

The complaint

Mrs R is complaining that the vehicle she was supplied by RCI Financial Services Limited ("RCI") was not of satisfactory quality.

What happened

Mrs R acquired a brand new car through a hire purchase agreement from RCI in April 2022. Mrs R has told us that the car is a self-charging hybrid and she test drove the same model of car at the dealership before deciding to order her new vehicle.

She began to have concerns fairly soon after acquiring the car, in June 2022. She felt the car was over-revving and not finding gears correctly but put this down to it being new and her getting used to it. She raised her concerns with the dealership who she says told her that they were expecting a fix from the manufacturer in September 2022 and would contact her then.

When she called the dealership back in September to discuss further, she felt the car sounded "like it was going to explode", especially when going up a hill. The car went into the manufacturer dealership shortly after this for the previously discussed fix, which we've been told was a software update.

After this, Mrs R told us that it got a bit better, but still over revved at times and seemed to struggle to find gears at lower speeds. She has told us that she was told this is a characteristic of the car, and if she drove the car in a different driving mode it would be better. However, she doesn't feel that she should have to do this, as the car has more than one driving mode, and she should be able to drive in the mode she chooses.

She complained to RCI, who didn't uphold the complaint, saying the sound was a characteristic of the car and was how it runs, and was not a fault. They explained that the software update carried out was to reduce the noise, not eliminate it, and there was nothing further they could do.

Unhappy with this, Mrs R bought her complaint to our service. The investigator who investigated it did not uphold the complaint. They said they weren't persuaded there was a fault with the car. They explained that their view was that this noise was a characteristic of the car, and that it might sound different depending on what mode the car was being driven in. They also pointed out that when Mrs R test drove the same model of vehicle, it was not known what mode it was being driven in.

Mrs R didn't agree with this and asked for an Ombudsman to make a final decision on her complaint. She also confirmed that she had sold the vehicle in April 2023, so could not provide any more evidence of the fault. She highlighted the distress and inconvenience she had suffered which she felt the investigator hadn't addressed, and that it had been ongoing for a long time without an apology even from RCI. She felt the fact she had sold the car created an easy way for the investigator to answer the complaint.

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 reached the same overall conclusions as the investigator, and for broadly the same reasons. 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.

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 what I consider was good industry practice at the time. Mrs R was supplied with goods under a hire purchase agreement, which means we're able to look into complaints about it.

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 goods, RCI are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances.

Mrs R has told us that she acquired the car in April 2022 and started to notice problems with the car "over-revving" and not finding gears around June 2022. She contacted the dealership who said they were waiting for a "fix" from the manufacturer which they expected in September 2022. The CRA says that a consumer has 30 days to reject a car that is unsatisfactory quality, and if they are outside of the 30 days, they have to give the business one chance to repair or replace a faulty car.

So, in these circumstances, the CRA would allow the business an opportunity to repair an issue or fault reported by Mrs R. I think it's fair that they were able to perform the software update to try to alleviate Mrs R's concerns.

When that time came and Mrs R contacted them, they performed the software update. Mrs R has said that this did improve things to an extent, but she felt that the car still over-revved on occasion and struggled to find gears at lower speeds.

For me to assess whether the vehicle was of unsatisfactory quality, I'd need to see evidence that the car was performing incorrectly, or something wasn't working. Alternatively, I'd need to be persuaded, as described in the CRA, that a reasonable person wouldn't consider the car to be of satisfactory quality.

Mrs R has described how the noise of the over-revving was causing her stress and anxiety, but the video/audio she supplied of the car didn't provide any clear evidence of a problem. Alongside this, there is no evidence from any expert or garage to confirm there was an ongoing problem or fault with the car.

The sound of the engine in different scenarios on the road would be influenced by things like Mrs R's driving style. Additionally, as a hybrid, it might be influenced by whether the car was driving in petrol or electric or a hybrid mode. And finally, the car had multiple driving modes, and the driving mode being used would potentially influence the revving/sound of the car and the gear changes.

Mrs R has told us that her car was performing differently from the one she took on a test drive, but she can't confirm what driving mode was being used when she carried out the test drive.

