

## The complaint

Mr H complains that RCI Financial Services Limited supplied him with a car which was not of satisfactory quality under a hire purchase agreement. I'll refer to RCI under its trading name of Mobilize.

## What happened

In April 2023 Mr H entered into a hire purchase agreement with Mobilize for a new car, arranged by a dealership, which I'll refer to as "A". The cash price of the car, after discounts and extras, was £19,145. A took Mr H's old car in part exchange and he took out a 49 month hire purchase agreement at a little over £250 a month. The car came with a three-year warranty.

In October 2023 the car broke down; its clutch had failed. Mr H returned it to A. A's notes indicate that its engineers believed that the failure was due to wear and tear, but it nevertheless agreed to carry out repairs under warranty.

In April 2024 the car again suffered clutch failure. Again, A's engineer concluded that this was down to wear and tear, but agreed with the manufacturer that it could be repaired and the costs split between them.

The clutch failed again in December 2024. On this occasion, A's engineer concluded that the clutch had been "*driven to destruction*". That is, he thought there was no defect with the clutch but that it had suffered excessive wear due to Mr H's driving style. On this occasion neither A nor the manufacturer agreed to fund the repairs. Mr H paid to have the car recovered and for repairs.

The clutch failed again in February 2025. Following an inspection, A concluded that this failure was the result of a manufacturing defect, and the car was repaired again at no cost to Mr H. Mobilize says that this was the only occasion on which the gearbox was replaced and the only occasion on which repairs were needed because of component failure.

Mr H said that he wanted to return the car and end the finance agreement. The fact that the fourth repair was needed because of a manufacturing defect was, he said, an indication that the clutch had been defective all along.

Mobilize did not agree. It said there was clear evidence from A that the other repairs had been needed because of the way the car had been driven, which had resulted in abnormal wear and tear.

Mr H referred the matter to this service, where one of our investigators considered what had happened. She did not recommend that the complaint be upheld. She concluded that, whilst Mr H had provided evidence that other owners of the same model of car had experienced similar issues, Mr H had not provided evidence that his car was not of satisfactory quality at the point of supply.

Mr H did not accept the investigator's assessment and asked that an ombudsman review the case.

I did that and, because I thought it likely that I would uphold the complaint, issued a provisional decision. I concluded, on the balance of probabilities, that the car was not of satisfactory quality on delivery. I did not however think it would be fair to allow Mr H to reject it and cancel the hire purchase agreement. I did however recommend that Mobilize reimburse Mr H for the costs arising from the breakdown in December 2024. I thought too that Mr H should receive a further £400 in recognition of the inconvenience to which he had been put and the distress which he had suffered.

Mr H broadly accepted my provisional decision, although he thought he should receive more than £400 in respect of his non-financial loss. And he provided evidence of the recovery and repair costs he had paid.

Mobilize did not accept my provisional findings. It did not believe I had given appropriate weight to the evidence it and A had provided which, it said, showed that all but the last set of repairs were the result of wear and tear, made worse by Mr H's driving style.

### **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 indicated in my provisional decision that I would make findings of fact on the balance of probabilities, or what I considered more likely to have happened. In its response, Mobilize took issue with my approach. It said I had ignored the technical evidence which it had provided about the car's condition, and about the reason repairs were needed. In addition, Mobilize says that I should not have taken account of evidence from Mr H in the form of social media conversations.

But it is not the case that I ignored evidence provided by Mobilize. In fact, I discussed both sides' evidence at some length.

