

The complaint

Mr D is unhappy that a car supplied to him under a hire purchase agreement with RCI Financial Services Limited trading as Nissan Financial Services (RCI) was of an unsatisfactory quality.

Mr D is represented in this matter by his partner Mrs D. For ease of reading I will only refer to Mr D.

What happened

In October 2020, Mr D was supplied with a used car through a hire purchase agreement with RCI. He paid an advance payment of £588 and the agreement was for £16,152 over 49 months; with 48 monthly payments of £229 and a final payment of £4,531 if he wanted to keep the car. At the time of supply, the car was more than four years old, and had done 29,713 miles.

Mr D said that the engine management light came on in February 2024. He said there was also a noise coming from the engine. He said a diagnostic check was done in May 2024. He said he was told a new engine was required and this would cost £9,000 to repair. Mr D wanted to return the car to RCI.

RCI didn't uphold his complaint. They said that in June 2024 the dealer had confirmed that the car required a new engine. RCI had asked the manufacturer to investigate on their behalf. It gave Mr D two options: the first was £200 towards the cost of a diagnostic report. It said this was to "*confirm the engine's condition further*". It said the diagnosis would cost £252, plus £1,080 if additional stripping down of the engine was necessary. The second option was to opt for the engine repair. It suggested this would cost £9,000. It told Mr D that it wouldn't commit to what support it may be able to provide.

RCI also said they wouldn't accept the rejection of the car as Mr D hadn't proven that the fault was present at the time of sale.

Mr D was unhappy with this response, so he referred his complaint to our service for investigation.

Our investigator said that he didn't think the engine in the car was sufficiently durable. He said this because a reasonable person wouldn't expect the engine to fail at 47,000 miles usage.

He said that RCI should allow Mr D to reject the car and cancel the agreement. He also said that they should refund all payments made since March 2024, when the car broke down. He also said they should pay £200 to Mr D for the distress and inconvenience caused.

RCI challenged the view. They said there was no reason to show that the engine issue was caused by a defect rather than routine maintenance required by Mr D. They said Mr D had refused to pay for a full diagnosis and said this needed to be done to show the cause of the engine issue.

Our investigator explained that a vehicle assessment check had been provided by a main dealer that confirmed a new engine was needed. He said the further diagnostic checks would have been at considerable cost to Mr D. He explained why he didn't feel it would be beneficial as the evidence showed that the engine had failed at 47,000 miles, well below the industry standard.

He also said that Mr D had provide evidence that he'd had the car regularly serviced.

RCI replied stating that there was no evidence of the cause of the engine failure. They explained it seemed to have failed due to an issue with another component. They said an independent report was required to establish the cause of the engine failure.

RCI also said the car had not been serviced by a main dealer, so they felt improper maintenance may have led to the failure.

Because RCI didn't agree, this matter has been passed to me to make a final decision.

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.

Where evidence has been incomplete or contradictory, as it is in this matter, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr D entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their durability.

Under the CRA, where a fault occurs in the first 6 months, there's a presumption that the fault was present or developing at the point of supply and its generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car. After 6 months, it's up to the consumer to show that the car wasn't of satisfactory quality when supplied.

So, if I thought the car was faulty when Mr D 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.

In this instance, it's not disputed the engine failed. Neither is it disputed that the engine failed after just 47,000 miles, and around eight years old.

RCI state that the onus was on Mr D to provide evidence that the issue was present or developing at the time of sale. They said that Mr D had the car for four years before the fault developed, and it was eight years old. They said they'd seen no evidence of a manufacturing defect.

No diagnostic reports have been provided by either party. But we do know that the supplying dealer inspected the car in or around June 2024 and confirmed that the car needed a new engine. A main dealer garage then carried out a health check who confirmed the car needed a new engine. I've asked for a copy of these reports or any related paperwork and/or correspondence, but neither party has provided these.

I don't believe the car was sufficiently durable. I've considered whether or not a reasonable person would accept that the engine on a four-year-old car, that had done less than 50,000 miles, and had been serviced annually, would fail completely. On balance, I don't think a reasonable person would find that to be acceptable.

Things go wrong with cars, and they require regular maintenance. I've seen no evidence that says the engine failed due to wear and tear, or a lack of maintenance.

I've seen evidence that Mr D had the car serviced annually since he acquired it. The mileage indicates that Mr D travelled around 17,000 miles in the four year period he had the car – this is significantly below the average annual mileage of cars in the UK. And there's no evidence that Mr D has been using the car in such a way that would critically damage the engine. So I don't think that the engine that is the subject of this complaint was sufficiently durable. And because of this, I don't think the car was of satisfactory quality when supplied.

RCI say that the evidence Mr D provided that the car was serviced was not evidence that it was properly serviced.

I have no reason to doubt the evidence Mr D submitted. I've looked at the service history and can see that the car was serviced by a local garage in December 2021, December 2022, and December 2023.

RCI said that the services weren't done by a garage in the manufacturer's network. That is not a requirement I have to consider. I agree it would have been more helpful if I had the record of what work was done at each service. But that is not available, so I must rely on what I've been given. Mr D's testimony has been consistent, and I've not been given any reason to doubt the evidence he submitted, so I'm persuaded that he had the car regularly serviced.

RCI say while the vehicle's mileage is indeed relatively low, it is 8 years old with an exemplary record without need of any repairs. They say this is indicative of its durability and reliability. I'd say it may also be an indicator that it was indeed regularly serviced.

RCI said that the potential cause of the engine failure was an issue with the oil sump and not an issue with the engine. They said this was what was said in Mr D's original complaint to them. I invited them to send me that information, but they did not provide anything.

So I have to base my decision on what I have. That is a failed engine on an eight year old car, that had only done around 47,000 miles. As I've explained above, I'm satisfied that the car wasn't sufficiently durable, as I don't think it likely the engine would have failed at this

point if it had been. This means that I'm satisfied that RCI supplied Mr D with a car that wasn't of satisfactory quality.

Putting things right

In a case like this where the car was not of a satisfactory quality, the appropriate remedy would be to allow RCI the opportunity to repair the car. But in this case, I understand a repair would cost more than the value of the car. So I don't think it would be fair to ask RCI to arrange repairs. That means Mr D should be allowed to reject the car.

Mr D hasn't been able to use the car since March 2024 because of the engine failure. It's not reasonable that he pays for goods he wasn't able to use. So RCI should refund all monthly payments Mr D made since March 2024.

I don't think it's fair in this instance to ask RCI to refund the deposit Mr D paid. That's because he had use of the car for three years of a four-year agreement.

Mr D has been inconvenienced by not being able to use the car because the engine needed to be replaced. This would not have happened if RCI supplied him with a car that was of a satisfactory quality. So, I think RCI should pay him £200 in compensation to reflect the distress and inconvenience caused.

Therefore, RCI should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr D;
- RCI is entitled to deduct a charge from the refunds, to pay for any repairs if the car has any damage which is beyond 'fair wear and tear' as set out in industry standards (and do not form part of this complaint);
- remove any adverse entries relating to this agreement from Mr D's credit file;
- refund monthly payments Mr D has made since March 2024;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr D made the payment to the date of the refund[†]; and
- pay Mr D an additional £200 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If RCI considers that tax should be deducted from the interest element of my award, they should provide Mr D with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

My final decision

For the reasons explained, I uphold Mr D's complaint about RCI Financial Services Limited trading as Nissan Financial Services and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 April 2025.

Gordon Ramsay
Ombudsman