.

I think a reasonable person would expect the car to last a considerable period of time before any problems occurred and would expect it to be free from even minor defects shortly after it was acquired, and definitely free from any intermittent electrical faults with underlying safety issues. Especially considering that the car was brand-new when supplied, it had a cash price of £31,130, and Mr W only travelled approximately 4,350 miles when it first broke down. So, taking all the circumstance into consideration, I think it is most likely there was a fault with the car which was developing or present at the point of supply. And considering the price, age, and mileage of the car when it was supplied, I do not think the car was of satisfactory quality when supplied to Mr W.

I agree with the investigator that it isn't fair to ask Mr W to provide more evidence now and I don't believe that a further opportunity to inspect the car again would achieve anything because the supplying dealership already had two unsuccessful repair attempts. The CRA sets out that where the supplied goods are not of satisfactory quality, the consumer can require the supplier (Mobilize in this case) to fix any faults. But, considering that the repair had already been attempted, I believe that it is now fair and reasonable for Mr W to be able to reject the car.

Mr W hasn't used the car since 19 January 2024 when it was returned to the dealer for the second inspection. He wasn't supplied with a courtesy car and was paying for goods he was

unable to use so I think it fair that he is refunded any payments made from this date onwards to the date of settlement.

Mr W was using the car until 19 January 2024. Because he had this use of the car up until then, I think it fair that he should pay to reflect that.

Mr W's use of the car was impaired between 23 December 2023 and 19 January 2024 because the electrical systems weren't working properly. However, this is a relatively short period in the overall scheme of things and therefore I don't think it's necessary to ask Mobilize to make a partial refund for that period.

Mr W has described the impact all of this has had on him. He needs a car to travel frequently between counties to care for his terminally ill mother and being unable to rely on this car put additional financial and emotional pressure on him at an already stressful period.

Mr W found the total loss of power while driving the car to be a stressful experience and explained that his fears were compounded by his concern for his family in case something went wrong with the car while they were in it.

I believe that these factors caused additional distress to Mr W which added to the inconvenience which he suffered as a result of the car being faulty. Mr W had to take the car back to the dealership as well as make time for the inspection that was carried out on the car. I think, he would not have needed to do so, if Mobilize had supplied him with a car that was of a satisfactory quality. Overall, having considered the impact of this situation on Mr W, I think it would be fair for Mobilize to pay him £250 compensation to reflect this.

Mr W has incurred other costs as a result of the car being faulty and evidence has been provided of the following:

- £420 for an independent inspection
- £370.27 for a hire car in March so he could continue to care for his mother.

The independent inspection report is not an expense Mr W would have incurred had Mobilize supplied Mr W with a car that was of satisfactory quality therefore I think it would be fair and reasonable for Mobilize to reimburse this cost to Mr W.

I have considered that Mr W was supplied with a courtesy car for one weekend, although this kept him mobile for only a short period, because it became inconvenient as he had to spend time every day negotiating the extension of the courtesy car for the next day.

I have considered the hire car cost incurred by Mr W in March 2024, but because I have asked Mobilize to refund all monthly payments since 19 January 2024 I don't think it would be fair or reasonable to ask them to also cover the cost of the car hire.

Mr W also explained that he's taken taxi trips costing over £350 since 19 January 2024 when he stopped using the car, however as I have asked Mobilize to refund all monthly payments since that date and those payments are £364.17 each, I don't think it would be fair or reasonable to ask them to also cover the taxi costs.

My provisional decision

For the reasons explained, I intend to uphold Mr W's complaint and direct RCI Financial Services Limited trading as Mobilize Financial Services to:

- End the agreement with nothing more to pay.
- Collect the car at no cost to Mr W if not already done.
- Refund Mr W's deposit of £5,939.18.

- Refund to Mr W all payments he made for the period from 19 January 2024, when he stopped using the car, to the date of settlement.
- Refund to Mr W £420 for the cost of the independent inspection, as outlined above.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay a further amount of £250 for the distress or inconvenience that's has been caused to Mr W.
- Remove any adverse entries relating to this agreement from Mr W's credit file.

If RCI Financial Services Limited trading as Mobilize Financial Services considers that tax should be deducted from the interest element of my award, it should provide Mr W with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so."

I asked both parties to provide me with any additional comments or information they would like me to consider by 8 August 2024. Both parties responded.

Mr W says he accepts my decision and won't be providing any further information.

Mobilize made some further comments and I will address these below.

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.

Following my provisional decision, Mobilize have made some additional comments.

Mobilize disagree with my decision and do not believe that Mr W should be reimbursed for any of the payments he has made. They say that the independent engineer's report is filled with errors and subjective conclusions and should not be used as basis for a decision. I don't accept this. The independent engineer confirmed in their report that their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon. Also, I've seen a copy of the independent engineer's report and I have not been provided with any evidence which suggests it is '*filled with errors*'.

Mobilize say that it was Mr W's decision to stop driving the car despite it being road- worthy and that it is wrong to say that he was paying for goods he was '*unable to use*', because Mr W could use them but chose not to use them. Mobilize added that they feel it is unfair for them to be penalised for decisions made by the consumer.

Mr W did decide to stop driving the car after the second breakdown, but I think he acted reasonably in doing so. The manufacturer's instructions regarding what a driver should do in the event of an electric system warning appearing are that the car should not be driven. Also, I don't think a reasonable person would likely consider the term '*roadworthy*' appropriate for a car which has suffered complete electrical failure on two occasions only 500 miles apart and was displaying warnings indicating that, according to the car's manual, '*the electrical circuit was overcharged or discharged*', and, according to the dealer's diagnostic report that '*the circuit current was above threshold*' and '*the supply faulty*'. The independent engineer said that electrical failures of this nature can lead to safety issues and the possibility of injury. Concern for his and his family's safety while using the car was another reason Mr W stopped driving the car and rejected it and I find this to be a reasonable reaction to the problems with the car.

Mobilize also say that in respect of the independent engineer being unable to replicate the same fault codes under testing, his report confirms '*no live concerns despite their best effort to replicate them*'. I have already said in my provisional decision that the inability to replicate the same fault codes during testing does not mean that a fault doesn't exist, and I have not been provided with any new information which changes my mind.

Taking all the circumstance into consideration, I still think that most likely there was a fault with the car which was developing or present at the point of supply. And considering the price, age, and mileage of the car when it was supplied, I do not think the car was of satisfactory quality when supplied to Mr W. So, I think it is fair and reasonable that Mobilize should put things right for Mr W.

My final decision

For the reasons explained above and in my provisional decision, I uphold Mr W's complaint and direct RCI Financial Services Limited trading as Mobilize Financial Services ('Mobilize') to:

- End the agreement with nothing more to pay.
- Collect the car at no cost to Mr W if not already done.
- Refund Mr W's deposit of £5,939.18.
- Refund to Mr W all payments he made for the period from 19 January 2024, when he stopped using the car, to the date of settlement.
- Refund to Mr W £420 for the cost of the independent inspection, as outlined above.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay a further amount of £250 for the distress or inconvenience that's has been caused to Mr W.
- Remove any adverse entries relating to this agreement from Mr W's credit file.

If RCI Financial Services Limited trading as Mobilize Financial Services considers that tax should be deducted from the interest element of my award, it should provide Mr W with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 September 2024.

Liz Feeney
Ombudsman