

The complaint

Mr M complains about a car acquired through a Hire Purchase agreement with RCI Financial Services Limited ('RCI'). Mr M has had problems with the car and wants to hand it back.

What happened

Mr M acquired the vehicle in March 2022. It was brand new and cost £16,090.00.

Mr M noticed a noise that he thought was a problem with the exhaust. He took the car to the dealership in July 2023 and he says he was told there was a known fault with the turbo. At this point the car had covered 17,516 miles and a rattling noise was found to be coming from the turbo.

A 'technical bulletin solution' was found from the manufacturer which was implemented. But the operative noted that the noise persisted. They also noted that a new solution was due to be available in September 2023. When this couldn't be resolved Mr M wasn't happy waiting any longer. He was upset about having to continue making payments under the agreement and stopped his direct debit.

A further inspection was carried out in November 2023. By this time the car had covered 20,792 miles. Mr M says he was told a software update would improve the sound issue. But the report from this inspection says the software was already all up to date. The note says an updated turbo will be released at the end of 2023 and that the manufacturer advised the turbo issue was '*not detrimental to the vehicle*'.

Mr M said the noise was getting worse by this point and he left the car at the dealership. He said when driving the car he'd been approached by people warning him he might have a problem with his exhaust.

I can see that RCI called the dealership on 28 November 2023. In this call it seems the dealership advised there is a confirmed manufacturing fault with the turbo – and it was for the manufacturer to resolve this. The dealership said they could fix the issue but there would be a delay until January 2024 or they could upgrade Mr M's car.

Although he had been offered an upgrade, he didn't want a car with a bigger engine because of the increased costs associated with that.

RCI has provided comments from the manufacturer. These relate to the two earlier visits to the dealership where the turbo noise issue was reviewed. On both occasions it was noted that the turbo was functioning as it should and the noise issue doesn't impact on the car being driven.

The manufacturer told RCI that there isn't a manufacturing defect, the noise is a characteristic of the turbo. And if it was a defect the car couldn't have covered 21,000 miles.

RCI said because the issues complained of happened more than six months from the date of supply Mr M couldn't reject the vehicle. However the dealership has offered to fix the issue

(although the replacement parts would delay the repair) or replace the car with an upgraded version.

The investigator that initially reviewed the complaint concluded there was evidence of a fault with the turbo. Because the car was provided brand new, it should have been fault-free for a considerable time and the faults as presented indicated that the car was not sufficiently durable.

RCI disagreed and said that the manufacturer confirmed the issue was not a manufacturing defect and the issue with the turbo was characteristic to that part and didn't impact its function.

RCI asked for the case to be reviewed by an ombudsman and so it has been passed to me to issue 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.

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Mr M acquired the car through a Hire Purchase agreement with RCI. Under this type of arrangement, RCI became the supplier of the car and is responsible if the goods aren't of satisfactory quality when they're supplied. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

When Mr M acquired the car in March 2022, it was brand new and cost £16,090.00. In circumstances where brand new goods are provided they are expected to be fault-free and sufficiently durable such that it remains fault-free for a considerable amount of time. Some components may wear quicker than others, but many components would be expected to operate without fault for a number of years.

In this instance I can see that Mr M raised issues with the dealership in July 2023. The dealership inspected the car and Mr M says he was told it was a known manufacturing fault.

RCI has raised the fact that the dealership spoke about a confirmed manufacturing defect, but the manufacturer disputed this. The manufacturer said it has worked on improving its turbos and they would be willing to replace this part in Mr M's car. On this basis RCI felt rejection would be unreasonable.

In this instance it doesn't seem as though there's much of a dispute about the noise that the turbo makes. Mr M complained about it, the dealership recognised it, the manufacturer was aware of it and RCI does not dispute it.

The element of dispute is whether this issue is simply an inherent part of how the turbo functions or whether it's an issue which means the car isn't of satisfactory quality.

In the manufacturer's comments it has stressed that the part isn't faulty, that it's operating as it should, it hasn't impacted on the car's ability to drive and that it wouldn't have been able to cover the mileage it had if it was faulty.

I don't think there's any evidence here to show that the issue with the turbo impacts its mechanical functionality or impacts the car being driven. However, the noise from the turbo does appear to have changed since Mr M acquired the car and the noise appears to have developed over time. If this noise was, as RCI and the manufacturer suggest, a characteristic, it would be reasonable to assume the characteristic, i.e. the noise, would have been present since outset. I don't believe that is the case and the noise appears to have developed as the use and mileage of the car has increased.

Where a noise has developed over time, it is possible that this is because of wear caused to the component. It's possible that if the wear to the component is causing an unexpected noise, this might demonstrate the component is wearing excessively or not as it should. Otherwise, the noise would not be there, and the turbo would sound the same as it did when the car was new.

