

## The complaint

Miss A complains that the car she acquired through a hire purchase agreement with RCI Financial Services Limited trading as Nissan Finance (RCIFS) wasn't of satisfactory quality. She also complains that a deposit paid for a previous agreement wasn't transferred to her second vehicle.

## What happened

Miss A acquired a car through a hire purchase with RCIFS in September 2019 that was returned due to issues. She was then offered a replacement car, and this was agreed in March 2020. The second car was also subject to a hire purchase agreement with RCIFS. Under this agreement she was required to make 36 monthly repayments of around £237 followed by a final payment of £7,981. Miss A says that the £4,000 deposit she paid towards the first car was agreed to be transferred to her second car, but this didn't happen. She is concerned this means she has been paying higher monthly rentals than she should.

Miss A says that the car she acquired in March 2020, wasn't of satisfactory quality. She says she experienced issues shortly after taking collection and repairs that she was told had taken place didn't. She says he has had to pay for several repairs which she thinks isn't reasonable given the age and usage she has had of the car.

RCIFS says Miss A raised her complaint in March 2022, two years after entering into the agreement. In its final response letter, it said the agreement Miss A entered into clearly set out the terms and she signed this on 19 March 2020. It said it hadn't been provided any further details of the deposit Miss A had said hadn't been transferred so it didn't consider this further.

In regard to the quality of the car RCIFS said the service history showed the car was serviced before it was supplied in March 2020 and then a major service took place in March 2021 when brake pads and discs were replaced free of charge. In June 2021 both front lower arms were replaced to address a suspension issue and a DPF regeneration took place, free of charge. It said Miss A accepted the car in March 2020 suggesting she was happy with it at that point and that she was responsible for its maintenance. It noted that offers had been made to reimburse the costs of tyres and for the battery to be replaced and that the dealership had invited Miss A to book the car in for assessment with the diagnostics costs and any repairs required being covered as a gesture of goodwill.

Our investigator thought it likely that there was a fault with the car's stop/start button. However, he didn't think there was evidence to show that the car wasn't of satisfactory quality at the point of supply. He thought that the most likely cause of the issues with Miss A's car was wear and tear. Regarding the deposit he thought the second agreement was a newly negotiated agreement and so had there been terms not included (such as the deposit) Miss A could have raised this at the time. He didn't think there was evidence to say she was being charged higher monthly rentals than she should.

Miss A didn't agree. She said that she wasn't made aware she was entering a new agreement with the second car. She says she collected the car on 19 March 2020 just

before the national lockdown and the process was rushed. She says she didn't receive a refund for the deposit and payments towards the first car as she had requested but was instead provided with a replacement car under the original agreement. She said the comments about wear and tear didn't take into account that she raised issues a month after having the car (engine control unit needed to be replaced) but due to the lockdown and the failure of the dealership to get the part the work didn't take place.

### *My provisional conclusions*

I issued my provisional decision on this complaint on 25 November 2022, in which I said the following and which forms part of my final decision.

*Miss A's complaint has two separate parts. The first is about the quality of the car supplied in March 2020. The second is about the process of the transfer to the new vehicle and whether the deposit she paid for the first vehicle was applied. I have dealt with these two parts separately.*

### *Quality of goods*

*Miss A acquired a used car in March 2020. Under the relevant regulations, specifically the Consumer Rights Act 2015, RCIFS can be held liable if the car wasn't of satisfactory quality at the point of supply. In assessing what is satisfactory quality I have considered factors such as the age and mileage of the car, as it is reasonable to accept that a used car would likely have suffered some wear and tear.*

*When Miss A acquired the car, it was around three years old and had been driven 37,559 miles. Miss A has said that she experienced issues shortly after collecting the car – noting in the first few months the alloys and tyres were damaged, cracks on the bumper and warning lights coming on which was found to be an issue with the stop/start function. There were then further issues identified in March 2021 when she took the car for a MOT and service.*

*I can understand why Miss A is upset by the issues she has experienced but for me to uphold this part of her complaint I would need to be satisfied that there were issues with the car that meant it wasn't of satisfactory quality at the point of supply. Items such as tyres, brake pads and discs and the battery are subject to wear and tear and while I appreciate the point that Miss A has made about the usage she had before replacements were needed, I also note that the car underwent an MOT in February 2020 where there were no advisories and as the brake pads and discs and tyres would have been checked as part of this I do not find I can say they were in an unsatisfactory state at the point of supply.*

