

The complaint

Mr K complains about the quality of a car he hired through RCI Financial Services Limited trading as Nissan Financial Services. The clutch on the car failed and needed replacing approximately seven months after taking possession of the car and Mr K is unhappy that he had to pay for the cost of repairs.

What happened

In December 2022 Mr K acquired a new car. The car was supplied through a hire agreement with Nissan Financial Services and in return for making the contractual payments, Mr K had use of the car over the 48 month term of the agreement.

Mr K experienced a problem with the car in early July 2023, by which time he had driven approximately 5,275 miles. The clutch had failed and needed replacing. Mr K was told that the clutch failed because of driving style and that there was no manufacturing defect with the clutch. And because of this, Mr K was required to pay for the cost of the repairs.

Mr K did pay for the repair costs but also says that as he was given no explanation as to what had caused the clutch to fail, other than that he was at fault. Mr K says that he does not consider his or his wife's driving style has caused the clutch failure as they are experienced drivers and have not had any previous issues with cars requiring clutch replacement.

Mr K says that without any reassurance the clutch would not fail again in the future and with the desire to avoid the possibility of any future repeated clutch repair costs, he decided to pay to settle the hire agreement with Nissan Financial Services and handed back the car.

Mr K complained to Nissan Financial Services but as it didn't uphold his complaint he referred his complaint to our service. One of our investigators explained why they considered the complaint should be upheld and what Nissan Financial Services should do to put things right.

Nissan Financial Services did not accept the investigator's conclusions. It referred to the damage to the clutch and maintains that it was user error that caused the clutch to fail.

As the complaint could not be resolved informally, it was passed to me as the last stage in our process.

Having reviewed the complaint, I asked the investigator to contact the parties and explain that while I was minded to uphold the complaint, I was intending to reach slightly different conclusions on certain aspects of the redress. Details around this were set out and both parties were invited to comment further before I reconsidered the complaint.

RCI responded and noted its disappointment that I was still intending to uphold the complaint. It highlighted information that had already been provided and in particular made reference to the manufacturer and dealer advising there is no manufacturing defect with the vehicle.

RCI also referred to having nothing to indicate the service plan the consumer purchased was included in the finance. It has asked to see evidence of this if it is required to refund this cost.

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'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Nissan Financial Services supplied the car to Mr K under a regulated hire agreement. Because of that, our service is able to consider complaints about the hire agreement and the goods, i.e. the car, supplied under the hire agreement. As the supplier of the car, Nissan Financial Services has an obligation to ensure the car supplied was of satisfactory quality – as set out in the Consumer Rights Act 2015. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

The car supplied to Mr K was brand new and the clutch failed approximately seven months and 5,275 miles after the car was supplied. A clutch is a component of the car that will wear out and at some point and likely need replacing. Used correctly though, a reasonable person would expect the clutch to last considerably longer, in time and mileage, than the clutch lasted here.

There appears to be no dispute that the clutch was faulty. There is however a dispute about what caused the clutch to fail. Nissan Financial Services refers to there being no manufacturing defect with the clutch and points to the clutch being burnt out to support its view that the failure was caused by user error. Nissan Financial Services refers to the ability to reduce the lifespan of the clutch by, amongst other things, the driver resting their foot on the clutch, and this is what can cause the clutch to burn out.

Mr K and his wife both drove the car and I understand they are both experienced drivers. When asked about their driving history Mr K has told us, *...this is the first time either of us have experienced a clutch failure... with 40+ years driving experience between us, all in manual gearbox cars...*

I have seen nothing to indicate that they have previously driven vehicles that have suffered from premature clutch failure or anything to indicate they do not know how to correctly drive a manual car with a clutch.

As referred to above, where the evidence in this case is incomplete, inconclusive or contradictory, I have reached my decision on the balance of probabilities. That is what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Photographs of the failed clutch have been provided and Nissan Financial Services and the manufacturer have commented on those photographs to say that these indicate the clutch has burnt out because of user error. I accept it is of course possible for either Mr or Mrs K to have caused the clutch to prematurely fail because of the way they have driven the car. But while there is no doubt the clutch has failed, I am not persuaded that the evidence here indicates the clutch failure could only have been caused by Mr or Mrs K misusing the clutch. The absence of any manufacturing defect being identified is also not in my view conclusive evidence that demonstrates Mr or Mrs K must have been responsible for the clutch to fail.

As referred to above, I understand both Mr and Mrs K are experienced drivers and have years of experience in driving manual cars. They know how to drive a manual car correctly and how to operate the clutch pedal. I appreciate this was a new car and likely different to their previous cars, but operating the clutch pedal of a car is a pretty standard requirement of a manual car and it is reasonable to assume both Mr and Mrs K would apply the clutch and drive in a similar way to they have done previously.

I have not seen anything to indicate that Mr or Mrs K have had prior experience of premature clutch failure, or anything else to indicate their driving style is not what would be required to operate the clutch correctly.

I find it highly unlikely that it was actually Mr and Mrs K's driving style that has caused the premature clutch failure. I again note that the clutch has been burnt out and it has been reported that no manufacturing defect has been identified. But the absence of identifying a manufacturing defect in this case is not in my view conclusive evidence that one does not actually exist. Especially when considering the other factors of the case and what I have already said about Mr and Mrs K's driving experience.

