

The complaint

Mr M complains that the car he acquired through a hire purchase agreement with RCI Financial Services Limited wasn't of satisfactory quality.

What happened

Mr M acquired a new car through a hire purchase agreement with RCI in October 2018. Over the course of the next three years he experienced several faults with the vehicle including, but not limited to, loss of power, faulty air conditioning and a faulty gearbox on two occasions.

Mr M brought a complaint to RCI as he wished to reject the vehicle on the ground that it wasn't of satisfactory quality. In its final response RCI said it wasn't possible to reject the vehicle as all the repairs had been completed under the manufacturer's warranty and at no cost to Mr M. It also said Mr M had been kept mobile during the repairs. As a gesture of goodwill RCI offered to reimburse Mr M four monthly payments (totalling £2,000) due to the inconvenience caused. Mr M didn't agree and brought his complaint to this service. He provided an independent inspection report and maintained that he wanted to reject the car.

Our investigator initially concluded that although he accepted there was a fault with the car at the time of his view, that didn't mean the car was faulty when it had been supplied to Mr M, or that it wasn't of satisfactory quality when it was supplied to him. He concluded that the offer of £2,000 from RCI was a fair offer as there wasn't any obligation for it to do anything further.

Mr M didn't agree with the investigator and provided an updated independent inspection report which included additional conclusions, including that the vehicle was suffering from a manufacturing defect which had never been rectified by the dealership. On receiving this report RCI consulted with the manufacturer who subsequently asked for one of its engineers to inspect the vehicle. The manufacturer maintained that the issues relating to the gearbox replacements and the turbo were not related. Following the inspection RCI agreed to take back the vehicle and refund Mr M's initial deposit of £3,664.93 minus the road fund licence, first registration fee and any damages that were not commensurate with the vehicle's age and mileage. It said the cost of any damage would be established following an independent inspection of the vehicle after its collection from the customer's home address.

RCI said that refunding Mr M's four monthly finance payments wouldn't be justified as Mr M was always kept mobile for the duration of the repairs, albeit not always in a like for like vehicle. Furthermore, it said, Mr M received an abundance of goodwill offers both from the manufacturer and the dealership and had free of charge repairs carried out on his vehicle despite his violation of the terms and conditions of the Pan-European warranty contract. RCI also said that the vehicle's current mileage is 1.5 times more than the mileage commitment within the finance agreement. It said RCI is open to waiving the excess mileage cost if it wasn't required to refund any finance payments.

Mr M wasn't happy and asked for a decision from an ombudsman. He said the calculation of the offer appeared to be based on a figure that was not representative of the deposit he paid

(£13,164.93). He also said the manufacturer had said it would factor in loss of earnings when the vehicle broke down. Mr M went on to say that previous compensation in terms of servicing, extended warranty etc, was from the manufacturer and not related to RCI or the finance agreement. With regards to the mileage Mr M said RCI has factored in excess mileage as part of its offer, but the manufacturer website clearly states this is only "...if you decide to return the vehicle to RCI Financial Services." Mr M said this is not the situation in this case. He said upon conclusion of this complaint and his agreement to the offer and figure of £8,614.93, RCI had recourse to reduce the offer by whatever it deems to be appropriate based on reasonable wear and tear. Mr M said it would have been his intention to purchase the vehicle at the end of the contract, and this would not be an issue.

I wrote a provisional decision on 4 April 2023. I said:

It's not disputed that there is a problem with Mr M's vehicle. As RCI has agreed to take back the vehicle it's left to me to decide what a fair and reasonable resolution is. In hire purchase agreements the finance provider, in this case RCI, becomes the owner of the car and is subject to the Consumer Rights Act 2015. The law says that goods supplied should be of satisfactory quality. I must take account of relevant law when deciding what is fair and reasonable. So I must consider whether the car was of satisfactory quality when Mr M acquired it at the point of sale.

Although RCI has allowed Mr M to reject the car on the basis that there is an issue with the gearbox it hasn't provided a copy of the latest inspection report. So it's not clear to me if RCI accepts the car wasn't of satisfactory quality at the point of sale, as this would likely affect the remedy. In its letter to RCI concerning the latest inspection the manufacturer, N, said:

"The diagnostic report revealed that there is indeed an issue with the vehicle's gearbox which will need to be repaired. While it is very likely that the gearbox issue has been exacerbated by the customer towing, in light of this diagnostic report and considering the ongoing dispute, N is willing to once again step outside its contractual obligation and look into Mr M's request of taking back the vehicle."

