

complaint

Mrs K complains about a new car she acquired through a hire purchase agreement with RCI Financial Services Limited (RCI). She's had problems with the car and says these weren't satisfactorily resolved.

background

Mrs K took delivery of the new car in June 2015. She says the car's oil consumption was high from the outset. The owners' manual suggested this might be the case whilst the car was new.

This meant she didn't report the problem to the car dealership until April 2017, by which time the car's oil consumption had increased even further. Mrs K reports the car using up 2 litres of oil in one week in April 2017. She also began to hear a knocking noise from the engine. There were no apparent leaks of oil from the car at any point. And the oil warning light had never come on.

In April 2017, the dealership had carried out a software update. They believed this would likely rectify the fault. They asked Mrs K to monitor the car's on-going oil consumption and report any continuing problems. Mrs K claims that she was told by staff at the dealership that this was a common fault with cars of this make and age.

Mrs K wasn't convinced the problems had been resolved. After the car's annual service in June 2017 - and after some further discussion - it was agreed that the car would be repaired in September 2017. When Mrs K found out that the proposed repair was a replacement of the "short engine", rather than a full engine replacement, she cancelled her appointment with the dealership. Her view was that the proposed repair would not properly resolve the problem.

Mrs K made a complaint to RCI. They said that because it had been in Mrs K's possession since June 2015, the car could not be rejected. They said they were "unable to determine" that the issue had been present at the time the car was acquired. They recognised the inconvenience the fault with the car had caused Mrs K and said to reflect this "an appropriate gesture of goodwill" would be offered once the suggested repair – the replacement of the short engine - was completed.

Mrs K was unhappy with this response and complained to our service. Our investigator looked into it and came to the view that RCI hadn't acted unfairly or unreasonably. Mrs K disagreed and asked that her complaint be referred to an ombudsman for a final decision.

After that, RCI wrote to us to make it clear they'd offered to carry out the replacement of the short engine and to pay Mrs K £589.02 (equal to two month's payments under the HP agreement).

Mrs K also wrote to us to say she has reluctantly agreed to the proposed repair – which was carried out on 9 November 2017.

Because I disagreed with our investigator's view, I decided to issue a provisional decision before I make my final decision. This allowed both parties to comment on my thinking before I make my final decision – which is the Financial Ombudsman Service's last word on the case.

my provisional decision

In my provisional decision, I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I think the complaint should be upheld. I'll explain why.

Mrs K acquired a new car in June 2015. There's no dispute that she's looked after the car carefully – for example, ensuring the oil was continually topped up. The mileage isn't particularly high - 16,851 miles in the 22 months before April 2017.

So, it's extremely unlikely Mrs K did anything to cause the excessive oil consumption issue – or the problem has arisen as a result of wear and tear. The fault was very apparent within 22 months of purchase – of a brand new car - and with less than 17,000 miles on the clock. The dealership don't dispute this.

I think this indicates there was an issue at the point of purchase, as Mrs K believes. There are two possibilities. One, the car was already defective and using excessive oil from the outset – a problem which simply got worse over time. Or it developed this fault over a relatively short space of time – which would suggest that it wasn't as durable as it should have been when it was sold.

The fact that Mrs K didn't report this before April 2017 does not change my view. The owners' manual for this model suggests that oil consumption may be high when the car is new. This masked the underlying issue for a period of time. And the problem seems to have gradually worsened over time – through to the week in April 2017 when the car appears to have used 2 litres of oil.

To sum it up, I don't think a reasonable person would expect - or accept – that a brand new car, used responsibly and carefully, would develop this kind of problem within less than 22 months of purchase.

So, I think RCI need to do something to put things right for Mrs K. The difficulty in this case is in deciding what that might be. In cases like this, depending on the individual circumstances, the usual options are that the car is rejected and returned, or replaced, or repaired.

Mrs K has already agreed to the proposed short engine replacement, which has by now been carried out. In any case, I think return or replacement of the car might have been difficult given the length of time since purchase. I am not sure returning the car and cancelling the agreement would make Mrs K any better off – or return her to the position she was in before she entered the agreement. Finding an acceptable replacement – a car of the same age, with the same mileage for example - would be difficult.

So, I think giving RCI another chance to repair the car is the best way forward. This has now happened – in part – by replacing the short engine. That said, I can see why Mrs K is reluctant to accept the short engine replacement. The fact that there are no visible oil leaks would strongly suggest that the car has been burning oil, which might have caused damage to the catalytic converter, the exhaust and other parts of the engine. I think RCI should

arrange for an independent inspection to find this out and pay to repair any such damage identified.

I also think RCI should compensate Mrs K. She has been reluctant – understandably – to make full use of the car, particularly after the oil loss issues became worse. From the outset, she has been required to take extra care before using the car – constantly checking oil levels for example. Throughout that time, Mrs K has continued to make the agreed payments to RCI under the HP agreement.