On balance, and after considering all of the evidence and arguments from all parties, I consider it more likely than not that Mr and Mrs K's driving style has not caused the problems here. I see no reason why experienced drivers would change their driving style and decide to use the clutch pedal in a different way to the way they had done in previous vehicles. I consider it more likely than not that there was an underlying defect with the clutch or its associated components that caused the clutch to fail.

The clutch failure after around seven months and 5,275 is in my view significantly premature and when considering the requirements of the Consumer Rights Act, I am satisfied that the car, and in particular the car's clutch, was not of satisfactory quality when the car was supplied to Mr K. Had the clutch been of satisfactory quality, which would include the expectations set out in the act around durability, it is reasonable to assume the clutch would have lasted for a significantly longer time and mileage before failing and requiring replacement.

It is ultimately for these reasons why I consider Mr K's complaint should be upheld. As I consider the complaint should be upheld, I will now consider what is required to put things right.

Putting things right

As Mr K was believed to have caused the clutch issue he was required to pay the £1,147.68 cost of replacing the clutch. As I have found that Mr K was not responsible for the premature clutch failure, it is unreasonable to expect Mr K to cover the cost of the replacement clutch. Mr K should be reimbursed this sum, along with interest.

Mr K has referred to incurring additional hire car costs as he says he was declined a replacement or courtesy car while the clutch was being repaired. Nissan Financial Services

says that Mr K did not approach the dealership or the manufacturer's customer service team about a replacement vehicle while the repairs were being completed. Mr K disputes this and says that he had already discussed this with the dealership and as he believed the dealership was acting on behalf of the manufacturer, there was simply no point contacting the manufacturer customer service team.

I have found Mr K to be consistent throughout his submissions and consider it unlikely that he would have gone to the additional expense of arranging his own hire car had he not been told a replacement was available free of charge. Had the car been of satisfactory quality this is an expense that Mr K would not have incurred.

Mr K has not acted unreasonably in arranging an alternative vehicle and the hire vehicle was smaller than the car he had under hire with Nissan Financial Services. It is unreasonable for Mr K to lose out the £413.96 he incurred for the cost of the alternative hire car and this should be refunded to him, with interest.

Shortly after the clutch being repaired Mr K ended his hire agreement with Nissan Financial Services and in doing so Mr K incurred an early settlement cost of £3,930.30. Mr K says that he chose to terminate the hire agreement early as he was concerned about incurring additional future costs associated with further clutch repairs or replacements. Mr K says that he was told that it was user error that caused that failure and he believed this to be untrue. Without any further explanation around what had caused the clutch to fail prematurely, or therefore any reassurance that the clutch would not fail prematurely again, Mr K says he decided to cancel the agreement early to avoid additional future repair costs.

In the circumstances, and considering what Mr K had been told about the cause of the clutch failure and the absence of any other explanation, I find that Mr K acted reasonably in ending the hire agreement early to avoid the potential additional repair costs for another failed clutch. It is unreasonable in the circumstances, here and for the reasons I have set out already above, for Mr K to incur the £3,930.30 cost and had the car been of satisfactory quality Mr K would have avoided this cost. Nissan Financial Services should therefore now refund this amount to Mr K, with interest.

Mr K has had use of the car and it is reasonable in my view for Mr K to therefore pay towards the use through the monthly rentals he's paid each month. Mr K paid an advanced or initial rental of £2,572.56 and this has impacted the amount of the monthly rentals Mr K was required to pay over the duration of the agreement. This advanced rental should in my view be considered as an initial payment that was made, but is essentially a supplement to the regular monthly rentals. It would be unreasonable to expect Mr K to lose out the full amount of the advanced rental having now ended the agreement early because of the faulty clutch. It would be reasonable in my view for the advanced rental to be refunded to Mr K but on a pro-rated basis.

Nissan Financial Services should therefore calculate how much of the advanced rental applies to the period of time Mr K had the car and refund the portion of the payment that would apply to the unused period of the original agreement term. Interest should be added to this amount.

Mr K paid £263.96 towards a service plan for the car but has had no benefit of this because of the car being returned. Mr K tells us he was unable to get a refund of this amount and it would be unreasonable in the circumstances here for Mr K to be expected to pay for something he has had no benefit from. Nissan Financial Services should therefore refund this amount, with interest, to Mr K.

I understand this was a separate payment and one that was not included in the cost of the

hire agreement and if necessary, Mr K should provide evidence of payment to Nissan Financial Services.

Interest should be added to the refunded payments and should be calculated at 8% simple per year from the date of each payment until the date the complaint is settled.

Finally, having considered the circumstances of this complaint I'm satisfied that Mr K has experienced some trouble and upset as a result of being supplied with a car that was not of satisfactory quality. Alternative travel arrangements were needed, in addition to the initial inconvenience of the car's failure. Mr K has also been told, unfairly in my view, that he and his wife are the cause of the clutch failure. Considering this, Nissan Financial Services should pay an additional £200 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold Mr K's complaint against RCI Financial Services Limited trading as Nissan Financial Services and direct it to settle the complaint in accordance with what I have set out above.

If settlement is not made within 28 days of Mr K accepting this final decision, interest at the same rate above should be added to the £200 payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 June 2024.

Mark Hollands
Ombudsman