When considering what is 'satisfactory quality' goods should be durable, by that I mean they should be made to last a reasonable period of time. Neither RCI or N have provided any evidence that the gearbox issue has been exacerbated by Mr M's towing. On the vehicle invoice I can see Mr M paid extra for the towbar package. As the vehicle was new and ordered from the manufacturer it seems reasonable to assume the manufacturer considers the fitting of a towbar to this particular car appropriate. It allowed the sale of the towbar package and fitted the towbar to the vehicle. It follows then that it would be reasonable to assume the vehicle and the gearbox would be suitable for towing without gearbox issues for a reasonable amount of time.

The gearbox has already been fixed/replaced twice, first in March 2021 and then again in September 2021. It now needs to be repaired a third time, with the mileage approximately 60,000. Without any evidence to support N's statement that the gearbox issue was very likely exacerbated by Mr M's towing it does appear there was an inherent problem with the car related to the gear box. This was a new car at the time Mr M acquired it and I wouldn't reasonably expect a gear box to fail twice within approximately 50,000 miles or three times within approximately 60,000 miles. So I think it quite likely there is an ongoing problem related to the gearbox and that it was present at the point of sale. It's usual to allow the dealer/manufacturer the opportunity to repair the vehicle. And the repair has been attempted twice and subsequently failed again. Subject to any further information I might receive I'm minded to say that

the car wasn't of satisfactory quality when supplied.

To bring this matter to a conclusion RCI has offered to take back the vehicle. Setting aside for a moment any charges for damage and excess mileage that Mr M may be liable for I consider it fair and reasonable that Mr M is allowed to return the vehicle. It has also agreed to return Mr M's deposit.

I consider it fair and reasonable for the deposit to be returned but there is some confusion about the value of the deposit. Mr M has stated that RCI hasn't considered the part exchange value of his previous car in its calculation of the deposit. He said the total deposit he paid was £13,164.93 (£3,664.93 + £9,500 part exchange value) and that RCI had previously offered to return £8,664.93 (£13,154.93 - £4,500 deposit contribution).

I looked at the paperwork for the vehicle sale and as there was some confusion about the deposit I outlined in detail in my provisional decision the cost of the vehicle and funds available. I concluded the deposit was £3,664.93. But that Mr M had also paid for an accessory pack. I went on to say:

On the invoice it states that Mr M received a cash back amount. It's possible Mr M may have forgotten about this in the passage of time since he acquired the vehicle. But I'm satisfied the part exchange value was included in the deposit calculation and the cashback would impact the amount of deposit to return now. The actual deposit Mr M paid, which should be returned, is £3,664.93. When Mr M acquired the car he paid for an accessories pack which included the towbar. As I'm minded to conclude the car wasn't of satisfactory quality at the point of sale I consider it fair that he is not charged for this pack and that this amount be refunded.

Although there is a problem with the vehicle Mr M has had use of it throughout the duration of the finance agreement. I can see in its final response that RCI offered Mr M £2,000 as a gesture of goodwill due to the inconvenience caused during the time Mr M had the vehicle. When the complaint came to our investigator RCI said in light of it agreeing to return Mr M's deposit it felt refunding Mr M's four monthly finance payments wouldn't be justified as he was always kept mobile for the duration of the repairs, albeit not always in a like for like vehicle. It said furthermore, he received an abundance of goodwill offers both from the manufacturer and the dealership and had free of charge repairs carried out on his vehicle despite his violation of the terms and conditions of the Pan-European warranty contract (through failing to get the vehicle serviced at the correct times). Although I haven't seen a copy of the final report RCI has said the issues at hand are related to the gear box, for which repairs have already been attempted. It doesn't appear the other repairs are related to the gear box.

As far as I can see Mr M was still inconvenienced by the continuing problems with the gear box which seem unrelated to the other repairs and the service history and which I think were present at the point of sale. I think it's fair RCI should keep most payments but, subject to further information, it should refund the four monthly payments it originally offered, representing less than 10% of the total finance agreement, for the inconvenience caused to Mr M. I can see from the mileage of the vehicle that Mr M went over the mileage commitment within the finance agreement. As such he would normally be required to pay the excess mileage cost. Mr M has said his intention had been to purchase the vehicle at the conclusion of the agreement. He said the manufacturer states on its website "If you do exceed your mileage allowance, rest assured, you will only be charged per mile if you decide to return the vehicle to RCI Financial Services."

Mr M said he is not deciding to return the vehicle, it has been rejected due to a fault with manufacturing. I think Mr M is saying, in effect, that he shouldn't be liable for the excess mileage as he always intended to purchase the vehicle. RCI has said that the vehicle's mileage is 1.5 times more than the mileage commitment within the finance agreement, but it is willing to have the excess mileage cost waived provided that it wasn't required to refund any finance payments.

