

The complaint

Mrs K is unhappy with a car she acquired under a hire purchase agreement provided by RCI Financial Services Limited trading as Nissan Financial Services ('RCI').

What happened

In June 2023, Mrs K entered into a hire purchase agreement with RCI to acquire a new car.

The cash price of the car is listed on the agreement as £35,079. A deposit is noted of £7,000 and Mrs K was due to make repayments of £359.28 a month over four years, with a final repayment of £18,176.96 if she wanted to keep the car at the end of the term.

Mrs K says she collected the car around the start of July 2023. But unfortunately, Mrs K says the car very shortly after displayed an engine management light ('EML') along with the dashboard displaying a warning about the gearbox.

A breakdown recovery company attended and confirmed the above later in July 2023. Mrs K says the breakdown company cleared the warnings, but explained they returned shortly after.

The car was returned to the dealer on 29 July 2023.

Mrs K complained to RCI and said she wanted either a brand new replacement, or to reject the car.

In September 2023, RCI wrote to Mrs K and explained it was still investigating the complaint, but due to the time that had passed it said she could refer the complaint to our service.

Later in September 2023, RCI issued its final response. It said, in summary, that the car was inspected by the dealer. It said diagnostic tests displayed a fault code which could be as a result of a CVT gearbox failure, the brake and accelerator pedals being used simultaneously or the seat belt not being fastened while travelling over ten miles an hour.

RCI said the recovery company and the dealer said there was "*no manufacturing defect*" with the car. They said no faults were present and the car was safe to drive.

RCI said it would not support rejection of the car, but due to the service received it offered Mrs K £150.

The car was returned to Mrs K at the end of September 2023. But she said the warning message and EML returned immediately.

Mrs K referred the complaint to our service and said she wanted to reject the car.

Mrs K provided further information from a breakdown company who attended on 5 October 2023. This stated a warning "*Gearbox fault service now*" was on the dash and noted the mileage as 128. This said that the car drove okay, but that Mrs K didn't want to drive it.

The car was then again returned to the dealer in later in October 2023.

On 3 November 2023, Mrs K told our service she'd been informed the car had been repaired. But she said she didn't want to collect it and still wanted to reject the car.

Mrs K then told our service she'd collected the car on 15 December 2023. She provided a photo of the dash showing the mileage as 143.

Mrs K also sent a photo of the dash showing a message "*system fault See Owner's Manual*".

Our investigator then issued a view. She said, in summary, that she thought the car was not of satisfactory quality when supplied. But she said she thought the repairs had resolved the issue. Our investigator said RCI should reimburse Mrs K the amounts due under the agreement for the time she was without the car, and pay her £150 to reflect the distress and inconvenience caused.

RCI responded and accepted the view, but said there was "*never an issue with the gearbox*" and that the issue was related to the oil pump.

Mrs K was unhappy with the view. She said, in summary, that the car had displayed the same fault from when she acquired it to when it was repaired. And she said she still believed she had a right to reject the car.

Our investigator responded. In summary, she said Mrs K had agreed to the repairs which resolved the issue so she couldn't now reject the car.

Mrs K remained unhappy. So, the case has been passed to me to decide.

I recently asked Mrs K whether she'd used the car. She said she had not driven it and it was returned to the dealer again, where it has remained.

I sent Mrs K and RCI a provisional decision on 8 August 2024. My findings from this decision were as follows:

Firstly, I'd like to explain to both parties that I may not comment on every point raised nor every piece of evidence. I'll instead focus on what I think are the key facts and what I consider to be the crux of Mrs K's complaint. This reflects the informal nature of our service.

Mrs K complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mrs K's complaint against RCI.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This says, in summary, that under a contract to supply goods, the supplier – RCI here – needed to make sure the goods were of 'satisfactory quality'. Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors.

I'm satisfied a court would consider relevant factors, amongst others, to include the car's age, price, mileage and description.

Here, I'll consider that the car Mrs K acquired was brand new and cost over £35,000. I'm satisfied a reasonable person would have very high standards for its quality, would expect it to be in excellent condition and would expect trouble free motoring for a significant period.

What I need to consider in this case is whether the car was of satisfactory quality or not.

It doesn't seem in dispute that there was a fault with Mrs K's car. But RCI have made the argument to our service that there are two separate issues here – one from July 2023 and one from October 2023 that are not connected. But I disagree this was the case and I'm satisfied it's highly likely this was the same fault. I'll explain why.

Firstly, the warning messages displayed on the car were the same throughout the times Mrs K said it went wrong, with the message "Gearbox Fault Service Now" displayed along with an amber EML in both July and October 2023.

When the breakdown company attended in July 2023, I can see from the report that their diagnostic test noted:

"GEARBOX – CVT"

"Lost communication with transmission fluid pump"

When the breakdown company attended in October 2023, their diagnostic test noted exactly the same:

"GEARBOX – CVT"

"Lost communication with transmission fluid pump"

The job sheet from when the car was then taken for a repair in October 2023 noted under:

"Cause of Failure" –

"Confirmed internal fault with CVT electric oil pump. New electric oil pump required"

So, from this it seems clear the car was showing a fault with the CVT oil pump from very shortly after Mrs K acquired it. And I'm satisfied this same issue remained, despite the initial repair attempt by the dealer, until the oil pump was later repaired.

