

The complaint

Mrs N complains about the quality of a car supplied to her under a hire purchase agreement with RCI Financial Services Limited, trading as Nissan Finance ("RCI").

What happened

In August 2021 Mrs N took out a hire purchase agreement with RCI for a used car. This car was just over three years old and had travelled around 35,000 miles. The cash price was £21,795.

Mrs N paid a deposit of £7,300. The rest was to be repaid in monthly instalments of approximately £304 for five years, using the finance agreement. Mrs N says she paid an additional amount to the dealer for a one-year warranty.

Mrs N has told us that she had a problem with the car on 28 January 2022, when it went into limp mode. She's shown us a report from the breakdown and recovery service, confirming the engine management light (EML) was on, the exhaust gas recirculation valve (EGR) was stuck, and the car wasn't driveable.

The car was recovered to a manufacturer's garage, who advised replacement of the glow plug and main power relays. Mrs N told us that she reclaimed this cost under the warranty.

Mrs N says the car went into limp mode again on 26 February 2022. She's shown us a report from the breakdown and recovery service, which says:

"Ran diagnostics and there were lots of fault codes stored cleared codes and fault code relating to EGR valve."

"Fault kept on returning vehicle needs to be recovered as not driveable."

Mrs N says she complained to RCI that she wanted to return the car due to these problems, but they advised her to take it back to the manufacturer's garage for diagnosis and repair under warranty. They offered to reimburse one month's payment as a goodwill gesture, to help with the upfront cost of diagnostic work.

Mrs N says the car broke down again on 28 April 2022. She's shown us a diagnostic report from the breakdown service, saying:

"Faults logged for EGR, mass air flow and relays. Strong smell of exhaust gas from under the bonnet and possibly adblue, unable to see source. Battery also low."

The car was again recovered to the manufacturer's garage. Mrs N says she paid £60 for the diesel particulate filter (DPF) to be regenerated, but this didn't resolve the problem. The garage advised her to replace the battery, but Mrs N wasn't happy to pay for this to be done.

On 26 May 2022 RCI issued their final response to Mrs N's complaint. They said they thought the dealer had provided a suitable remedy by carrying out diagnostics and identifying repairs needed. They advised Mrs N to book the car in again for the recommended repair to be carried out, saying:

“if the battery is underperforming then many other parts including the DPF and EGR will be switched off by the Engine Control and it is likely your vehicle will continue to experience further issues and breakdowns.”

RCI confirmed that, as a goodwill gesture, they'd made a payment of £304.26 to Mrs N's bank account to help with initial diagnostic and repair costs.

Mrs N says the car broke down again within a few weeks of the battery being changed. She's shown us a copy of an invoice dated 6 July 2022, showing a replacement battery was purchased at a cost of £125.

The car was taken to a different manufacturer's garage to find out what was wrong with it. The garage has provided a copy of their job card, showing the car was booked in on 6 July 2022 for investigation into the EML light on the dashboard. They've also provided a copy of their invoice dated 23 September 2022, detailing diagnostic work they'd carried out. It states:

“EML on display: fault stored EGR... requires emissions control unit.”

“Emissions control unit had failed, looks like this may have caused damage to the turbo. Advised requires new turbo and associated parts to rectify.”

Mrs N says she tried to claim the cost of this repair under warranty. The warranty company sent the turbo to a specialist, who said it had failed due to foreign object damage. The warranty company then arranged for an independent engineer to inspect the car on 21 September 2022. That engineer reported:

“We could see no evidence to suggest a sudden failure or impact damage had occurred. We do consider the causation is due to wear and deterioration, which would not be unexpected of a vehicle of this age.”

RCI said Mrs N's dispute was with the warranty company - and that they were unable to help her. Unhappy with this situation, Mrs N brought her complaint to us.

Mrs N told us she couldn't afford to pay the manufacturer's garage for the diagnostic work they'd carried out - or the price they'd quoted for the repairs. She says a payment plan was set up in her husband's name to pay for the diagnostic work, but she'd only been able to afford to make four of the agreed six instalments.

Mrs N says she arranged for the car to be recovered to an independent local garage for repair. She's provided a copy of a receipt dated 2 November 2022, showing she paid a total of £1,515. Mrs N says she had to sell the car due to the amount of money she'd spent on it - and that she's been struggling financially ever since.

After looking into what had happened, our investigator said he didn't think the car had been of satisfactory quality when it was supplied to Mrs N. He thought the problems with the emissions control unit and turbo were most likely to have been already present or developing at that time - and he didn't think the turbo could be considered durable.