I'm not disputing Mr M's original intention to purchase the vehicle at the end of the agreement. However, he asked to return the vehicle three times, and RCI refused, which indicates to me that he wasn't satisfied with it. The first time he requested to return the vehicle in 2020 appears to be related to intermittent loss of power. The second and third times in March 2021 and September 2021 are related to the gear box issues. On the balance of probability I think it unlikely he would've wanted to purchase it after the first refusal, even more so after the second and third refusal.

I do believe though, subject to further information, as Mr M wasn't given the opportunity to return the vehicle in March 2021, when the first gear box was replaced at 46,633 miles or September 2021 I think it fair and reasonable he shouldn't be charged excess mileage costs after 46,633 miles.

Mr M has said the manufacturer had said it would factor in loss of earnings. We don't usually make a specific award for someone's professional earnings as this complaint is brought in a personal capacity. I have factored in the inconvenience caused to Mr M in the refund of payments as set out above.

Mr M is also concerned that RCI can reduce the offer by whatever it deems to be appropriate based on reasonable wear and tear which leaves the costs open ended. I understand Mr M's concerns but if he isn't happy with any wear and tear charges he can make a separate complaint, in the first instance to RCI.

Both parties responded to my provisional decision with additional commentary which, where appropriate, I've responded to below.

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'd like to thank both parties for their detailed responses. I've thought carefully about what each has said and having done so I believe my provisional decision still stands. I shall explain why below.

In its response to my provisional decision RCI said I was heavily biased in Mr M's favour and failed to consider many aspects of the case. So I'd first like to reassure RCI and Mr M that my decision is based on the evidence available to me and is independent without bias to either party.

RCI disagreed with all aspects of my provisional decision. It said there were several discrepancies between what was established in my decision and what really transpired in relation to Mr M's vehicle.

Refuting the allegation that the vehicle was not of satisfactory quality at the time of purchase.

RCI has said that it provided this service with sufficient evidence confirming that Mr M's negligence resulted in the first two breakdowns of the vehicle. It said it was evident that the first two repairs namely the replacement of the turbo and the mass airflow sensor were required because of the customer's non-adherence to the vehicle's recommended service schedule and was not a result of a manufacturing defect.

In my provisional decision my finding that the vehicle wasn't of satisfactory quality at the point of sale was specifically in relation to the gearbox issues. It was not in relation to the turbo or the mass airflow sensor. And RCI hasn't provided any evidence that these latter issues are linked in any way to the gearbox issues.

RCI went on to say that the manufacturer's report relating to the vehicle's inspection in October 2022 is protected under legal privilege and it said although it wasn't able to disclose the full report it was indeed confirmed that the gearbox had experienced ongoing issues.

This was a new car at the time Mr M acquired it and as I mentioned in my provisional decision I wouldn't reasonably expect a gear box to fail three times within approximately 60,000 miles. In the absence of the report I must make my decision based on what I believe is likely to be the case. And I remain of the opinion that there is likely an ongoing problem related to the gearbox and that it was present at the point of sale.

RCI said in a bid to bring the case to an amicable conclusion it had offered to purchase the vehicle back from him. While I appreciate the sentiment behind RCI's offer as a goodwill gesture my decision is that the vehicle likely wasn't of satisfactory quality at the point of sale due to the gearbox issues and so I have framed the remedy on that basis.

RCI also said that while the vehicle is indeed capable of towing it must do so in line with recommended towing limits. This is reasonable and I'm not disputing it. But Mr M has told this service that he hasn't done any towing with the car and RCI hasn't provided any evidence that inappropriate towing has caused the repeated issues with the gearbox.

Towbar accessories pack

RCI said the only invoice available to it showed the total value of Mr M's deposit following a cashback was £3,664.93. But it said this invoice doesn't advise of any accessories pack and as such, it reserved the right to decline this payment request up until the point of this invoice is made available to it. I've seen a copy of the invoice with the accessories pack which can be provided to RCI. But RCI went on to say that in its opinion Mr M has had fair use of these accessories since the time of purchase and requested a deduction be made. The accessories pack was part of the optional add-ons when Mr M ordered the car and as such is part of the car itself, so I don't think a separate charge for usage is fair and reasonable.

Finance payments and excess mileage

RCI said the request to refund Mr M's four monthly finance payments and only charge for the excess mileage up to 6,633 miles is unreasonable. It said it had no evidence that Mr M had requested to return the vehicle in 2020. It said even if it had done so the request would've been declined as the vehicle failed in 2020 because of Mr M's negligence to service it properly. It said based on its records Mr M didn't request the rejection of the vehicle in 2021 and that Mr M was pleased to accept several goodwill offers following the repairs.