I'm satisfied a reasonable person would not expect this car to have this issue so soon after Mrs K acquired it. It follows I'm satisfied the car was not of satisfactory quality when supplied.

I have also considered the most recent error message on the dashboard that Mrs K sent evidence of to our service. There's very limited information about what happened here, but this wouldn't change my opinion above nor what I think would be fair and reasonable to put things right. So I don't think I need to make any findings about this specific issue.

I've then gone on to consider what, if anything, RCI need to do to put this right.

Mrs K said she wanted to reject the car. RCI and our investigator explained they thought she didn't have this right. But I disagree on this point. I'll explain why.

I've set out above why I'm satisfied the car had an issue which meant it was of unsatisfactory quality when it was supplied. The CRA explains under these circumstances, Mrs K would have the 'short term right to reject', if the car was of unsatisfactory quality and she exercised this right within 30 days of acquiring the car. Having reviewed things, I'm satisfied Mrs K had this right and exercised it.

I've seen quite a few emails from Mrs K stating she wants to reject the car. Some examples

from emails sent by Mrs K within 30 days of acquiring the car to either the manufacturer, dealer or RCI:

“Could you kindly arrange for the car to be picked up and handle my deposit to be refunded?”

“At this point, I don’t want the car anymore; I’m sick and tired of this back-and-forth game”

“Either (manufacturer name) provides me a like-for-like brand-new automobile or processes a refund”

“Please, I don’t want anyone to patronise me about giving (manufacturer name) a chance to fix the car, I did not purchase a faulty car, no one should force or brain wash me into driving or keeping a faulty car. I want a brand-new car of the same colour, make and model or a refund.”

So, I’m satisfied Mrs K exercised her short term right to reject. And I’m also satisfied from reviewing RCI’s system notes that it was aware she had exercised this right within 30 days.

It follows all of this that I think RCI should’ve allowed Mrs K to reject the car at this point.

It’s worth explaining that even if I didn’t consider Mrs K had the short term right to reject, I would still reach the conclusion that RCI should’ve allowed her to reject the car. I say this because the CRA explains Mrs K would have the final right to reject if:

“after one repair or one replacement, the goods do not conform to the contract”

Here, I’m satisfied ‘conform to the contract’ means for the car to be returned to satisfactory quality. I’m satisfied a repair was attempted when the dealer first had the car in July 2023. And as I set out above, I’m satisfied this did not resolve the issue.

So, it follows all of this that I’m satisfied Mrs K had both the short term right to reject, which she exercised, and the final right to reject.

I’ve thought about how adamantly Mrs K has communicated that she does not wish to keep the car as she has lost faith in it. And I’ve considered her actions – Mrs K objected to collecting the car after the second repair – and says she has not used it. Having considered this, I think it’s fair and reasonable she’s now allowed to reject the car.

I’ve thought about what else RCI needs to do here. The CRA explains RCI can retain repayments to reflect the use of the car that Mrs K has had. But any use here has been extremely minimal, and from what I’ve seen Mrs K wasn’t kept mobile for more than a short period when the car was being repaired. So, I find it’s fair and reasonable that all the repayments are reimbursed to Mrs K.

I’m also satisfied Mrs K has suffered distress and inconvenience because of what’s happened. The car going wrong so soon after she acquired it must have been very upsetting. I think it must have been very frustrating to be denied the right to rejection she exercised. She was without the use of her car for quite some time and has had to deal with the car going wrong on more than one occasion. She’s explained the impact on her family that this situation had – which must have been upsetting for Mrs K. She explained she had to use public transport. And she’s recently explained she’s had to acquire a different car, while still maintaining the repayments on this agreement – which I’m sure must have been stressful.

Thinking about this, I don't think the £150 offered by RCI reflects the situation. I think a higher amount of £500 should be paid.

I gave both parties two weeks to respond with any further evidence or information.

Mrs K responded and said she agreed with what I set out in the provisional decision. She asked me to note that she had returned the car to the dealer at the start of January 2024 with both keys and all the relevant documents.

RCI replied and said it had nothing to add to its previous comments on the case.

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 thought about all of the information on the case again, I still think it should be upheld. This is for the reasons explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct RCI Financial Services Limited trading as Nissan Financial Services to put things right by doing the following:

- Collect the car at no cost to Mrs K
- End the agreement with nothing further to pay
- Reimburse Mrs K all repayments made under the agreement*
- Reimburse Mrs K's deposit of £5,000* **
- Pay Mrs K £500 to reflect the distress and inconvenience caused ***
- Remove any adverse information about this agreement from Mrs K's credit file

*RCI should pay 8% simple interest on these amounts from the time of payment to the time of reimbursement. If RCI considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs K how much it's taken off. It should also give Mrs K a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

**From an invoice I've seen, I believe Mrs K received a dealer deposit contribution of £2,000, which is why this figure is not the full amount showing on the credit agreement.

***If RCI has already paid Mrs K an amount to reflect the distress and inconvenience caused, it can deduct it from this figure

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 17 September 2024.

John Bower
Ombudsman