To put things right, the investigator said RCI should refund the monthly payments Mrs N had made for the period between July and November 2022, when she hadn't had a car to use. And he said they should reimburse her for any diagnostic or repair work she'd had to pay for.

The investigator thought RCI should pay Mrs N a further £250 compensation for the distress and inconvenience she'd been caused. And he said they should remove any adverse information recorded on her credit file about this agreement.

RCI said they hadn't seen invoices or receipts showing costs Mrs N had incurred. They didn't agree with the investigator's view that the problem with the turbo was likely to have been present when the car was supplied to her – or that it hadn't been durable.

RCI provided a copy of the turbo specialist's report, stating the turbo had failed due to "foreign object damage". They said they'd asked the company who undertook this inspection for more information about this, and had been advised:

"Foreign object damages are caused by external influences such as carbon, debris, dirt, stones, or any other solid particles entering the engine's intake system."

"If a foreign object is sucked into the turbocharger's intake, it can collide with the rotating compressor wheel. The high-speed rotation of the compressor wheel means that even small objects can strike it with significant force. The impact can cause physical damage to the wheel, resulting in dents, or chips."

As RCI didn't agree with our investigator's view of Mrs N's complaint, it was passed to me to make a final decision.

My provisional decision

I issued a provisional decision saying:

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

The agreement Mrs N entered into with RCI was for hire purchase, so I can consider her complaint about it. Under this type of agreement, RCI is the supplier of the car. So, they're responsible for a complaint about the car's quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of those goods is satisfactory. It goes on to explain that things like fitness for purpose, freedom from minor defects, and durability can be aspects of the quality of goods.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. In a case involving a car, it seems likely that the relevant circumstances a court would take into account might include things like its age, mileage, and history.

In this case, I bear in mind that the car was just over three years old and had covered around 35,000 miles when it was supplied to Mrs N. It cost £21,795, which is significantly less than it would've cost when it was new. I don't think a reasonable person would have the same standards for this car as they would a newer one with less mileage. But I think they'd still expect to be able to drive it for a reasonable amount of time without major issues.

In this case Mrs N bought a warranty from the dealer. I think it's important to stress that having an additional warranty in place doesn't affect Mrs N's statutory rights under the Consumer Rights Act 2015 - or the legal remedies available to her if those rights haven't been met. My decision will focus on whether the problems Mrs N experienced with the car were likely to have been due to it not having been of satisfactory quality from the start.

Was the car of satisfactory quality when it was supplied to Mrs N?

A large amount of evidence has been put forward in this case - including conflicting opinions about what caused the problems with the car. I want to reassure both parties that I've

reviewed all of that information in detail. But my decision will focus on what I consider to be the main issues in this case. If I haven't commented on a specific point, it's because I don't think it affects what I believe to be the right outcome.

The breakdown reports Mrs N has provided show a problem was identified with the EGR valve getting stuck on 28 January 2022. The manufacturer's garage invoice dated 4 February 2022 records the car's mileage to have been 35,658 at that time. So, I can see it had only covered around 600 miles by the time Mrs N started to have problems with it breaking down.

The evidence shows that, despite various attempts to diagnose and fix whatever was causing it, the problems with the car continued until ultimately the turbo failed in July 2022. The independent engineer's report dated 21 September 2022 records the mileage to have been 37,544. So, Mrs N had only had around 2,500 miles' use of the car by this point.

I note that the independent engineer considered the cause of the turbo failure to have been "wear and deterioration, which would not be unexpected of a vehicle of this age." I disagree. Bearing in mind the price she'd paid for this car, I think Mrs N could reasonably expect the turbo to last longer than that. I wouldn't consider this to be sufficiently durable.

RCI stress that the turbo specialist believes the failure was due to solid particles entering the engine's intake system and coming into contact with the compressor wheel of the turbo. I've considered this.

But I haven't seen any evidence to suggest this was caused by anything Mrs N had done. I think it's most likely that any foreign object that entered the engine's intake system came from within the engine bay. I note that the manufacturer's garage invoice dated 23 September 2022 states: "emissions control unit had failed, looks like this may have caused damage to the turbo".

For these reasons, I don't consider the car to have been of satisfactory quality when it was supplied to Mrs N. I think she should reasonably have been able to expect it to last for longer than this without the need for major repair work.