In his response to my provisional decision Mr M said while he doesn't remember the exact dates of the servicing he believes that the Covid-19 lockdowns did have an impact on his being able to get his car serviced on time and being able to get it booked in without delay. He said the dealership eventually closed down which led to the nearest dealership being a

one hour drive away. Mr M said he tried to reject the car in 2020 and 2021. He said he wasn't aware of the specific legal position of rejecting vehicles until after the vehicle went to the dealership in September 2021. He said this was information subsequently provided to him in informal advice from a different dispute resolution service.

As the dealership Mr M bought the car from is no longer operating it's not possible to confirm what conversations Mr M had with it regarding rejecting the vehicle. He said he was never told to contact RCI. I've no reason to dispute Mr M's testimony. Given the repeated problems, irrespective of whether they were caused by the gearbox or due to not getting the car serviced, I think it more likely than not that Mr M requested to reject the car. But it should be said my reasons for finding the car of unsatisfactory quality are related to the gearbox only.

RCI said that with the provisional decision what was required from it is that on top of the free services and other goodwill gestures Mr M received it would continue compensating him by refunding him with four monthly payments and waive the excess mileage charges while he continued to disrespect the terms and conditions of the vehicle's warranty and was kept mobile throughout the repairs.

While I do understand that RCI has provided free repairs it appears to be conflating those repairs with the gearbox issues. The gearbox has been repaired/replaced twice already and needs to be repaired a third time. As I said in my provisional decision Mr M was inconvenienced by the continuing problems with the gearbox. RCI offered to compensate Mr M for the inconvenience caused with the refund of these payments. I still think it's fair RCI should keep most payments, but it should refund the four monthly payments it originally offered. This only represents less than 10% of the total finance agreement and I consider it fair and reasonable in the circumstances.

RCI has also said that there is still an outstanding balloon payment towards the vehicle and considering the fact that Mr M has not made any further payments since the end of the agreement in October 2022 but kept on using the vehicle this means he's had six months of free motoring. As I have found that the vehicle wasn't of satisfactory quality at the point of purchase with regards to the gearbox I don't believe Mr M should be penalised for the time taken in bringing his complaint to this service during this time.

Mr M said he had a specific conversation with the dealership when he purchased the vehicle with regards to excess mileage. He said the nature of his work meant he had to travel to different work settings nationally and that this was also a family car. He said he was told by the dealership at the time that if he purchased the vehicle or took out another finance agreement with the manufacturer then excess mileage would not be an issue.

Mr M said his intention to purchase the vehicle at the end of the agreement remained despite requesting to reject the vehicle. I do understand what Mr M is saying but he said he requested to reject the car three times and had the business agreed on any of those occasions Mr M would've been required to pay excess mileage charges (and any charges related to damage to the vehicle) as part of fair usage. These charges were still a condition of the finance agreement that he signed, and he has driven a considerable distance over the 40,000. So I think only being charged for 6,633 is fair and reasonable in the circumstances.

Vehicle inspection

RCI said that before paying any sums to Mr M the vehicle will need to be subjected to an independent bodywork inspection which the manufacturer will pay for. It said this was necessary to ensure there are no bodywork damages to the vehicle that are not commensurate with its age and mileage. I understand that such an inspection would be part

of the finance agreement. But I don't agree that refunds should be withheld subject to any damage charges. RCI should put things right as I've outlined above and below, independent of the inspection outcome.

Mr M has said that for him to walk away from this having to pay monies to RCI does not feel like a reasonable outcome. He said he would rather be offered no compensation and it be agreed that the matter is concluded with the car being returned to RCI, given he had already paid them £24k throughout the agreement which ended in November 2022.

I do understand Mr M's frustration with this situation. But he has had fair use of the car, including long past the end of the finance agreement. I'm not aware of the condition of the vehicle and it wouldn't be fair on RCI to accept the vehicle back without being able to inspect it for damages and to charge appropriately. Any charges that result as part of the inspection should be paid by Mr M separately. And if he wishes to dispute those charges he can raise a new complaint with RCI.

Putting things right

To put things right RCI Financial Services Limited must:

1. End the hire purchase agreement and arrange for the car to be collected from Mr M – both at no cost to him.
2. Refund to Mr M four monthly payments to a total of £2,000.
3. Refund to Mr M the deposit of £3,664.93 and the cost of the accessories pack (inc. VAT), £1,431.36. A deduction can be made for the road fund licence.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Only charge excess mileage over 40,000 up to 46,633 miles.
6. Ensure that no adverse information about the agreement is recorded on Mr C's credit file.

My final decision

My final decision is that I uphold this complaint and RCI Financial Services Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 May 2023.

Maxine Sutton
Ombudsman