

The complaint

Mr M is unhappy that a car supplied to him under a hire purchase agreement with RCI Financial Services Limited trading as Nissan Financial Services was of an unsatisfactory quality.

What happened

In November 2019, Mr M was supplied with a new car through a hire purchase agreement with RCI. He paid a deposit and the agreement was for £24,255 over 49 months; with 48 monthly repayments of £324.98 and a final payment of £11,378.40.

Shortly after being supplied with the car, Mr M discovered that the suspension was broken, and he was told that the car wasn't safe to drive. RCI say that Mr M was also told he was able to reject the car at this point. On 5 December 2019, Mr M was offered a replacement car by the manufacturer, which he accepted. And he was supplied with a courtesy car while he was waiting for this. Mr M went into dispute with the manufacturer over the replacement car, and he instructed a solicitor to deal with this for him.

Mr M cancelled his direct debit, and the agreement went into arrears. RCI were unable to contact Mr M about the arrears, and he didn't respond to their requests even after being offered a payment deferral because of the coronavirus (Covid-19) pandemic. The agreement was terminated and defaulted in October 2020. But Mr M repaid the arrears a few days afterwards, and RCI reinstated the agreement.

Mr M was advised in October 2020 that, due to the time that'd passed since the original offer, he was no longer able to reject the car. And, while the car had gone in for repair in December 2019, these repairs were delayed due to the parts shortage caused by the pandemic. And the repairs weren't completed until December 2020.

Mr M didn't collect the car and attempts to contact him about this weren't successful. So, in May 2021, RCI gave the dealership permission to buy back the car. Which they did. The agreement was then cleared, and Mr M was paid the £342.98 difference between what the car had been sold for and what was outstanding on the agreement with RCI.

Mr M complained to RCI on 3 March 2022. RCI said that Mr M had been offered a replacement car, followed by a full refund, which he'd declined. And, when the original car had been sold, the agreement had been settled, with the overpayments refunded to him. So, they didn't think they needed to do anything more.

Mr M wasn't happy with RCI's response and brought his complaint to us for investigation. He also asked for a full refund of the payments he'd made to RCI.

Our investigator said it wasn't disputed the car Mr M was supplied with was faulty. But the situation had been complicated by Mr M dealing with the manufacturer, and also by his refusal to accept the original car back once it'd been repaired. And, despite efforts to do so, an agreement to resolve matters couldn't be reached.

The investigator said it would be fair and reasonable, given the circumstances, for the deposit Mr M paid to be refunded to him, with interest, as it would've been if he'd been able to reject the car. However, because Mr M had been offered a replacement car in December 2019, which he refused; because the original car had been repaired and was available for Mr M to collect, which he also refused; and because Mr M had been supplied with a courtesy car for a considerable period of time; the investigator didn't think RCI should refund either the payments Mr M had made or any alternative transport costs he may have occurred.

Finally, as it was Mr M's choice to obtain legal representation, and not something necessary given the circumstances; the investigator didn't think that Mr M's legal costs should be paid by RCI.

Mr M didn't agree with the investigator. He said that the replacement car wasn't available in December 2019, and he was told it wouldn't be available until 2021. And, while they gave him a courtesy car, it wasn't the one he was paying for.

RCI said they'd reviewed the evidence and *"there was no rejection, or buy back, of the vehicle offered at the time [December 2019]. [Mr M] had actually sold the vehicle to the dealership. This was initially a part-exchange and then the dealership simply purchased the vehicle from the customer when the new vehicle was cancelled."* As such, they no longer agreed that rejection could be considered, and they didn't think that a refund of the deposit was appropriate because Mr M *"has already benefitted from the deposit amount in the settlement figure."*

Because neither Mr M nor RCI agreed with the investigator, this matter has been passed to me to make a final decision.

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 (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate 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. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless RCI can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr M to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr M took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask RCI to put this right.

It's not disputed that the car supplied to Mr M was of an unsatisfactory quality. As such, my decision won't address the faults with the car, but instead concentrate on what is a fair and reasonable remedy.

There is still a dispute, but it relates to Mr M's dealings with the manufacturer. The manufacturer say that Mr M asked for the replacement car to be delayed until March 2020, so he could benefit from the change in registration. And, after this had been agreed, he asked for the specification to be changed from diesel to petrol, which wasn't agreed. They also say that Mr M rejected the replacement car and, when he asked for a refund of what he'd paid, they said this wasn't possible as the original car had by then gone in for repair.

However, Mr M doesn't agree with this version of events, and says he was always told that a replacement car wouldn't be available until 2021.

While I've noted this dispute, I don't think it's relevant to the complaint I'm considering. I'm saying this because, for whatever reason, it's clear that Mr M wasn't supplied with a replacement car before the original car had gone in for repair. And, once this had happened, it was reasonable that the manufacturer refused to allow rejection at this point. What's more, this was a dispute between Mr M and the manufacturer – RCI weren't involved in this, and I've seen no evidence that Mr M made them aware of what was happening, or asked them to allow him to reject the car. And I can't fairly hold RCI responsible for not taking action on a situation they were unaware of.

Mr M was provided with a courtesy car in 2020, covering the period between the fault occurring on the car, and the repair taking place. I appreciate that he was stuck abroad for part of 2020, due to the pandemic, and couldn't make use of the courtesy car. But this would also have been the case had the original car not had a fault – he would still have had a car he was paying for but not able to use due to circumstances outside of everyone's control. So, I don't think it's reasonable to ask RCI to refund any payments to Mr M.

However, I'm also satisfied that, by Mr M asking for a replacement car in December 2019, and the manufacturer agreeing to this, he was exercising his short-term right to reject under the CRA. And, given the undisputed fault with the car, it was his right to do this.

Putting things right

While RCI have said that Mr M sold or part-exchanged the car with the dealership, this isn't the case – they agreed for the dealership to purchase the car after Mr M failed to collect it. And, had Mr M come to them in December 2019, instead of going to the manufacturer, the car would've been rejected, and the agreement unwound.

So, to put Mr M as far as possible back into the situation he would've been had the short-term right to reject been actioned in December 2019, this agreement should be treated as being rejected and not settled in some other way.

For the reasons given above, I'm satisfied that Mr M shouldn't be refunded with any payment he's made. However, Mr M made use of a hire car in early 2021, once the courtesy car had been returned. And he thinks RCI should cover the payments for this.

The original car had been repaired and Mr M chose not to collect this. While I accept that this also goes to Mr M's rejection of the car, the repaired car was available to him as an alternative to the courtesy car. And collecting it wouldn't have stopped him from pursuing his complaint against RCI. So, because Mr M chose not to collect the car and he put himself in a position where he was without transportation, I won't be asking RCI to refund these costs.

However, had the rejection been dealt with in December 2019, then Mr M would've received his deposit back. And, given the circumstances, I'm satisfied he's still entitled to this. So, RCI should:

- refund the deposit Mr M paid;
- apply 8% simple yearly interest on the deposit refund, calculated from the date Mr M made the payment to the date of the refund[†]; and
- remove any adverse information relating to this agreement from Mr M's credit file.

[†]HM Revenue & Customs requires RCI to take off tax from this interest. RCI must give Mr M a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr M's complaint and RCI Financial Services Limited trading as Nissan Financial Services should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 November 2022.

Andrew Burford
Ombudsman