Components will of course wear and over time sound different as a result of that wear. But this would in my view be expected much later in a car's lifetime and after considerably more mileage had been travelled.

The exact cause of the noise has not been identified so the potential impact of the noise on the turbo is therefore unknown. But I can appreciate Mr M's concerns and that if the turbo noise is caused by premature wear, it could fail much sooner than one would expect.

This may therefore explain why the manufacturer has issued a bulletin about the turbo and offered to replace the turbo. Had this noise truly been a characteristic as has been suggested, I consider it unlikely that the manufacturer would go to the trouble and expense of replacing Mr M's, and presumably a number of other customer's, turbos.

On balance, from the evidence presented in this complaint, I am not persuaded that the issue Mr M has experienced with the turbo noise is actually a characteristic of the component or car.

I think it's important to stress that in cases of this sort we are not simply considering the extent to which any issues experienced impact on the car being drivable. Satisfactory quality can clearly entail whether a car can be driven as expected, however it's not restricted in the way that's being relied upon in this case.

As I said above, freedom from minor defects, appearance and durability are considerations to be taken into account when assessing satisfactory quality. For instance, the appearance

of a car is likely to have absolutely no impact on whether it can be driven, but it nevertheless contributes to the quality of goods and whether they're ultimately satisfactory.

While I acknowledge that the manufacturer says this issue does not reflect a manufacturing defect, I think this does not sit easily where the issue is known to the manufacturer, there's a suggested fix for the issue and a timeline for expected resolutions within its technical bulletins. The dealership also described this as a known manufacturer defect.

The fact there is a manufacturer's technical bulletin about this specific issue indicates that this is an issue that has caught the attention of a number of customers and required concerted action from the manufacturer in order to address it.

Although noise issues are not strictly related to the appearance or finish of the car, the aspects outlined in the CRA are not exhaustive. And other aesthetic considerations can and should factor into any assessment of satisfactory quality. Noise issues are likely to impact upon someone's enjoyment of a car – and an engine which is producing unexpected and irregular noise issues would have this effect.

The part itself may function mechanically as it should, but it does so while producing an unusual and concerning noise. But as already noted, the noise may be a result of premature wear that has not yet impacted on the performance of the turbo, other than in the noise it makes. But this does not however mean the turbo will last as long as should be expected into the future and may ultimately fail prematurely at some late date. The CRA outlines that goods should be free from minor defects. The imperfections with the way that the turbo is currently operating constitutes at least a minor defect in my view and suggests there is something wrong with the turbo. I'm not sure why the manufacturer would offer to replace a turbo that was working exactly as it should.

Given that's the case, I think it's important to consider whether this issue has arisen prematurely or if it's the kind of issue that you would expect from a car of this age and use.

This issue seems to have arisen one year and four months after acquiring the car, and after covering approximately 17,500 miles. While that level of use is reasonable for the amount of time, a reasonable person would not expect a significant aspect of the car to experience an issue, as has happened here, for a car that was acquired brand new.

A reasonable person would expect goods that are brand new to be fault-free for a considerable amount of time – and issues presenting themselves prematurely would be indicative of goods that are not sufficiently durable. Significant mechanical components would be expected to operate without fault for a number of years – and not fail in the way they have here so quickly.

All of this is to say that I consider the noise issue with the turbo has impacted Mr M's enjoyment of the car and is not what a reasonable person would expect of goods that are provided brand new. Previous attempts at repair have failed and fixes that were promised have not materialised in a reasonable time.

Putting things right

Because of this I think it's fair for Mr M to be able to reject the car and the agreement be ended at no further cost to him. He returned the car to the dealership in November 2023. Any payment he's made since then should be refunded. His deposit should also be refunded. These refunds should be made along with 8% simple interest from the date of payment to the date of settlement. Any negative information reported to credit reference agencies should be removed.

I've considered Mr M's use of the car and the loss of enjoyment as part of the overall award I've made. I think the £300 suggested by the investigator isn't unreasonable bearing in mind the issues Mr M has experienced.

My final decision

My final decision is that I uphold Mr M's complaint against RCI Financial Services Limited.

I do not consider the car was of satisfactory quality, RCI should:

- End the agreement and collect the vehicle with nothing further for Mr M to pay
- Refund all payments made from November 2023 onwards
- Refund his deposit
- Pay 8% simple interest on the above amounts from the date of payment to the date of settlement*
- Pay Mr M £300 to reflect the distress and inconvenience this matter has caused
- Remove any adverse information reported on Mr M's credit file

* If Stellantis considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give him 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 M to accept or reject my decision before 10 December 2024.

Scott Walker
Ombudsman