

The complaint

Mr P complains about the quality of a car he acquired through a hire purchase agreement financed by RCI Financial Services Limited (RCI).

What happened

In January 2019 Mr P acquired a used car through a hire purchase agreement with RCI.

In around October 2022 Mr P experienced unusual noises and a burning smell from the vehicle and took it to a branch of the dealership from which he acquired the car for investigation. The dealership completed a diagnostic in October 2022 and found the rear differential had failed. They said there might also be damage to the gearbox, but this would be unclear until the rear differential had been replaced.

The manufacturer told Mr P that because the warranty for the vehicle had expired, he was responsible for the cost of repairs. Both the manufacturer and the garage offered to contribute toward the cost of the repair.

Mr P complained to RCI about the quality of the car in January 2023. He said the rear differential failed prematurely, so was a manufacturing defect. He wasn't happy with the contributions offered by the manufacturer and dealership, and he asked RCI to cover the cost of repairing the car.

RCI sent Mr P their final response to his complaint in February 2023. They said there was a fault with the gearbox but as the warranty had expired Mr P would be responsible for the cost of replacing it. They said the manufacturer had offered a 35% contribution toward the cost of repairs, and the dealership had offered 10%, and they thought this was fair. RCI didn't uphold Mr P's complaint.

Unhappy with this, Mr P brought his complaint to this service for investigation. He said he believes RCI are responsible for the cost of repairs as the fault was a premature failure of the rear differential. He said he's been unable to use the car since October 2022.

Our investigator gave her view that the car was not of satisfactory quality when it was supplied to Mr P. She thought the car wasn't reasonably durable, and so RCI should cover the cost of the repairs, plus 8% simple interest. She also recommended that RCI pay Mr P £150 compensation for distress and inconvenience.

RCI didn't agree. They said if the car had an inherent fault, it would've manifested sooner. They said Mr P purchased the car second hand, so there's no way to know how it was cared for before he got it. RCI said if a part is assumed to last 100,000 miles, and has lasted 55,000 miles instead, then the failure has occurred 45,000 miles sooner than expected and so the offer to cover 45% of the repair costs was fair.

As an agreement can't be reached, the case has been passed to me for a 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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. RCI as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the “quality of the goods is satisfactory”

To be considered “satisfactory” the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £20,000. It was 18 months old and had travelled around 12,000 miles at the time of supply. With this in mind, although the car was used, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a cheaper, higher mileage, second-hand vehicle.

The dealership, who investigated the car in person, said that the rear differential had failed and required replacing. They said there was possible damage to the gearbox as a result, but this couldn't be confirmed until the rear differential had been replaced. They expected initial repair costs to be around £5,500.

The manufacturer of the vehicle recommends that the differential fluid is changed every 30,000 to 60,000 miles. And the part itself is expected to last the lifetime of the car, or some 100,000 to 150,000 miles.

Mr P had use of the car for around three and a half years and travelled around 43,000 miles prior to the fault arising. The car had travelled around 55,000 miles in total before the rear differential failed. Based on the lifespan for this part, and the manufacturer recommendation for fluid changes, I'm satisfied that a reasonable person wouldn't expect the rear differential to have failed so soon.

The dealership said they believed the fault to be a premature failure and a manufacturing defect. They said the vehicle was well looked after, has a full service history and showed no signs of abuse such as racing or being used off road. I haven't seen any evidence to suggest the fault was caused by usual wear and tear, driving style or poor maintenance. So, I'm satisfied it's more likely that Mr P's car had an inherent defect which caused the part to fail when it did.

RCI said that if the car had an inherent fault, it would've become apparent much sooner than it did. There's no evidence to suggest that Mr P's car couldn't have travelled the 55,000 miles that it did with an inherent defect prior to the fault occurring.

On the balance of probabilities, I'm persuaded that the car was not reasonably durable, and therefore was not of satisfactory quality at the time of supply.

Putting things right

Having made that finding, I need to decide what, if anything, RCI should do to put things right.

The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. That repair should be done in a reasonable time, and without significant inconvenience to the consumer.

Mr P has confirmed that he recently paid for the rear differential to be replaced, and this has resolved the fault. So, I think repair is a reasonable remedy in the circumstances, and RCI should refund Mr P for the cost of the repair, plus 8% simple interest from the date Mr P paid for the repair to the date of the refund. Mr P should provide the invoice for repairs to RCI to allow this refund to be made.

Mr P hasn't been able to use his vehicle since the fault occurred, but he was kept mobile in a courtesy car at no extra cost. So, I'm not asking RCI to refund any of the payments made by Mr P.

Mr P has been put to distress and inconvenience in being supplied with a car that wasn't of satisfactory quality. He's had to spend time contacting a number of people to resolve the issue and has expressed his concern at being without a vehicle. Our investigator recommended that RCI pay Mr P £150 compensation to reflect this. All things considered, I think £150 fairly reflects the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint, and RCI Financial Services Limited must:

- Refund Mr P for the cost of the rear differential repair, upon receipt of the invoice from Mr P, plus 8% simple yearly interest from the date of payment to the date of settlement.
- Pay Mr P £150 compensation to reflect the distress and inconvenience caused

If RCI considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 July 2023.

Zoe Merriman
Ombudsman