Putting things right

I'm satisfied that Mrs N has incurred additional recovery, diagnostic and repair costs because she'd been supplied with a car that wasn't of satisfactory quality. I'll summarise these:

Date	Description	Amount	Paid?
17 May 2022	Regenerate DPF	£60	Paid
6 July 2022	Replacement battery	£125	Paid
19 October 2022	Diagnostic work	£90	Paid
14 November 2022		£90	Paid
14 December 2022		£90	Paid
14 January 2023		£90	Paid
14 February 2023		£90	Still owed
14 March 2023		£90	Still owed
2 November 2022	Recovery and repair	£1,515	Paid

I note that RCI refunded £304.26 to Mrs N's bank account on 20 May 2022 to help with initial diagnostic and repair costs. I think it's fair that they should reimburse her for the balance of the costs she's incurred, with interest. I calculate this to be £1,755.74. And I think RCI should pay the £180 still owed to the manufacturer's garage for diagnostic work detailed in their invoice dated 23 September 2022.

Mrs N says she wasn't able to drive the car after the last time it broke down – and that she wasn't provided with a courtesy car to use in the meantime. The job card created by the manufacturer's garage shows it was taken there on 6 July 2022, and the receipt for the repair work is dated 2 November 2022. I think it's reasonable to assume the car was driveable again at that point.

So, I think it would be fair for RCI to refund the monthly payments Mrs N made for the period from 6 July 2022 until 2 November 2022, to reflect the fact that she didn't have a car to use during that time.

I think Mrs N has suffered stress and inconvenience due to the issues with the car. She says it was in and out of garages for much of the first year – and that paying for repairs caused her financial difficulties.

I do think Mrs N could've done more to help get the problem diagnosed. Given that RCI offered her just over £300 in April 2022 to help with diagnostic and repair costs, I think following the manufacturer's recommendation at that point would've ruled out the battery as a possible cause of the problems with the car at an earlier stage.

I think this delayed getting the problem diagnosed and resolved. But I can't say the outcome would've been any different if Mrs N had replaced the battery two or three months earlier. The evidence I've seen shows this didn't fix the problem - and RCI still didn't agree to uphold Mrs N's complaint.

Having thought about this, I think it's fair for RCI to pay Mrs N £300 compensation for the distress and inconvenience she's been caused by being supplied with a car that wasn't of satisfactory quality.

For the reasons I've explained, I intend to uphold this complaint and direct RCI Financial Services Limited, trading as Nissan Finance to:

- Reimburse Mrs N £1,755.74 for recovery, diagnostic and repair costs she's incurred.*
- Pay the £180 Mrs N owes to the manufacturer's garage, to clear the balance of their invoice dated 23 September 2023.*
- Refund the monthly payments Mrs N made for the period from 6 July 2022 to 2 November 2022.*
- Add interest to each of the above payments, calculated from the date of payment until the date of settlement at 8% simple per year.*
- Remove any adverse information that's been recorded on Mrs N's credit file about this agreement.*
- Pay Mrs N £300 compensation for the distress and inconvenience she's been caused.*

If RCI consider tax should be deducted from the interest element of the award, they should tell Mrs N how much they've taken off. They should also give her a tax deduction certificate if she asks for one.

I invited both parties to send me any further information or comments they'd like me to consider. RCI didn't respond.

Mrs N said she was happy with the provisional decision. She asked whether she could also be reimbursed for the payments she'd made to the manufacturer's garage for diagnostic work. She explained that the delay in having the battery changed was due to not having insufficient funds to pay for that as well as the monthly instalment to RCI.

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 want to reassure Mrs N that the four instalments she paid to the manufacturer's garage have been included in my calculation of the amount RCI should reimburse for recovery, diagnostic and repair costs she's incurred. I've included a full list of those costs in a table, which can be found at the bottom of page four of this document.

As no new information has been provided in response to my provisional decision, I see no reason to change my mind.

My final decision

For the reasons I've explained, I uphold this complaint and direct RCI Financial Services Limited, trading as Nissan Finance to:

- Reimburse Mrs N £1,755.74 for recovery, diagnostic and repair costs she's incurred.
- Pay the £180 Mrs N owes to the manufacturer's garage, to clear the balance of their invoice dated 23 September 2023.
- Refund the monthly payments Mrs N made for the period from 6 July 2022 to 2 November 2022.
- Add interest to each of the above payments, calculated from the date of payment until the date of settlement at 8% simple per year.
- Remove any adverse information that's been recorded on Mrs N's credit file about this agreement.
- Pay Mrs N £300 compensation for the distress and inconvenience she's been caused.

If RCI consider tax should be deducted from the interest element of the award, they should tell Mrs N how much they've taken off. They should also give her a tax deduction certificate if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 14 December 2023.

Corinne Brown
Ombudsman