In respect of Mr H's evidence, I said:

*As the investigator noted, Mr H has not been able to provide direct evidence – for example, by way of an engineer's report – that the vehicle was not of satisfactory quality at the point of delivery. That is, however, unsurprising. When he found out that the clutch had failed, he returned the car to A for repairs, which he expected to be carried out under warranty. He had no reason to think he might need any more evidence than the fact of the breakdown. And once one set of repairs had been completed, any inspection would not have shown what the car's condition was at delivery.*

*Mr H has also provided screenshots of social media group conversations, in which other owners have reported similar issues to his – the clutch failing long before it might be expected and dealers saying this is down to wear and tear.*

*Mr H has also provided a statement from a relative who was a senior figure in a well-known breakdown service and who has said that this was a known fault with this particular model, and that the manufacturers were aware of it.*

My provisional decision then discussed Mobilize's evidence:

*A's evidence that the faults occurred because of the way in which the car was driven is primarily in the form of a commentary which accompanies a video and pictures of the damaged clutch. The engineer who provides the commentary seeks to demonstrate and explain the difference between a clutch which has failed as a result of wear and tear and a clutch which has failed because of driving style. He says that the manufacturing defect results in rivets becoming detached from the clutch plate, but there is no evidence of that with the third repair.*

In its response, Mobilize acknowledged that the rivets were not visible in the video, but that the clutch plate was clearly damaged.

I then went on to explain why I had considered both side's evidence, but that I did not believe either set was conclusive. I said:

*In my view, there are problems with both sets of evidence. Neither can be said to be truly independent. Much of Mr H's evidence is hearsay and does not relate to his vehicle. It is unlikely that any of the evidence I have described would be admissible in court. This service is not bound by the same rules of evidence as a court would be, but the issues I have summarised do affect the weight I can attach to what the parties have said.*

Mobilize believes that its evidence is independent. I have no reason to think the engineer's comments do not reflect his true opinion, but, since he was working for A, he cannot be said to be truly independent in the same way that, say, a court expert would be. But I also drew attention to the weaknesses in Mr H's evidence, and went on to say:

*Whilst they are of limited evidential value, I should have regard to comments on online forums, many of which are consistent with Mr H's experience. But I also note that this model has been the subject of a manufacturer's recall campaign in respect of gearbox issues.*

Mobilize has since provided evidence that Mr H's car has not been subject to a recall. It has also provided evidence that, when the car was repaired following the December 2024 breakdown, its tyres were severely worn and there was some bodywork damage. The tyres were replaced at the same time, and the bodywork damage was also repaired. Mobilize says that supports its case that the car was not driven sufficiently carefully.

There is therefore some new evidence which I did not have when I issued my provisional decision. Specifically, there is evidence of additional damage to the car, which Mobilize says supports its case that the mechanical issues could be attributed to his and/or his wife's driving style. And Mr H's car has not been the subject of a recall.

As I have indicated, the evidence is finely balanced. In my view, it does not show conclusively either that the car was defective at delivery or that it developed faults because of the way it had been driven. On balance, though, I am not persuaded that I should change my conclusion from that which I reached in my provisional decision. As I said there:

*... it seems to me most unlikely that poor driving was the sole or even the main reason for the clutch failures in this case. To drive a clutch to destruction (to paraphrase A's engineer) within a few thousand miles in a new car is likely to involve a very high degree of carelessness or a level of incompetence which is likely to have come to light with other cars.*

### **Putting things right**

I remain of the view that an appropriate remedy is reimbursement of repair costs incurred by Mr H, along with interest and compensation for distress and inconvenience. In assessing the

latter, I have taken into account Mr H's comments about being stranded in a potentially dangerous situation.

Mr H has provided evidence of recovery costs of £192 and repairs in December 2024/January 2025. They included replacement tyres and bodywork and light repairs, but I have calculated and shared with the parties the amount attributable to the clutch repairs at that time.

### **My final decision**

For these reasons, my provisional decision is that, to resolve Mr H's complaint in full, RCI Financial Services Limited should pay him:

- £192.00, being the costs of recovery and storage of the car in December 2024;
- interest on £192 at 8% a year simple from 30 December 2024 until the date of payment;
- £2,606.92, being the cost of clutch repairs paid by Mr H;
- interest on £2,606.92 at 8% a year simple from 7 January 2025 until the date of payment; and
- £400 in recognition of the inconvenience to which he has been put and the distress he has suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 January 2026.

Mike Ingram

**Ombudsman**