

The complaint

Mrs K is unhappy that a car supplied to her under a hire purchase agreement with N.I.I.B. Group Limited trading as Northridge Finance was of an unsatisfactory quality.

What happened

On 28 July 2022, Mrs K was supplied with a used car through a hire purchase agreement with Northridge. She paid an advance payment of £1,000 and the agreement was for £9,236 over 60 months; with 59 monthly payments of £189.59 and a final payment of £199.59. At the time of supply, the car was around three and a half years old and had done 62,151 miles.

Mrs K experienced an issue with the clutch in early August 2022, and she says the car was returned to the dealership for repair. However, the car broke down again in September 2022 due to an issue with the diesel pump and timing chain. Mrs K complained to Northridge, and then brought matters to the Financial Ombudsman Service for investigation.

Our investigator said that Northridge hadn't provided anything to show that the fault with the car wasn't present or developing at the point of supply. So, the investigator said the car wasn't of a satisfactory quality. And, as the supplying dealership had already had the chance to repair the car, and it was still faulty, Mrs K should now be allowed to reject it.

So, the investigator recommended that Northridge end the agreement and take back the car, refund the deposit Mrs K made, as well as all payments since September 2022 when she stopped using the car, and pay her an additional £300 for the trouble, upset, and inconvenience she'd been caused.

Mrs K provided further evidence about the faults with the car, and Northridge said the dealership hadn't repaired the clutch in August 2022. However, the investigator didn't think this changed her opinion, and issued a revised view stating this.

Northridge didn't respond to the investigator's revised view, and Mrs K asked if the two payments she made at the beginning of the agreement could also be refunded. Given this, 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, 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. Mrs K was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Northridge are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Northridge can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mrs K to show it was present when the car was supplied.

So, if I thought the car was faulty when Mrs K 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 Northridge to put this right.

Mrs K has said there was a fault with the clutch that the supplying dealership fixed in August 2022, at the second attempt. However, I've noted that the dealership has subsequently told Northridge they hadn't done any work on the car. Mrs K hasn't been able to provide any worksheets to show any work being done on the clutch, and the dealership haven't provided anything. Given this, I can't say for definite whether there was a fault with the clutch that was repaired or not.

However, I have seen a report from a breakdown company dated 22 September 2022, following the engine cutting out and Mrs K being unable to drive the car. This report confirms the mileage at the time was 64,452 and it also says, "*suspect cam / fuel injection timing incorrect*" and the car was recovered to an accredited garage.

I've also seen an email from the accredited garage, confirming what work was done. This email says:

"This vehicle was recovered to us with a failure to the High pressure fuel pump. This was changed but on stripping down the vehicle as still further issue we discovered timing chain had in fact snapped which required changing."

The garage goes on to explain this isn't covered by the warranty, as the overall costs of the repairs exceeds the amount of warranty cover. Mrs K hasn't had the car repaired, and it remains undrivable. The publicly available records show that the car is subject to a SORN, and the existing MOT expired on 7 March 2023, and hasn't been renewed. Both of these back up the fact that the car isn't being used.

Based on the evidence I've seen, I'm satisfied there was a fault with the car, regardless of any fault that may or may not have existed with the clutch. And this fault manifested itself within six months of the car being supplied to Mrs K. So, as per the CRA, it's for Northridge to show that the fault wasn't present or developing at the point of supply.

Given that the car is off the road, it's been available for inspection at any point since 22 September 2022. However, Northridge have chosen not to have the car independently inspected, an inspection that would offer an opinion of whether the faults with the diesel pump and timing chain were present or developing at the point of supply. What's more, Northridge have offered no alternative evidence in relation to these faults.

As there's no evidence of the clutch fault (which Mrs K says was repaired anyway), and the diesel pump issue has been fixed, I've considered the problem with the timing chain. Based on what I've seen, it would be expected for a timing chain on the make and model of car supplied to Mrs K to last for around 10 years, and between 80,000 and 150,000 miles. As the car was less than four years old, and had done less than 65,000 miles, at the time of the breakdown; I'm satisfied the timing chain failed sooner than could be reasonably expected. As such, it wasn't sufficiently durable.

Given the above, I'm also satisfied that the car wasn't of a satisfactory quality when supplied to Mrs K.

Section 24(5) of the CRA says *"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract."* This is known as the single chance of repair.

However, Section 23(2)(a) of the CRA states:

*"If the consumer requires the trader to repair or replace the goods, the trader must –
(a) do so within a reasonable time and without significant inconvenience to the consumer"*

Given that Northridge don't accept the single chance at repair took place in August 2023, when the dealership supposedly fixed the clutch issue, then they could argue they still have the single chance at repair under section 24(5) of the CRA. However, as the fault occurred in September 2022, and Northridge haven't attempted this single chance of repair more than a year later, it's arguable they've failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mrs K should be able to reject the car.

As such, Northridge need to do something to put things right.

Putting things right

Mrs K was able to use the car while it was in her possession, and before the breakdown on 22 September 2022. Because of this, I think it's only fair that she pays for this usage. So, I won't be asking Northridge to refund the first two payments she's made.

However, the car has been off the road and undrivable since 22 September 2022. And Mrs K hasn't been supplied with a courtesy car. As such, she was paying for goods she was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Northridge failed to keep Mrs K mobile; I'm satisfied they should refund any payments she's made since this date.

Finally, it's clear that Mrs K has been significantly inconvenienced by what's happened. So, I think Northridge should compensate her for this. The investigator recommended Northridge pay her £300, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Northridge should:

- end the agreement with nothing more to pay;

- collect the car at no cost to Mrs K;
- remove any adverse entries relating to this agreement from Mrs K's credit file;
- refund the £1,000 deposit Mrs K paid (if any part of this deposit is made up of funds paid through a dealer contribution, Northridge is entitled to retain that proportion of the deposit);
- refund any payments Mrs K made on or after 22 September 2022;
- apply 8% simple yearly interest on the refunds, calculated from the date Mrs K made the payments to the date of the refund[†]; and
- pay Mrs K an additional £300 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Northridge to take off tax from this interest. Northridge must give Mrs K a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Mrs K's complaint about N.I.I.B. Group Limited trading as Northridge Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 3 January 2024.

Andrew Burford
Ombudsman