

complaint

Mrs N complains that RCI Financial Services Limited, trading as Nissan Finance, charged her too much for repairs to a car she returned after she terminated a hire purchase agreement. She also complains that she has been charged more for the vehicle than she remembers agreeing to.

background

I issued my provisional decision in December 2017. I explained why I was planning to uphold Mrs N's complaint in part. An extract of that provisional decision is set out below:

Mrs N has been represented throughout the course of this complaint by a friend Mr A but for simplicity I will refer to Mrs N in this decision.

Mrs N acquired a car through a hire purchase agreement financed by RCI Financial Services Limited (RCI). She says that she later realised that she was being charged £2,000 more for the car than she remembers agreeing to and she's also unhappy that she was charged £1,324 to repair damage to the car when she returned it at the end of the hire period.

Mrs N provided a picture of the car bearing the same registration plate and having an appropriate dealership branded sales price board in its window. The sales price written on the board was £13,995 but Mrs N says that she was charged £15,095 in the agreement and that she wasn't aware she was paying £15,095 until recently. RCI said that Mrs N needed to raise concerns about the price she was charged for the vehicle with the dealership. They stressed that they were only responsible for setting up finance for the value the dealership advised.

RCI provided copies of the third parties vehicle inspection that was completed when Mrs N returned the vehicle. They said that the items that needed repairing, and were highlighted on the inspection report, were outside of what they would consider fair wear and tear. And they said that they used the British Vehicle Rental and Leasing Association (BVRLA) trade guidelines when making this assessment.

But Mrs N disagreed. She said she'd noted her disagreement at the time of the inspection and had written this on the inspection report and she complained that she should have been given the opportunity to have her own independent assessment made or have the car repaired herself at a lower cost.

She referred her complaint to this service and our investigator provided his view in October. He thought Mrs N's complaint about the amount she had been charged for the car should be directed to the Motor Ombudsman as it was not a complaint against RCI but one against the dealership. He also reviewed the repair charges that had been levied and compared the photographs on the inspection report with the BVRLA guidelines. He agreed with the majority of the charges as he could see sufficient damage but he disagreed with the damage that had been claimed on two of the cars panels and RCI agreed to remove the charges of £80 as a gesture of goodwill.

But Mrs N didn't think our investigator had gone far enough and she asked for a decision by an ombudsman.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I don't agree with the investigator's opinion. I think it's possible for us to look into Mrs N's complaint about the original price of the vehicle and I don't think Mrs N should pay as much as RCI has asked to return the vehicle to a satisfactory condition. I'll explain why.

the price of the car

The ombudsman service is only able to look into complaints about services provided by certain businesses that are under our jurisdiction. Mrs N's complaint about the price she was charged by the dealership would appear, at first sight, to be outside of our jurisdiction but part 56 of the Consumer Credit Act 1974 says that when a hirer enters a negotiation with the dealership, as well as acting for himself, the dealer is acting as an agent of the creditor (who in this case is RCI) and as such if the agreement has been wrongly constructed we have jurisdiction to make a decision on it.

Mrs N has provided a photograph of the vehicle that appears to show it on sale for £13,995. It may have been taken at the dealership and certainly the sales price board is branded correctly. It may also have been taken on the date that Mrs N says she reached an agreement with RCI to finance her agreement but I can't be certain about either of these points.

Mrs N has been paying her monthly instalments since January 2014 and it seems strange that the issue has only come to light now. I would have expected her to have raised concerns much earlier than this if she'd had concerns about the money she was being asked to repay. It's difficult for me to say conclusively what happened when Mrs N signed her agreement at the dealership but I'm persuaded that if she really hadn't agreed with the price on the agreement, she would in all probability have raised the issue earlier. So I'm not upholding this part of her complaint.

the repair bill

When Mrs N entered into her agreement the terms and conditions said the car would be inspected when returned and there would be a check to establish:

"whether there is any damage which, in our reasonable opinion, is in excess of fair wear and tear (having regard to age and mileage)"

Mrs N was provided with a copy of the BVRLA fair wear and tear standard that RCI's independent inspector would use to establish what fair wear and tear was. I have looked at each of the 18 chargeable items that the third party inspection highlighted using this standard and I agree with the investigator's comments that all bar two of the issues are clearly repairable and chargeable. I think the repairs to the right front wing and left door are disputable but I note that RCI are prepared to dispense with these charges.

Mrs N says she should have been given an opportunity to get an independent inspection but if she had I don't think the inspector would've ignored the issues that were highlighted on the report that was obtained. The damage is very clear so I don't think a further inspection would've improved the situation for Mrs N.

Mrs N also says that she should have been given a chance to get the repairs done herself. But I note she didn't ask for this. She simply disputed the cost and I don't think the costs quoted were exorbitant. She may have been able to get the work done more cheaply but still would've faced a further inspection and a charge of £168 to have it completed. There would also have been a risk that the work was not completed to the right standard and there would have been a significant delay before RCI got their vehicle back to sell – and a resultant reduction in the sales price. So I'm not convinced, if Mrs N had been given this option she would've taken it up.

what was fair?

When RCI financed Mrs N's hire purchase arrangement they did so on the provision that the vehicle was returned to them in a good condition. If they received the vehicle in this condition they would have expected to attain a "good price" when they sold it at auction. RCI use the "CAP clean" figure (an independent valuation used extensively by the trade) to decide what that "good price" would likely be.

They told me that the CAP clean figure for Mrs N's car when she returned it was £7,025. When their independent inspectors looked at the car they decided that it wasn't worth this much and needed £1,324 worth of work to get it back to a standard where RCI would be able to sell it for that figure. This obviously isn't an exact science – it's an estimate. And when RCI looked at the repairs, their inspector had suggested they make to the car, they decided, as they were entitled, to take their chances selling it at auction, without the repairs, and they were able to get £6,200 for the car. £825 less than the CAP clean figure.

So whilst RCI expected to lose £1,324 because the car had not been returned to them in a good condition, they actually only lost £825. And I don't think it would therefore be fair of them to charge Mrs N more than this. The spirit of the agreement they entered into with Mrs N was that they would not be financially disadvantaged as a result of receiving a vehicle back in a poorer condition than was agreed. And if RCI had decided to repair the vehicle I think they could have justifiably charged Mrs N £1,324 to complete this work. But they didn't and as a result, their loss was lower and it's that lesser figure that should, more fairly, be passed on to Mrs N.

I asked both parties to respond to my provisional decision with any new information or comments they wanted me to consider. VWFS accepted my decision and Mrs N did in part although she questioned whether the original sales price was valid and explained she had raised this on several occasions. But I don't think this changes my opinion on the sales price and so I now make the following order.

my final decision

For the reasons given above RCI Financial Services Limited should allow Mrs N to pay £825 in full and final settlement of her hire purchase agreement with them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 15 February 2018.

Phil McMahon
ombudsman