

The complaint

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

What happened

In February 2020, Mr S was supplied with a new car through a hire purchase agreement with RCI. There was no deposit and the agreement was for £30,683.40 over 60 months; with 58 monthly repayments of £495.43, a single payment of £495.24, and a final payment of £8,200.27 if Mr S wanted to keep the car.

In October 2020, when the car had done 5,399 miles, it had to go back to the supplying dealership because of a problem with the diesel particulate filter (DPF). The dealership regenerated the DPF, however Mr S took the car back to the dealership in December 2020 due to a warning light illuminating. At this point the car had done 7,426 miles, and the dealership again carried out a repair.

The car was back with the dealership in January 2021, after doing a total of 8,734 miles, because of another warning light being illuminated. And another repair was carried out. In December 2021, at 17,815 miles, another repair was carried out with the exhaust gas sensors being replaced, the DPF regenerated, and the oil and filter changed. The DPF was regenerated again in March 2022, at 20,344 miles; and in April 2022, at 20,636 miles, along with another oil and filter change. In May 2022, the dealership completed another oil filter change, when the car went in for a scheduled service.

Mr S complained to RCI about the faults with the car. They said the dealership had carried out all of the repairs under warranty and offered him £150 compensation for the inconvenience he'd suffered. Mr S wasn't happy with this and brought his complaint to the Financial Ombudsman Service for investigation.

While the complaint was with us for investigation, RCI agreed that Mr S was able to reject the car. However, because they thought Mr S may've used the car off-road, they said that they may charge him for any damage outside of normal wear and tear. However, Mr S said he would prefer a permanent fix, or some assurance that any ongoing repairs would be covered by the dealership after the warranty had ended.

Our investigator said there was a fault with the DPF. And, given that Mr S used the car for a series of shorter and longer journeys, the DPF should have been able to regenerate itself as designed. But, because it failed to do so, on multiple occasions, the investigator thought the car wasn't of a satisfactory quality when supplied. They also said that the car was designed to be used off road, and they didn't think that the fact Mr S had occasionally used it as designed would make any difference to the functioning of the DPF. So, as the dealership had attempted to repair the car on multiple occasions, all unsuccessful, the investigator thought Mr S should now be allowed to reject the car.

The investigator said that, because Mr S had had use of the car, it was reasonable he paid for this usage. And they didn't think RCI needed to refund any of the payments he'd made.

However, the investigator recognised the impact and inconvenience Mr S suffered as a result of the car needing to go back for repair on multiple occasions. So, they recommended RCI pay him £200 compensation for this.

Although Mr S agreed the car wasn't of a satisfactory quality, he didn't agree with the investigator's recommendations. And he thought these were unfair and disadvantaged him. He explained that he'd already paid over £16,000 to RCI, which left about £20,000 still to pay under the agreement. And he thought the car was worth around £25,000. So, he thought he'd be better off selling the car and paying off the finance.

Mr S has also said that, by allowing him to reject the car, this essentially means he's been leasing the car, rather than renting it with a view to buying it if he chose to make the final optional payment. And, if he had leased the car, it would've cost him less than the monthly payments he's been making. Because of this, Mr S said that he wouldn't be returning the car to RCI *"and I will continue to pay the agreement as I have done."*

Because Mr S didn't agree 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 S 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 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 S to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr S 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 Mr S had problems with the car, or that these problems made the car of an unsatisfactory quality. Given this, my decision will focus on what I think is a fair and reasonable remedy. However, when considering the remedy, I also need to take into consideration what the CRA allows.

Where goods are of an unsatisfactory quality, the CRA allows one chance at repair. And, if this repair is unsuccessful, then it allows for rejection of the goods. From what I've seen, the dealership has made multiple attempts to repair the car, and these have failed. And, Mr S has confirmed that the fault with the car has recently reoccurred. So, I think it's reasonable for me to conclude that the dealership can't enact a repair that fixes the fault with the car. Given this and given the range of outcomes available under the CRA, I agree with the investigator that Mr S now has the right to reject the car.

What's more, when bringing his complaint to us, Mr S has said that he's prepared to keep the car if the dealership / RCI agree to continue to fix the fault when it occurs, free of charge. But it's clear from the evidence that the fault can't be fixed. As such, I don't think that this resolution is fair and reasonable to all parties. And I think that rejection is the most suitable remedy under the CRA.

Mr S has explained why he doesn't think rejection is a suitable option for him. And I appreciate his frustration and that he thinks he's being unfairly disadvantaged if he rejects the car.

I've seen that the total payable under the agreement is £37,430.45. Mr S made the first payment in April 2020. As such, assuming all payments have been made to date (and I've seen nothing to show me they haven't) then Mr S has paid £17,835.48. Which would leave £19,594.97 remaining. And, Mr S believes the car is currently worth £25,000. So, he says he has slightly more than £5,000 equity in the car. And he thinks RCI should compensate him for this equity if he rejects the car. Otherwise he says they will benefit from this equity. Which he thinks is unfair.

While I understand Mr S's argument, and his comments about what would've happened if he'd leased a car instead, I don't think that RCI should pay Mr S £5,000. I say this because I haven't seen anything to show me that the car could be sold for £25,000, or that this valuation takes into consideration that the car has a fault that can't be rectified.

In practice, RCI will send the car for auction. And, given the fault, it could sell for significantly less than the amount outstanding on the agreement. And, under Mr S's argument as to the ownership of the equity (and by extension the shortfall), RCI could ask him to pay any shortfall. Which I accept that Mr S would also find unfair.

When allowing rejection, the CRA is silent on equity. And, given the potential scenario above, I think this is reasonable – it's unfair that a customer, after being provided with goods that aren't of a satisfactory quality, should potentially face a bill after being allowed to reject those goods. And the risk of absorbing any shortfall should lie with the financial business / supplier. And, if there's no shortfall, and there's equity instead, so be it – this is the counterweight to the risk the CRA puts on them. As such, I won't be asking RCI to pay Mr S for any potential equity upon rejection of the car. But this doesn't mean that Mr S can't choose to repay the amount owing under the agreement, sell the car himself, and keep any potential equity there may be in the car.

But this doesn't mean that Mr S hasn't been inconvenienced by what's happened. He's had the car for three years and has needed to take it to the dealership on six occasions for the fault with the DPF to be fixed. And this would've been both frustrating and inconvenient for him. The investigator has recommended that RCI pay him £200 compensation for this, which is in line with what we would normally recommend. And I haven't seen any compelling reasons why this amount should be amended. As such, I will adopt this compensation as part of my final decision.

Mr S has also said that he's recently spent around £3,500 in servicing the car and replacing the tyres. Under the terms of the agreement, this is Mr S's responsibility. And he accepts that the tyres needed replacing due to in-use wear and tear, and not because of any fault or issue with them when supplied. I accept that Mr S may not have needed to go to this expense had RCI allowed him to reject the car in May 2022 (when they responded to his complaint). However, the investigator recommended rejection in November 2022, and Mr S didn't want this for the reasons given. So, I'm satisfied that, had RCI offered rejection in May 2022, Mr S would've likely refused this for the same reasons. As such, as Mr S chose to continue to keep and use the car, I think he's responsible for the costs associated with this. And I won't be asking RCI to refund the costs of either the servicing or the tyres.

Putting things right

Given the above, RCI should:

- end the agreement with nothing further to pay;
- collect the car at no cost to Mr S;
- remove any adverse information relating to this agreement from Mr S's credit file; and
- pay Mr S an additional £200 for the distress and inconvenience he's suffered as a result of being supplied a car that wasn't of a satisfactory quality.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 April 2023.

Andrew Burford
Ombudsman