I think these problems have reduced – but not eliminated altogether – Mrs K's ability to use the car in the way she would have expected. So I don't think it fair that Mrs K has had to pay the full amount under the credit agreement for a car she's not been able to use to its full extent. I think it's fair for RCI to refund half the payments she's made since April 2017, when the full extent of the underlying problem came to light.

the responses to my provisional decision

Mrs K agreed with my provisional decision. However, she wants me to stipulate that any courtesy car she's provided with during the proposed inspection – and any subsequent repairs – should be an equivalent like for like replacement for their car.

She is also keen that I am absolutely clear that we would expect RCI to take responsibility for any future problems with the car which arise from the original oil consumption issue.

RCI responded to my provisional decision and made a number of points.

First, RCI queried whether an inspection is necessary if the car is now running satisfactorily. They also said that if an inspection were carried out, it would be best done by the supplier's own engineers. They have a far greater technical and mechanical knowledge of their vehicles and so would be able to carry out the highest possible level of inspection.

Second, RCI said it is unfair to ask them to refund 50% of Mrs K's monthly payments since the short engine replacement was carried out, *if* that has solved the problems with the car. In that case, Mrs K has had use of a fully functioning vehicle since the replacement was made.

They also suggested that *if* the replacement has resolved all issues with the car, it would be unfair to ask them to repay 50% of the payments after the replacement was first scheduled on 4 September 2017. It was Mrs K who cancelled that appointment and so it was her responsibility that the car was not repaired to full functionality earlier.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also thought again about the conclusions I reached in my provisional decision, bearing in mind the comments made by Mrs K and by RCI.

I agree that Mrs K should expect an appropriate standard of courtesy car whilst her vehicle undergoes inspection – and any subsequent repairs. That was what I intended in my provisional decision, so I don't intend to change the wording of my decision. But I *do* expect that any courtesy car provided by RCI will be of an appropriate standard. And at least in line

with any requirements set out in the original hire purchase agreement between Mrs K and RCI.

I also agree that RCI should resolve *any* issues with the car caused by the original oil consumption issue, whenever they might arise. That, indeed, was the intention of my provisional decision - and in particular the requirement for RCI to identify and resolve any problems arising from the original fault. Again, I'm satisfied that this was clear in my provisional decision, so I don't think it's necessary to amend the wording.

I haven't changed my view that an inspection is necessary. Even if the car is running well at present, it's likely that it's been burning oil in the past. The purpose of the inspection was to discover whether that's caused any longer term damage to other parts of the car's engine.

I'm persuaded however that it would be in everyone's best interests if the inspection were carried out by the supplier's own engineers. As RCI say, it's likely this will be the most reliable way to identify any remaining issues with the vehicle.

I have been in touch again with Mrs K about this and she is happy to agree that the inspection is carried out by the supplier, as long as this takes place at the dealership where she acquired the vehicle. And as long as I am clear that if any problems caused by the original oil consumption issue are missed by the inspection but do become evident in future, we will expect RCI to resolve these.

I understand why Mrs K wants assurance on this point, given that she's lost some trust in the supplier and RCI. Assuming the inspection is carried out thoroughly and effectively, it should identify any remaining problems. And once they are repaired, that should be an end to the matter. But I'm happy to confirm again that it is the intention of my decision that RCI will resolve all problems arising from the original oil consumption issue.

I don't agree with RCI's argument that it would be unfair to ask them to repay 50% of Mrs K's payments since September 2017. Mrs K tells me that her use of the vehicle since November 2017, when the short engine was replaced, has been extremely cautious.

She has continued to monitor the car's oil consumption regularly, to establish whether the problem has been resolved. And because of concerns about this and the possible knock-on effects of the car's likely burning of oil, she has avoided taking longer journeys – for example to visit family members in other parts of the country - for fear of breaking down.

It's understandable that Mrs K has not yet begun to fully use and enjoy the car, given that the inspection I've suggested hasn't yet been carried out. Until it is - and the car is either given a clean bill of health or any identified damage is repaired – she can't be sure the car is reliable. And I'm satisfied she won't be able to use the car as she intended when she acquired it.

So, I think it is fair that RCI should continue to repay 50% of Mrs K's payments until such time as the inspection identifies no remaining problems or any such problems are resolved.

my final decision

For the reasons I've given, my decision is that I uphold Mrs K's complaint. RCI Financial Services Limited must:

- within six weeks of the date of this decision, carry out an assessment of the car to find out whether there are any other problems which have been caused by the underlying oil consumption issue (this assessment is to be carried out at the dealership where Mrs K acquired the vehicle);
- pay for any such problems to be fully repaired (within a month of the inspection);
- provide a courtesy car for Mrs and Mr K whilst that assessment and any subsequent repairs are carried out.

RCI Financial Services Limited must also pay compensation to Mrs K, amounting to 50% of the payments made from April 2017 to the point at which the independent assessment confirms there are no further problems, or until the problems the assessment identifies are resolved – whichever is later. RCI should also pay annual interest at 8% simple on each payment that is to be returned to Mrs K.

If RCI Financial Services Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs K how much it's taken off. It should also give Mrs K a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 5 March 2018.

Neil Marshall
ombudsman