The car dealership suggested she could use one particular driving mode to reduce the revving noise if it was causing her anxiety, but Mrs R said she wasn't happy to do this, as she should be able to drive the car in whichever mode she chooses.

Whilst I agree that she has the right to drive the car in whichever mode she chooses, this suggests that potentially she may have driven the test drive car in one driving mode, and then expected it to behave and sound the same in another driving mode when she has taken delivery of her own car. That wouldn't be realistic, different driving modes would likely sound and behave differently. Alongside this, a test drive can't be expected to replicate all the road conditions she would come across when owning a car.

RCI have confirmed that this "issue" was a characteristic of the car, and the dealership suggested that the revving sounded louder in this particular driving mode, and she could improve it by changing the mode. The software update provided was not intended to completely remove the noise, just to reduce it. Mrs R did confirm that it seemed to improve things to an extent, but not to her satisfaction.

There's no argument here from either party that the car revving could be louder than might be considered normal when it was in this particular driving mode and in certain road conditions. RCI have said that this is a characteristic of the car, but it's clear that Mrs R found this uncomfortable, and it was causing her stress.

However, there is no supporting evidence to suggest there was a fault, or any risk to Mrs R. She has said she felt at times that the car was going to "explode", but again, there's no evidence to back this up. And if the noise in this driving mode was causing her stress, I'm unclear why she wouldn't choose to change to the recommended driving mode to help reduce her concerns.

Ultimately, for me to decide the car was not of satisfactory quality, I need to consider the CRA. Specifically, I need to be satisfied that a "reasonable person" wouldn't have considered the car of satisfactory quality. I'm afraid I've seen no evidence of this. RCI have confirmed that in the driving situations described by Mrs R, in the driving mode she chose to use, the car could sound like it was over-revving. No evidence has been provided about the car struggling to find gears and any impact this had, and no evidence has been provided to show that the revving was excessive or dangerous in any way.

When we approached Mrs R during our investigation to ask her to supply more evidence of these things, she confirmed she had sold the car during our investigation. So unfortunately, she was no longer in a position to be able to obtain further evidence.

When she asked for an Ombudsman to make a final decision, Mrs R told us that we hadn't considered her frustration, upset or distress caused by the situation, or the financial impact she's had to incur. She was also upset that the business hadn't apologised despite all her concerns.

I empathise with Mrs R and the stress the situation has caused her, but I'm afraid I can't consider that as part of my decision on this case. Because I don't agree that the car was of unsatisfactory quality, I can't consider the distress and upset to her that the situation caused her.

These are customer service issues for RCI, in the same way that it's down to RCI to decide if or when it wishes to apologise to Mrs R. Our service doesn't have a remit to investigate customer service issues alone. I could only consider the impact of any distress caused to Mrs R if I was upholding a complaint about the quality of the car supplied, and the distress this issue caused her. But as I don't agree the car was of unsatisfactory quality, I can't

consider these things further.

Alongside this, Mrs R has talked about financial impact on her. I'm not clear what financial impact she refers to, possibly her decision to sell the car. But as above, without evidence of the car being of unsatisfactory quality, there is nothing further I can do here.

I empathise with Mrs R. It's clear that she didn't like the way the car drove in certain situations. But in my role, I can only consider whether the car was of satisfactory quality when supplied, as described in the CRA.

As both parties have confirmed it, I accept that it's likely the car sounded like it was over-revving in certain driving conditions in the driving mode Mrs R was using, but I can't agree that this made the car of unsatisfactory quality. We've got no evidence of the detail of this revving, and a software update was carried out to improve it, which seems to have made some improvements. No two cars sound and behave exactly the same, and unfortunately, it seems that this model didn't suit either Mrs R's driving style, or her preferences for how a car should sound.

Alongside this, there is no corroborating evidence of the car struggling to find gears in certain situations, or of the extent of the over-revving. As the car was sold during our investigation, there's no further evidence which can be obtained about this.

I'm sorry that Mrs R didn't like the car and how it performed, but I can't agree that it was of unsatisfactory quality. As such, I won't be asking RCI to do anything further here.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 24 September 2023.

Paul Cronin
Ombudsman