*Miss A has said the tyres should have been replaced before the car was supplied. An invoice has been provided to show the two front tyres were replaced in January 2020 (two months before the car was supplied) and the car had been driven around 2,000 miles since the replacement and so I wouldn't expect the tyres to have been replaced again at the point of supply. However, I appreciate that Miss A did need to replace the tyres. Miss A had a tyre and alloy warranty which I would have expected her to consider a claim under and I note an offer to cover this cost has been made. I think this resolves this issue.*

*The car underwent its MOT in March 2021. At this time issues were identified. But as Miss A had been driving the car for a year by this time and had covered around 9,000 miles, I think the issues raised at that time were more likely wear and tear than faults. That said I note the brake discs and pads were replaced at no cost to Miss A and then in June the lower arm suspension was replaced and a DPF regeneration undertaken at no cost to Miss A.*

*Miss A has provided evidence of the battery needing replacing. The information shows this was in May 2021 after she had been able to drive the car over 11,000 miles. Again, I do not find I can say that given the mileage Miss A covered that this was an issue at the point of supply but note the offer made in regard to this cost.*

*This only leaves the issue Miss A has raised about the stop start function. Miss A has said she noticed an issue with warning lights coming on in the first few months and she was told to return the car. The stop start function was identified as being an issue. In June 2020, a new part was ordered but there were then delays with the repair due to the pandemic. I understand that this is an ongoing issue and given when it was first raised, I think it is reasonable to accept this was a fault that was present at the point of supply. Therefore, this means the car wasn't of satisfactory quality.*

*Miss A has explained that the dealer requested a replacement part in June 2020, and it appears at that time she accepted the offer of repair which I find reasonable. Delays then occurred due to the lockdown and Miss A says she didn't have any update on this issue until March 2021. This is a long delay, but it appears that Miss A wasn't chasing for the work to take place.*

*An MOT and service took place in March 2021. This raised other issues which have been noted above. Miss A says the car was booked in for the stop start issue to be addressed but after collecting the car, the issue re-emerged and she says the repair hadn't happened. It isn't clear what happened in regard to this repair, and I note the business has said that the dealer had repeatedly invited Miss A in for the car to be investigated and this issue addressed but that this hadn't happened and at the time of writing (May 2022) the dealer hadn't seen the car since June 2021. In cases where repairs take an unreasonable amount of time, or are unsuccessful, it can be reasonable to say that the customer should be allowed to reject the car. However, in this case it isn't clear what has happened or where the fault lies for the delays and so I think the fair resolution is for the investigation and repair to take place at no cost to Miss A as has been offered.*

#### *Transfer to new agreement*

*I appreciate the timing of Miss A collecting her second car was the eve of the country going into lockdown restrictions and so I can understand why there may have been an urgency about getting the documents in place for the car to be supplied. I have looked through the documents provided to understand the payment flows.*

*Miss A entered into the first agreement in September 2019. The sales invoice records the cost of the car as £15,495 and additional items were added (MOT, fuel and delivery) bringing the total cost to £15,725. A dealer contribution of £650 was recorded along with a deposit received from Miss A of £3,252. This left a credit requirement of £11,823. The total cost of £15,725 and the credit of £11,823 is recorded in the first hire purchase agreement.*

*This first agreement records an advance payment of £3,902. The disbursement form from the time shows a total deposit of £4,650 (of which Miss A has shown that she paid £4,000 the rest is the contribution). This amount included £748 for the alloy and tyre warranty. Therefore, the net contribution was £3,902. In regard to Miss A's £4,000 payment of the £4,000 paid £748 was to cover the tyre and alloy warranty, giving the net deposit amount of £3,252.*

*In March 2020, Miss A signed a new agreement. I note her comments about this but there was a new agreement set up and she has noted the need for an additional £1,000 payment. The agreement included all payment and other relevant details and she signed this and so I think it reasonable to accept she knew she was entering into a new agreement at this time.*

*RCIFS has said that the new agreement was set up as a part exchange and as such the deposit wasn't refundable. Instead, a price was agreed for the first car and this amount was used to settle the finance with any remaining amount (in this case around £570) paid as a deposit towards the new agreement. Additional to this Miss A received a £400 deposit contribution resulting in the total deposit amount being around £970. Miss A has said that it was agreed that the deposit from the first car would be transferred but I do not have further evidence of this.*

*I have therefore considered whether I think the outcome of this exchange was fair. In cases where rejection of a car is agreed we would usually expect the existing finance to be settled and any deposit refunded. Miss A has asked about her payments under the first agreement, but these would have been made for the use of the first car until exchange. However, in this case the resolution to the issues with Miss A's first car was for a like for like exchange to take place. I have looked at both agreements and can see that the total amounts payable under each, the monthly repayments and the terms were very similar. The details provided of the car Miss A received under the second agreement suggest it was an improvement on the first car (newer and a lower mileage), therefore I can see that the dealer did provide (as far as reasonably possible), a like for like exchange.*

