

The complaint

Mr H complains about the quality of the car RCI Financial Services trading as Nissan Financial Services supplied him. Mr H says the car isn't functioning as it should and wants to return the car and end his agreement with RCI.

What happened

Mr H entered into a hire purchase agreement with RCI in July 2022, the cash price of the car was £27,768, this included the initial registration fee, delivery and accessories cost. Mr H paid a deposit of £948 towards the agreement. Further amounts were deducted for the value of a part exchange, adjustments to the price and a government adjustment. The total amount of credit on the finance agreement was £25,716, the total amount payable was £32,074.65. The agreement was due to last for 49 months with 48 monthly payments of £395.09 and a final payment of £11,058.71 if Mr H wished to keep the car. Mr H was supplied with a new car.

Mr H says the car is engaging the intelligent braking system (IEB) in an unsafe manner. He first raised his concerns about the car in September 2023. When Mr H raised his concerns, the issue was investigated and the response from the garage was that following investigations there were no error codes stored. Mr H presented his car for a service in October 2023 and asked for the braking system to be checked, there were no issues found by the garage after inspection.

Mr H says he has avoided driving the car since January 2024, he said the braking system caused a collision earlier in the year as it detected a truck in another lane and when he tried to accelerate, the car spun. The insurance company for the third party accepted responsibility for the accident and paid for the repair of Mr H's car.

Mr H says the car isn't functioning as it ought to, and he has a friend with a similar car who is experiencing the car braking when it shouldn't. Mr H says he had a report done by a third-party garage and has sent this to RCI, Mr H is unable to provide a copy of this report.

When Mr H complained to RCI, it didn't uphold any part of his complaint and so he referred it to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator didn't think there was a fault with the car that made it of unsatisfactory quality and so didn't recommend that the complaint be upheld.

Mr H disagreed and asked for an ombudsman to review his complaint.

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 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 H was supplied with a car under a regulated consumer credit agreement which means we're able to look into complaints about it.

The crux of Mr H's complaint is that the car is faulty because the braking system doesn't work as it is supposed to and that makes the car unsafe.

So, what I need to decide here is whether the car supplied to Mr H was of satisfactory quality. If I don't think it was, I'll need to think about what's fair, if anything, to put things right. The Consumer Rights Act 2015 ("CRA") covers the agreement in this case and under this agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The car Mr H acquired was brand new. The car's condition should meet the standard a reasonable person would consider satisfactory, considering its age, mileage and price. Bearing this in mind, I don't think a reasonable person would expect a brand-new car to have any problems for a reasonable amount of time and I think they would have high expectations for the quality of the car.

The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Was there a fault with the car?

Mr H first raised issues with the car in September 2023, about 15 months after he acquired the car. The garage carried out a diagnostic check and there were no fault codes stored, the garage has said it was unable to replicate Mr H's concerns with the car when it carried out its tests. It says it offered extended testing on the vehicle to Mr H, but he declined. At the time, the garage confirms it updated the vehicle control module.

Mr H took the car back to the garage on 13 October 2023 for a service, the issues with the braking system were checked again and the garage has reported there were no defects detected. It also says it carried out a diagnostic check and found no fault codes were stored. Mr H took the car in for the replacement of the headlamp bulb in November 2023 and again the garage reports there were no further issues raised. The garage has provided information to show it inspected Mr H's car on more than one occasion and hadn't found any faults in 2023.

It appears Mr H took the car back to the garage for further checks in July 2024 and based on what Mr H told RCI about this visit, he was told although unrelated codes were stored and a loose wire was found which he says the garage resecured, the garage was satisfied the braking system was operating as expected. From what I can see the unrelated codes found and the loose wire haven't had a negative impact on the durability of the car as Mr H's complaint about the car remains the braking system, which the garage has confirmed is working as expected.

Based on all the above, there isn't a report that shows there was a fault with the braking system. So, I can't conclude that the braking system is faulty.

Mr H says the issue with the braking system is intermittent and has sent evidence in the form of videos which he says shows the car braking when it shouldn't and also some videos from his friend who has a similar car with similar complaints.

I can't comment on the videos from Mr H's friend as he isn't a party to this complaint, and I don't have information about the circumstances of his vehicle and so it won't be reasonable to take information about his car and apply it to Mr H's complaint. The video Mr H has sent from his car, in my opinion, doesn't clearly demonstrate that the braking system doesn't work as it should. There appeared to be another vehicle in the video Mr H sent although he says it wasn't within close enough proximity to have triggered the braking system. I've read the car manual, and it explains how the braking system works to prevent accidents by detecting objects through the sensors. There's a possibility the braking system detected the other vehicle.

I appreciate Mr H is unhappy with the way the car is functioning and he feels it is unsafe. Mr H has said there are road works on his usual route which means the lanes are narrower while the works are ongoing. While I can't be sure, it wouldn't be unreasonable to think the narrower lanes are triggering the braking system in line with the way it should work.

Mr H has said the braking system caused an accident but I'm mindful the third-party insurer took responsibility for the accident and paid for the repairs of Mr H's car. On balance, it is reasonable to conclude that the third-party insurers completed an investigation and deemed their insured was at fault. I haven't seen any information that shows the braking system on Mr H's car was the cause of the accident. I appreciate Mr H had issues with the charging unit installed in his home which has now been resolved and I'm satisfied that issue doesn't impact the current issues with the braking system now raised by Mr H.

Mr H has told this service he had an independent report about the concerns of the car which he has sent to RCI. We've asked both parties for a copy of this report and Mr H has said he sent a hardcopy to RCI and didn't keep a copy. RCI has said it didn't receive any such evidence. In the absence of this information Mr H has referred to, there is nothing within the information provided on this case that shows the braking system is unsafe or any information that makes the car of unsatisfactory quality.

I'm mindful that by November 2023, Mr H had completed 12,478 miles on the car and so despite the issues he says he was experiencing he had good use of the car during the period. RCI has also offered to disable the IEB on Mr H's car as there is the possibility to turn the function on and off and Mr H has declined this saying, he'd been told by his insurer this would invalidate his cover, although he hasn't provided any information to this effect.

Based on all the available information, I don't think RCI supplied Mr H with a car that had a fault or was developing a fault at the point it was supplied, which meant the car wasn't fit for purpose. It follows that I won't be asking RCI to take any further actions.

I understand my findings will likely disappoint Mr H as he feels strongly about his complaint and has said it is costing him money as he hasn't been able to return the car. My role requires me to look at the available information and base my findings on that available information. Based on all the information I haven't seen anything that persuades me the car isn't fit for purpose and I hope my explanation will go help Mr H understand why I've reached this conclusion.

My final decision

For the reasons given above, I don't uphold Mr H's complaint or make any awards against RCI Financial Services trading as Nissan Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 March 2025.

Oyetola Oduola
Ombudsman