

The complaint

Mr D has complained to us about a hire purchase agreement with RCI Financial Services Limited trading as Nissan Financial Services (“RCI Financial”).

What happened

On 18 January 2023 Mr D acquired a new car through an agreement with RCI Financial. Unfortunately three days later the car was in an accident and, as a result, needed repairs. Mr D’s insurer nominated a Nissan dealership to carry out the repairs, and the car was taken in by the dealership on 27 January 2023. Since then the repairs haven’t been carried out. The explanation given is that a part has been delayed due to global supply chain problems.

Mr D complained to RCI Financial because he has had to continue paying the monthly payments while not having use of the car.

On 20 November 2023 RCI Financial wrote to Mr D and said it couldn’t meet the eight week deadline for answering his complaint. It also referred him to this Service. It subsequently sent him a final response letter in which it said because its role was as provider of the finance, the delays in the repairs were not its fault. It said it wasn’t qualified to assess required repairs. It said in the terms and conditions Mr D had agreed to make monthly repayments even if the vehicle wasn’t usable. It said that it didn’t administer the warranty, and that was dependent on the manufacturer and dealership. So Mr D brought his complaint to this Service.

Our investigator issued an opinion. They said RCI Financial was correct when it stated the problem was not a manufacturing defect and therefore it was not responsible. They said Mr D was required to continue paying by the terms of the finance agreement. They thought that Mr D could pursue the insurance company or manufacturer for the delays in the repairs.

Mr D disagreed with the investigator, so the complaint has been passed to me to decide.

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.

Mr D’s complaint is about a hire purchase agreement. Entering into this type of consumer credit contract is a regulated activity, so I’m satisfied I can look into this. Having done so, I don’t think this complaint should be upheld. I’ll explain why.

First of all, I’ve looked at the specific terms and conditions to which Mr D agreed. They say: *“5.3 You must continue to make the Payments under this Agreement if the Goods become unusable for any reason (subject to your statutory protections set out in this Agreement)”*

This term in this agreement means that even though Mr D hasn’t been able to use the car, he’s still repaying the loan. I can well understand that this is an extremely frustrating situation

for Mr D. However it's also necessary to consider whether the situation is the fault of RCI Financial.

Mr D told us he expects it to be able to help because it is part of the same RCI Financial "umbrella" as the dealership. But in law these are separate legal companies and separate legal entities. And so, they have different responsibilities. I will explain further why this means RCI Financial isn't fairly responsible for what has occurred here.

RCI Financial is responsible for supply and administering the finance agreement. Under the finance agreement RCI Financial is also the supplier of the car, and therefore will be responsible for supplying a vehicle that is of "satisfactory quality" in law. This comes about via the implied terms of the Consumer Rights Act 2015. So if the car had been sold with an inherent defect of some kind, RCI Financial would be likely to be responsible for putting that right. However, it isn't responsible for damage caused by third parties.

This complaint isn't about a car that was faulty at the point of sale; it's about something else entirely. The problems with this car arose as a result of the crash damage. Mr D is complaining about the delay in the repairs, and those repairs are needed because of the accident. It follows that as the provider of the finance, RCI Financial isn't responsible for this delay. So I can't fairly tell it to refund his monthly rentals or (as Mr D has asked) treat the finance agreement as "annulled."

During the course of this complaint, Mr D also told us that he wanted to complain against his insurance company; it nominated the dealership where the car is waiting for the delayed part, which is a hose pump outlet. I understand that Mr D has now started that complaint process.

I comprehend Mr D's concerns with the situation he's in; paying for a car when he can't have the use of it. It is open to him to look into pursuing another party. He may need to pursue matters through other avenues, such as the courts and he may wish to seek independent legal advice. I hope this decision doesn't come as too much of a disappointment to Mr D. But looking at all the information available in this complaint, it wouldn't be fair or reasonable to hold RCI Financial responsible.

My final decision

For the reasons given above, I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 August 2024.

Katrina Hyde
Ombudsman