

The complaint

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

What happened

On 11 November 2022, Mr S was supplied with a used car through a hire purchase agreement with Northridge. He paid a deposit of £4,000 (through a part-exchange of his existing car) and the agreement was for £21,250 over 49 months; with 48 monthly payments of £314.81 and a final payment of £12,250. At the time of supply, the car was around four years old, and had done 53,001 miles (according to the MOT record for 9 November 2022).

Shortly after being supplied with the car, it started to develop faults – there was an issue with the main beam assist, a rattle from the dashboard, smoke coming out of the engine, and an AdBlue fault. Mr S wanted to reject the car, but the supplying dealership insisted on attempting a repair.

Mr S wasn't happy with what had happened, and he complained to Northridge. As Mr S had been unable to use the car for around two months while it was being repaired, and as he hadn't been provided with a courtesy car, in March 2023 Northridge paid Mr S £750 compensation for the trouble and inconvenience he'd been caused.

Mr S wasn't happy with Northridge's offer, as he wanted to reject the car. So, he brought his complaint to the Financial Ombudsman Service for investigation. On 28 June 2023, while this complaint was being investigated, Mr S had an accident in the car. The car was written off, and Mr S cleared the outstanding finance with Northridge on 31 July 2023.

Publicly available information shows that the car was repaired and eventually sold to a new owner in October 2023. While the mileage at the time of the accident hasn't been confirmed, although Mr S says it was 56,000 miles; the MOT record for 28 October 2023 confirms the mileage as 58,980 miles. Given this, and that it's likely the car didn't do any substantive mileage between the accident and repair/sale, I'm satisfied it's more likely that the car had done around 58,500 miles at the time of the accident.

Our investigator initially said there was a fault with the car which made it of an unsatisfactory quality at the point of supply. As the dealership had tried, and failed, to repair the faults, the investigator said that under normal circumstances Mr S would be able to reject the car. However, as the car had been written off and the finance settled, the investigator said that Northridge should refund the £4,000 deposit Mr S paid, along with statutory interest, and pay him an additional £100 for the distress and inconvenience he'd been caused.

Northridge didn't agree with the investigator. They said Mr S was offered a courtesy car, but didn't take the dealership up on this offer, and that there was no evidence the main beam assist fault remained after the dealership had attempted to fix this, as well as fixing all the other faults reported with the car.

Northridge also didn't think it was fair that Mr S took the £750 compensation and continued his complaint, when this was offered on the basis *"that no further action will be taken in respect of this complaint."* And that Mr S replied to state he *"accepted the full and final offer of settlement."*

Northridge provided evidence to support their view the complaint was closed. They provided an email dated 8 March 2023 which said, *"our final offer, again made on an entirely goodwill basis is £750."* Mr S replied to this the same day, confirming *"I accept the good will gesture of £750."* Finally, in a letter dated 13 March 2023, referring to the 8 March offer and acceptance, Northridge said *"if you are not satisfied with the outcome of your complaint, please regard this letter as a Final Response and you may now refer this matter to the Financial Ombudsman Service."*

Finally, Northridge said they believed Mr S had been using the car for commercial purposes, which was against the agreement he signed.

Mr S provided evidence of the times he'd raised issues with the car with the dealership and Northridge, and the investigator reissued their view. They said that Mr S hadn't accepted the £750 in full and final settlement of the complaint, and this complaint was therefore something we were able to look into. They also said there was no evidence Mr S was using the car for commercial purposes but, even if he was, it didn't mean the complaint couldn't be looked at as the agreement was regulated.

However, based on the additional evidence that had been submitted, the investigator didn't think Mr S had shown there was still a fault with the car, that made it of an unsatisfactory quality, after it had been initially repaired by the dealership. So, they changed their view and didn't think Northridge needed to do anything more.

Mr S didn't agree with the investigator's amended view. He said he'd tried to take the car to a main dealer for a health check, as asked for by the dealership, but they wouldn't do this because the dealership hadn't authorised it. So, he felt he had no option but to ask to reject the car. He also thought that the photographic and video evidence he'd supplied showed the fault was still present after the car had been repaired. And he thought it was reasonable that at least some of his deposit was returned.

Because Mr S didn't agree, 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. Mr S 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 Mr S to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr S 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.

It's not disputed that Mr S had some problems with the car shortly after it was supplied to him, and he's provided evidence of faults with the car within the first 30-days of it being supplied. However, it's also not disputed that the dealership completed a repair. 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, so I don't think it's unreasonable the dealership attempted to repair the car.

Mr S has said that a second repair took place in March 2023, to fix the issues the dealership didn't repair, specifically the AdBlue. He's provided an invoice for work done on the car, which shows the mileage at the time was 55,662. However, it doesn't show what work was carried out, or provide any other information apart from the amount owing. As such, I can't rely on this as proof the dealership's repair failed. And, even if I could, there's no evidence that the faults repaired in March 2023 reoccurred. So, this isn't something that would support rejection of the car.

Mr S has provided evidence that, on 12 April 2023, he sent the dealership an email complaining the car had displayed a warning message. He provided video evidence of this to Northridge on 20 April 2023.

I've seen this video, and it shows a warning message on the dashboard of the car. While it's not entirely clear from this video what this warning message actually says, I believe it's "*Main beam assist: currently unavailable. Camera view restricted due to surroundings.*" However, there's nothing that indicates why this is the case and, as the video was taken while the car was being driven, there's nothing on the video that shows the camera and whether its view is restricted.

Had the faults not been fixed by the dealership when they repaired the car, I would've expected them to still be there when the car was collected by Mr S, and not present themselves some months later. So, I'd be looking for some evidence that the fault Mr S was experiencing in April 2023 was as a result of the dealership repairs having failed, and not caused by something that wasn't present or developing when the car was supplied.

Neither party has been able to provide a report from a garage or independent engineer relating to the April 2023 faults. While Mr S said he was unable to provide this as the dealership didn't authorise a health check to be carried out by a main dealer (which Mr S acknowledges isn't something that would look at the main beam assist), this wouldn't have

stopped him getting the car checked by another garage. And, as the car has now been written off by Mr S's insurer, repaired and resold, it's no longer possible to obtain such a report.

Based on what I've seen, on the balance of probabilities, I'm not satisfied there is evidence that shows that either the original repair failed, or that the issues Mr S encountered in April 2023 resulted from a fault that was present or developing at the point the car was supplied to him. And the mileage figures I've seen indicate Mr S was able to make full use of the car while it was in his possession.

Northridge have paid Mr S £750 for the around two months he was without use of the car, even though I've seen evidence he was offered (and refused) a courtesy car. As this is more than the value of two payments, I'm satisfied this was a reasonable offer.

What's more, I've seen that Mr S was asked to provide details of the insurance value he received for the car but chose not to do so. As this was an insurance write-off, he presumably received the market value of the car, which wouldn't be dissimilar to the price he paid, given the short time he was in possession of the car. Mr S hasn't complained that the write-off figure was insufficient to repay the finance, and the terms of the finance would discount any settlement figure based on interest not charged.

As such, while Mr S has said he thinks he should recover at least some of the deposit he paid, I'm satisfied it's more likely than not he recovered this (less any applicable excess) in the difference between the settlement figure and the amount he received from the insurers. And if Mr S were to receive a deposit refund from Northridge, this would essentially amount to double recovery. Which I consider to be unfair.

As such, given the above, I won't be asking Northridge to do anything more.

My final decision

For the reasons explained, I don't uphold Mr S's complaint about N.I.I.B Group Limited trading as Northridge Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 December 2023.

Andrew Burford
Ombudsman