

The complaint

Ms D complains about the way RCI Financial Services Limited trading as Nissan Financial Services has dealt with her in respect of a hire-purchase agreement she used to acquire a car.

What happened

In November 2021, Ms D entered into a hire-purchase agreement with Nissan Financial Services for a new car. The car was priced at just under £37,800. The total amount payable under the hire-purchase agreement was shown as £41,329.57.

Unfortunately, in July 2023 Ms D's car wouldn't start and following retrieval through a breakdown company it was established that there was a leak in the engine cooling system. This took over three months to fix, though I understand Ms D was provided with a replacement vehicle during this time.

Ms D believes that the problem should have been identified a few months earlier when the car was serviced and suggests this indicates the service wasn't carried out properly. She has cited further problems with the car, which she says makes a buzzing noise during reversing, and with a vehicle recall notice issued by the manufacturer, which she believes rendered the car unsafe.

Ms D sought to reject the car. But Nissan Financial Services wouldn't agree that she was entitled to do so. It said that the identified issue with the cooling system had been fixed and that the recall notice wasn't something that amounted to a breach of its obligation to provide a vehicle that was of satisfactory quality. Nissan Financial Services added that it had no record of Ms D mentioning the noise when reversing, while the dealership didn't consider this indicative of a fault. Nevertheless, Nissan Financial Services offered to reimburse a month's payment by way of recognition for the delayed repair. But Ms D wasn't satisfied with this proposal and referred matters to us.

Our investigator wasn't persuaded to find that Ms D was entitled to reject the car. She felt Nissan Financial Services had taken a fair approach to dealing with Ms D's concerns, including carrying out the repair to the cooling system while keeping Ms D mobile. The investigator noted Nissan Financial Services had later said it would also cover the cost of the car's next scheduled service, and considered the overall outcome was reasonable.

Ms D didn't accept the investigator's assessment and the matter has been passed to me for review.

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 can see from my review of the correspondence between Ms D and Nissan Financial Services – and her correspondence with our service – that the situation has caused her to

feel distressed and anxious. I have empathy with her over this, as anyone would. But I'm afraid I am going to disappoint her once again when I say that I've reached a similar conclusion to our investigator, and for much the same reasons as have previously been explained.

Due to the provisions of the Consumer Rights Act 2015 ("CRA"), the agreement between Nissan Financial Services and Ms D is to be read as including a term that the car would be of satisfactory quality. That means the quality a reasonable person would expect in the circumstances – taking into account, for example, the car's age, price and mileage.

When she took delivery of it, Ms D's car was brand new. That doesn't mean it's reasonable to expect that such a car might not need some repairs during the course of the hire-purchase agreement – not because of any inherent fault but due to the general wear and tear that happens to mechanical parts.

The issue with the radiator cooling system could be due to damage sustained during Ms D's possession of the car, which wouldn't be Nissan Financial Services' responsibility. Or it could point to a defect. For the purposes of this decision, however, I don't need to decide this point. That's because even if it could be shown to be a fault present at the point of supply, the point at which Ms D raised it with Nissan Financial Services means that she's not entitled, under the Consumer Rights Act 2015 ("CRA") to reject the car. She's instead entitled to repair or replacement without cost to her, which is the action that was carried out. So I don't find Nissan Financial Services has acted in a way that was contrary to Ms D's rights under the CRA.

That repair should be carried out within a reasonable period. I think it's fair to say the timescale here was outside what might fall within a reasonable period. However, Nissan Financial Services took suitable steps to avoid material detriment to Ms D by providing her with a replacement vehicle while hers was being repaired. It also proposed compensating her for this by reimbursing a month's payment, and like our investigator I think that's fair.

I take a similar view to our investigator in respect of the vehicle recall notice. I've no reason to think that this would provide Ms D with a valid claim in breach of contract. It is, unfortunately, common enough in the motor industry for manufacturers to issue such notices from time to time. The reason for that appears to have been to adjust the level of antifreeze in the coolant system to reduce risk of it freezing at very low temperatures. That might have rendered the car unusable for a period, but I'm not persuaded it rendered the car unsafe.

According to the Driver & Vehicle Standards Agency, any outstanding recall should be fixed by the dealer prior to selling a car to a consumer. But here, the recall notices weren't issued until after Ms D acquired the car. As such, I think it's likely they'd be considered one of the many inconveniences that go hand in glove with running a car.

While Ms D has mentioned a buzzing noise when reversing, I've not seen anything that would enable me to conclude that she should be entitled to reject the car on that basis. Further, while Ms D has provided evidence of a subsequent breakdown report from the RAC, this document merely indicates that the battery requires recharging, but that it remains serviceable. There are various reasons that a battery might run flat, and I don't share Ms D's view that this means the car has further faults.

My final decision

As noted above, RCI Financial Services Limited trading as Nissan Financial Services has already reimbursed Ms D £334.79 (the equivalent of one month's hire-purchase repayment) and offered to cover the cost of the next standard service on the car.

For the reasons I've set out here, my final decision is that I do not require RCI Financial Services Limited trading as Nissan Financial Services to take any further steps to resolve Ms D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 30 May 2024.

Niall Taylor
Ombudsman