*However, while the total amount payable under the first agreement was around £18,960, Miss A had paid £3,252 towards this and a further dealer contribution had been made meaning the total amount left to pay was around £15,059. Under the second agreement, Miss A says she had to pay £1,000 and the amount she is required to pay under the agreement (excluding the deposit) is around £16,498, giving a total payable of around £17,498. So, while I can see a part exchange did take place on a like for like basis and I note that the second car was likely of a higher standard, without further evidence to show that Miss A received the deposit benefit elsewhere (that is through a price reduction on the car or other process) it does appear that the deposit she initially paid has not been fully transferred. As she didn't get the full benefit of this in the transaction, I do not find she has been treated fairly.*

*Considering the amount of the deposit that Miss A has lost out on, I have taken the original amount of £3,252 and I think it fair to deduct the £570.91 transferred as part of the exchange as well as the £400 dealer contribution. This leaves a figure of £2,281.09. I think this amount should be paid to Miss A along with interest for the time she has been without the funds.*

*In conclusion, I think the offer made by RCIFS in regard to the issue with the stop start function is a reasonable remedy to the quality of the car issue, but I think RCIFS needs to pay Miss A an additional amount to reflect the loss of the deposit payment.*

#### *Responses to my provisional conclusions*

Neither party accepted my provisional decision, and both provided further responses for consideration.

Miss A reiterated that the car she was provided with wasn't of satisfactory quality. She provided further details about the timing and nature of the issues she had experienced with the car. She said the car was continuously cutting out due to the issue with the stop start function which was extremely worrying and almost caused her to have an accident. She said that she was told she would be supplied with a mint condition car but instead received a car of poor quality. She said the way the dealership treated her and the issues with the car caused her stress and anxiety which she thought she should be compensated for.

In regard to the issues with the deposit, Miss A reiterated that she wasn't aware she was entering into a new agreement for the replacement car and had this been explained to her she wouldn't have signed the new agreement due to her concerns. She noted the comment about a dealer contribution towards her agreement and said she wasn't made aware of this and said that her paperwork showed she paid a deposit of £4,000. In addition to this she paid £400 towards the tyre insurance. She said she thought the five months of payments made towards her first car should have been transferred to the replacement vehicle. Miss A said she wasn't told that her original agreement and warranty had been cancelled until the dealership said it wouldn't cover the diagnostics and repairs. She requested the repairs under the extended warranty and after providing the documentation to the dealership it accepted her extended warranty was valid.

RCIFS said that the issues with the first vehicle weren't raised with it. It said it was only aware of the part exchange and not the reasons behind it and that the decision was made between Miss A and the dealer. It said this wasn't a complaint to be considered by the Financial Ombudsman Service but the Motor Ombudsman. RCIFS then said even if the issue with the first vehicle was to be considered by the Financial Ombudsman Service there was no evidence that it was agreed the car would be rejected. Instead, a part exchange was agreed. It said Miss A received the benefit of her deposit as this reduced the settlement of the financial agreement. It said if the deposit was refunded, Miss A would benefit twice.

### **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.

#### *Quality of goods*

Miss A has said she was told the replacement car would be mint condition. I note this comment, but I have no further evidence of the conversations that took place at the time. However, given the experience Miss A had with the first car I find, on balance, it reasonable that the dealership would offer to provide a good condition replacement. Miss A says that a month after acquiring the car (it wasn't driven in that time due to the national lockdown) she washed the car and noticed that damage she had been told about hadn't been remedied – that is a cracked bumper replaced and alloy wheels and tyres replaced. While I understand why Miss A was upset, this was minor damage that wouldn't be unexpected on a used car and the dealership accepted to repair it as part of its offer. So, while there may have been issue with this repair, I do not think this means the car wasn't of satisfactory quality.

In regard to the tyres, as I set out in my provisional decision these were replaced shortly before the car was provided to Miss A and so I wouldn't have expected them to have been replaced again. I understand the point Miss A has made about the date stamp on the tyres but this relates to when the tyres were made and the dealership has explained that tyres will be fitted from the stock available and so I do not find the date means the replacement didn't happen at the time noted on the invoice provided. As I set out in my provisional decision, I do not think this issue means the car wasn't of a satisfactory quality and note that Miss A had a tyre warranty and the dealership offered to cover the cost of the replacement tyres. I think this was a reasonable resolution to this issue.

