

The complaint

Mrs P complains about the quality of a car she has been financing through an agreement with RCI Financial Services Limited ("RCI"), trading as Nissan Finance.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving reasons for my 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.

I know it will disappoint Mrs P, but I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mrs P acquired her car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then RCI, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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 like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mrs P. The car here was brand-new so I don't think a reasonable person would expect it to have any faults.

I'm persuaded that the car did have faults and that at least some of those remain unrectified. They would include a fault with the speed limit recognition system that Mrs P has been complaining about from only a few weeks into the agreement and I've also seen a video showing the media unit not working.

RCI have clearly had many opportunities to repair the issues Mrs P complains of and as repairs haven't been successful the legislation explains that Mrs P should be allowed to reject the car and to end the finance agreement with RCI. I'm pleased to see that RCI have agreed to that.

Putting things right

In those circumstances RCI should end the finance agreement and take the car back.

They'll need to refund the deposit Mrs P paid but they don't need to refund the £1,000 dealer contribution. The invoice shows the deposit Mrs P paid to be £1,344.23. They'll need to add interest to that refund as Mrs P has been deprived of the money.

RCI should also refund the instalments Mrs P paid towards her agreement but the relevant legislation allows them to retain some of those instalments to compensate them for the use Mrs P has had from the car. The car has still been driveable although it must have been frustrating for Mrs P to have to regularly refer faults to the dealership and make arrangements to have the car looked at, and I note that she wasn't always provided with a courtesy car. On balance, I'm persuaded that RCI should retain 90% of the payments they've received but that they should refund the other 10% to Mrs P, again adding interest.

Mrs P has been inconvenienced by these matters. She's had to regularly contact the dealership and to escalate her complaint to this service when I think it could have been resolved earlier. She's also had to make arrangements with work to take the car to the garage and has had to make alternative arrangements to have her child taken to football practice. In the circumstances, I would agree with the investigator that RCI should pay her £350 in compensation.

I understand Mrs P is concerned about the residual value in the car and that she considers RCI may benefit from that. I can't consider whether the price that was agreed was a fair one. That price was agreed at the outset and it's that agreement and whether there's been a breach of it, that I'm considering here. It's also not something that RCI have been asked to look at.

The road fund license was included in the finance agreement and as Mrs P is returning the car any unused portion of that road fund license should be refunded to her. RCI have suggested Mrs P should claim that back through the DVLA but as the car belongs to RCI and not Mrs P I think it's likely they will be the registered keeper and will have to claim that back for her. If I'm wrong about that, and in any eventuality, RCI should liaise with Mrs P to ensure she's reimbursed for any unused portion of the road tax she may have paid.

It's not necessary for RCI to refund the first registration fee as that would have been due regardless.

Mrs P has explained that the car has recently been in a rear end collision. She has explained that some repairs have been necessary. The terms of the finance agreement explain that Mrs P is responsible for refurbishment costs if the car is not returned in a good condition. RCI may therefore choose to inspect the car as they would always have done when/if the car was returned. Mrs P may then need to pay for any refurbishment but only if the damage is beyond normal wear and tear.

My final decision

For the reasons I've given above I uphold this complaint and tell RCI Financial Services Limited to:

- Allow Mrs P to reject the car and end the finance agreement.
- Collect the car at no cost to Mrs P.

- Refund the deposit of £1,344.23 and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund 10% of all finance payments that have been made in respect of loss of use and loss of enjoyment. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mrs P £350 to compensate her for the distress and inconvenience she's experienced.
- Liaise with Mrs P to ensure any unused road fund license that may have been paid is refunded to her.
- Remove any adverse reports they may have made to Mrs P's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 10 January 2023.

Phillip McMahon
Ombudsman