

The complaint

Mr P is unhappy that a car supplied to him under a hire purchase agreement with RCI Financial Services Limited was of an unsatisfactory quality.

What happened

In February 2023, Mr P was supplied with a used car through a hire purchase agreement with RCI. He paid a deposit of £300, was given a part-exchange allowance of £72.22, and the agreement was for £13,707.78 over 60 months; with 59 monthly payments of £287.73 and a final payment of £288.18. The agreement also included two additional products loans totalling £438. At the time of supply, the car was almost six years old, and had done 79,098 miles.

The car was supplied by a dealership I'll call 'B' but was sent to another dealership in the same group, whom I'll refer to as 'D', which was nearer to Mr P's home, for collection. When Mr P arrived at D to collect the car, he raised an issue about scratches on the bonnet and other body panels. He said that D arranged for him to return the car at a later date for the damage to be resolved.

After collecting the car, Mr P found further issues with worn tyres and the rear windscreen washer not working. He also said that there was no evidence provided that B had replaced the timing belt and water pump as agreed, and that the car was still dirty inside, despite him having paid for a full valet. He contacted B on 23 February and 2 March 2023 about this.

B arranged for the car to be inspected at D's premises, and this inspection took place on 11 March 2023. The inspection confirmed that one tyre, the rear washer system, and a front wheel arch needed replacing. B offered to replace the existing worn tyre (a premium brand) with a new budget brand tyre, but Mr P was unhappy with this. He wanted two tyres replaced, on a like-for-like basis, and he was unhappy that the issues with the car hadn't been identified when B had an MOT done, just before the car was supplied to Mr P.

After several unsuccessful attempts to resolve matters with B, Mr P complained to RCI. Following this, B agreed to replace two tyres, but Mr P received no further contact about the other issues with the car. RCI didn't uphold Mr P's complaint, because B denied the car had ever been inspected. So, Mr P brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said the evidence, which included a further inspection that had taken place on 8 August 2023, showed there were faults with the car. And he thought the issues with the tyres, paintwork, and wheel arch were present or developing when the car was supplied to Mr P. Which made the car of an unsatisfactory quality.

Because of the issues with the car, and the delays in repairs being arranged, the investigator said that Mr P should now be allowed to reject the car and receive a refund of the deposit he paid. The investigator also said that RCI should refund Mr P's costs that have been incurred as a result of the quality issues with the car, as well as 5% of the payments he'd made; plus an additional £200 for the distress and inconvenience he'd been caused.

Mr P agreed with the investigator, but RCI didn't respond. Because of this, this matter has been passed to me to make a final decision.

While we were waiting for RCI to respond to the investigator's view, Mr P paid out an additional £68.36 for a replacement tyre on the car, as one of the already worn tyres had further worn to the point where it was illegal for the car to be driven.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

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 P was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, RCI are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless RCI can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr P to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr P took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask RCI to put this right.

I appreciate that both B and RCI have said Mr P never had the car inspected at D's premises in March 2023. However, I've seen that, on both 6 and 10 March 2023, B asked Mr P to take the car for inspection at D. And I've seen an SMS message from D to Mr P, dated 11 March 2023, which confirms "*your vehicle is currently going through our service process*" and giving him specific contact details.

I've also seen that, in an email of 3 April 2023, B agreed to "*replace the tyre and look into the rear washer not working.*" In emails the following day, B agreed to replace both worn tyres and to deal with the issues with the bodywork. On 3 May 2023, they also provided Mr P with the evidence of the work that'd been carried out on the timing belt.

While the report from this inspection hasn't been provided, I'm nevertheless satisfied by the evidence I've seen that the car was inspected by D on 11 March 2023. And the subsequent emails between Mr P and B show me that faults with the car were found, specifically relating

to the tyres, the paintwork, and the rear windscreen washer. It's also clear from these emails that work was done on the timing belt just before the car was supplied to Mr P.

I've been provided with a copy of a report on the car, dated 8 August 2023, which Mr P obtained at the cost of £40. This confirms the damage to the paintwork, that tyres were worn down to the legal limit, that the wheel arch liner was damaged beyond repair, and that the repairs to the timing belt had been completed with non-manufacturer aftermarket parts.

This report confirms the same issues that Mr P complained about from shortly after the car was supplied to him. And RCI haven't provided any evidence, for example a report from an independent engineer, that shows me the issues with the car weren't present or developing when the car was supplied to Mr P. As such, I'm satisfied that it's more likely than not the issues were present upon supply. While I've taken into consideration the age and mileage of the car, I'm also satisfied that the level and nature of the damage made the car of an unsatisfactory quality when it was supplied to Mr P.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for RCI.

However, section 23 of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must –
(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given that, in their emails to Mr P in March 2023, B agreed to repair the car, and these repairs haven't taken place, it's arguable that RCI failed to comply with Section 23(2)(a) of the CRA. So, in these circumstances, Mr P should be able to reject the car.

Putting things right

Mr P has been able to use the car while it was in his possession. Because of this, I think it's only fair that he pays for this usage. However, given the issues with the car, especially the tyres, I'm also satisfied that Mr P's usage and enjoyment of the car has been impaired. So, I also think it's fair that RCI refund some of the payments Mr P made. And I think 5% of the payments made since the car was supplied fairly reflects the impaired use caused by the car not being of a satisfactory quality.

The investigator also recommended that RCI refund to Mr P the extra expenses he incurred by being provided with a car that wasn't of a satisfactory quality. At the time of the investigator's view, this was the £40 inspection cost. However, I think that this should also include the cost Mr P has since incurred in replacing the tyre, to ensure the car remained road legal.

Finally, it's clear that Mr P has been inconvenienced by what has happened, and by having to try and get the agreed repairs resolved. So, I think RCI should compensate him for this. The investigator had recommended RCI pay him £200, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, if they haven't already done so, RCI should:

- end the agreements with nothing more to pay;

- collect the car at no cost to Mr P;
- remove any adverse entries relating to this agreement from Mr P's credit file;
- refund the £372.77 deposit and part-exchange contribution Mr P paid;
- refund 5% of the payments Mr P has paid,
- reimburse Mr P the £108.36 he's paid for the extra expenses he's incurred, as detailed above;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr P made the payments to the date of the refund[†]; and
- pay Mr P an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]HM Revenue & Customs requires RCI to take off tax from this interest. RCI must give Mr P a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr P's complaint about RCI Financial Services Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 November 2023.

Andrew Burford
Ombudsman