Miss A raised other issues about the brake discs and the battery. She thought the battery issue arose as a result of other issues with the car. However, based on the age and mileage of the car, the use Miss A had of it before the replacements were needed and that the car passed an MOT shortly before it was supplied with no advisories, I find these issues were more likely than not wear and tear rather than due to faults with the car at the point of supply.

As I accepted in my provisional decision, while most of the issues Miss A raised were wear and tear the issue with the stop start function means the car wasn't of satisfactory quality. Miss A provided further details about this and the concerns it caused her. As I agree this issue was due to a fault present or developing at the point of supply, I have considered what a reasonable remedy would be.

In certain cases, rejecting the car may be the appropriate remedy but, in this case, I still think the offer of diagnostics and repair is reasonable. I say this because Miss A initially accepted the repair, and the part was ordered. Delays occurred due to the national lockdown. I understand Miss A's frustration but, in this case, I accept that the repair had been accepted and the dealership was working on obtaining the part. I appreciate Miss A's frustrations with the delay, but I also note the comments by the dealership that it had offered to assess the car and carry out repairs. Therefore, I find that repair was a reasonable remedy in response to this issue raised.

Miss A has said in August 2022, an independent review of the vehicle found that the stop start function issue was as a result of a defective engine control unit and this was repaired under her extended warranty. I note her comments about the issue of getting the repairs accepted under the warranty but as this has happened, I find this is a reasonable remedy to this issue.

Overall, I understand why Miss A was upset by the issues with her car, but the only issue I think meant there was an issue with the quality of the car was the stop start function and in this case I think repair of this was a reasonable remedy.

#### *Transfer to new agreement*

I have considered the comments of both RCIFS and Miss A in response to my provisional decision in regard to the transfer of the agreement. RCIFS say that they weren't involved with the return of the Miss A's first vehicle and that a part exchange was arranged without its involvement. However, Miss A acquired her car through a hire purchase agreement and under section 56 of the Consumer Credit Act 1974, RCIFS is liable for what is said by a credit broker or a supplier (in this case the dealership) in relation to antecedent negotiations or what is said about the goods prior to Miss A entering into the finance agreement.

While I cannot say for certain what was discussed at the time, as Miss A had paid a significant deposit towards the first car and had only had use of the car for short period, before the replacement was agreed, on balance, I find it more likely than not that she would have expected the benefit of the deposit to be passed to the second car and I find it reasonable to accept that Miss A would have discussed this as part of the transfer process. I note Miss A's comments about not being aware of that second agreement was being set up rather than her original agreement being amended but I also accept she signed the document and I think she was provided with the information she needed to be aware that a new agreement was in place.

I have considered therefore what happened based on the information provided about the financing of the agreement and what I think should have happened if Miss A was treated fairly in this process. In principle, as I set out in my provisional decision, I do not think Miss A needed to be refunded for the payments she made under the first agreement as these were for the use of the first car, however I do think the benefit of her deposit should have been transferred to the second car. The finance flows aren't completely clear, and I note Miss A's comment about the payment she made of £4,000 and £400 for the tyre warranty and that she wasn't aware of the dealership contributions.

My role isn't to provide an audit of the figures involved but based on the information provided, and also what I think would have happened, I think there is a shortfall in regard to the deposit amount transferred to Miss A's second agreement. I set out my calculations in my provisional decision and I note the additional comments provided. But, in summary the initial deposit Miss A paid towards the first car was £3,252 and then a deposit of £970.91 was paid towards the second car. This amount consisted of the amount remaining after Miss A's first agreement had been settled and a £400 contribution from the dealer. So, while I have taken onboard the comments made by both parties, on balance, I think the amount I previously identified is a reasonable reflection of the deposit amount that wasn't transferred (£2,281.09) and this should be refunded along with interest.

I know this isn't the outcome that either party wants. However, based on the evidence I have seen, I find this is the fairest resolution to this complaint.

### **Putting things right**

RCI Financial Services Limited trading as Nissan Finance should pay Miss A £2,281.09 along with 8% simple interest from the date of the second agreement to the date of settlement to reflect the loss of deposit transferred.

In regard to the stop start issue Miss A experienced with her car, I note Miss A has said that repairs have been undertaken under her extended warranty. However, if this has yet to happen, RCI Financial Services Limited trading as Nissan Finance should ensure this is repaired no cost to Miss A as was offered.

### **My final decision**

My final decision is that I uphold this complaint. RCI Financial Services Limited trading as Nissan Finance should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 17 February 2023.

Jane Archer  
**Ombudsman**