

The complaint

Miss H 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.

Miss H is being represented in this complaint by Mrs H. However, for ease of reference, my decision will only refer to Miss H.

What happened

In June 2019, Miss H was supplied with a used car through a hire purchase agreement with Northridge. She paid a deposit of £5,000 and the agreement was for £3,481.24 over 24 months; with monthly repayments of £145.01. At the time the car was just over three years old and had done 18,901 miles.

Miss H, a self-employed driving instructor, started having problems with the car. And, in September 2019, it was returned to the supplying dealership for repair. Several attempts to repair the car were unsuccessful and Miss H asked Northridge if she could reject the car. Northridge didn't agree to this, but the supplying dealership offered to buy the car back and settle the outstanding finance. This took place in July 2020.

Between September 2019 and July 2020 Miss H hired an alternate car so she could carry on working. And she paid both the rental payments and the monthly payments to Northridge during this time.

While Miss H had accepted the dealerships offer, she wasn't happy that her consequential losses weren't being considered. Northridge said that Miss H had accepted the dealerships offer in full and final settlement of her complaint, and they didn't think they needed to do anything more. So, Miss H brought her complaint to us for investigation.

Our investigator said it wasn't disputed that the car was of an unsatisfactory quality when supplied to Miss H. And she thought we were able to consider Miss H's consequential losses that arose directly from Miss H not having use of the car. While she didn't think this should include the costs of cancelled lessons/tests (as these could've been rescheduled), or the cost of a replacement windscreen (as this wasn't as a direct result of Miss H not having access to the car she was financing); she did think that Northridge should pay interest on the amounts Miss H had already been refunded, some insurance costs, and the difference between the rental payments for the alternative car and the monthly payments to Northridge.

Northridge disagreed with the investigator, and they maintained their view that Miss H had accepted the dealerships offer in full and final settlement of her complaint. Miss H also disagreed and said it hadn't been possible to reschedule the missed lessons. She also said she'd been caused a significant amount of distress by the situation, and thought she should receive an additional £2,500 in compensation.

An ombudsman colleague reviewed the case in full and, on 8 November 2021, he issued a provisional decision. In that decision he said:

Miss H's contract with Northridge Finance is a regulated consumer credit agreement, and one which our service is able to consider a complaint about. Under this type of agreement Northridge Finance is responsible for a complaint about the quality of the goods.

The relevant legislation to this complaint says that the goods supplied need to be of satisfactory quality, which is defined as the standard that a reasonable person would consider satisfactory, taking into account the description of the goods, the price paid and other relevant circumstances.

From what's been said it seems that all parties agree that the goods Miss H was supplied with were not of satisfactory quality. I understand that's why the supplying dealer made an offer to buy back the car and settle the outstanding finance. However, in this case Northridge Finance has argued that it wouldn't be appropriate for us to consider Miss H's complaint because she already accepted an offer to settle it.

should we consider this complaint

Our rules allow me to use my discretion to dismiss cases without considering their merits if I believe that it would be appropriate. One such circumstance where I'd consider doing that, is where a consumer had already accepted an offer of compensation in full and final settlement of their complaint. But I'd need to be satisfied that the consumer was aware that the acceptance of the offer effectively precluded them from bringing a subsequent claim for compensation to this service. All things considered, I'm not satisfied that's the case here. I'll explain why.

The evidence Northridge Finance has provided shows that following a conversation with Miss H in August 2020, the supplying dealer emailed her to offer to take back the car, refund her deposit and pay off her finance agreement.

I've seen that Miss H had a number of subsequent emails with the supplying dealer about the offer it had made. During those emails Miss H made it clear that her claim for consequential losses had not been addressed. Although ultimately the supplying dealer offered to also refund some costs relating to diagnostic tests Miss H had paid for.

I would have expected Northridge Finance, or the supplying dealer if it had been acting in agent for Northridge Finance as it's suggested, to have made the consequences of Miss H's acceptance explicit. Especially as I've seen that Miss H emailed the supplying dealer expressing concern she may not be able to make a subsequent claim for consequential losses to Northridge Finance if she accepted the offer as she'd no longer own the car.

However, with specific regard to the language used relating to the offer and the context in which it was provided, I'm not satisfied that it was made clear to Miss H that her acceptance of the offer would preclude her from making a claim for consequential losses against Northridge Finance.

I also would have expected the offer to have made reference to the possibility of referring the matter to our service. From what I've seen, I'm persuaded that Miss H believed that the offer she'd accepted was simply an offer made by the supplying dealer to buy back the car, and the offer was not made in full and final settlement of her complaint about the quality of the car she was supplied with.

Given this, I'm satisfied that Miss H likely would not have accepted the offer if it had been made clear to her that it could prevent her bringing a subsequent claim or complaint about losses against Northridge Finance. As such, I won't be using my discretion to dismiss this complaint. I'll now go on to consider whether the recommendations our investigator made were fair.

Miss H's financial loss

As I've mentioned above, I think all parties accept that the car Miss H was supplied with was not of satisfactory quality, which is why the supplying dealer bought it back. That's the conclusion our investigator reached and Northridge Finance did not disagree.

That being said, I'm mindful that Northridge Finance has given us very little evidence relating to the merits of this case. Its submissions have simply focused on whether it's a case I should dismiss. My assessment of what's happened therefore relies heavily on Miss H's version of events, but Northridge Finance will have the opportunity to submit further evidence in response to my provisional decision.

The car Miss H was supplied with was around three years old and had covered approximately 18,000 miles. I therefore would not have expected it to have been as durable as a brand new car, but I'd have relatively high expectations of it in terms of durability, given it was relatively young and had a low mileage for its age.

From what's been submitted it seems that Miss H had reported issues with the car within a few months of taking it, which ultimately led to the significant repairs – including the removal and perhaps replacement of the engine – which ultimately don't seem to have remedied the issues. And it seems that Miss H was without the car for around 11 months whilst repairs were carried out. Based on what I've seen I think it's clear that the car Miss H was supplied with was not of satisfactory quality, so, I think it would've been fair to allow Miss H to reject the car and she ought to be compensated for any financial loss she's incurred.

In circumstances where a consumer rejects a car because it's not of satisfactory quality, we'd usually expect the finance to be unwound and for their deposit to be returned, along with simple interest at 8% per year. We'd also consider making awards for impeded use, other financial loss which arose as the result of the goods not being of satisfactory quality, as well as compensation for trouble and upset caused. We'd usually award simple interest to the sums which consumers had already paid but were being returned.

In this case, Miss H had already had her deposit returned as well as some costs she'd incurred in diagnosing fault with the car. I agree with our investigator interest ought to have been paid on those sums. So, I'll require Northridge Finance to do that.

Turning to Miss H's request for consequential losses, I agree with our investigator's approach to the loss of earnings Miss H has claimed for. Like our investigator, I'm not persuaded that Miss H lost out on work as a direct result of what happened. I accept she may have had to cancel lessons but based on what's been said I'm not persuaded that it wasn't possible for them to have been rescheduled.

I also agree that it wouldn't be fair to require Northridge Finance to pay Miss H the cost she incurred in repairing a hire car. I accept Miss H's point about the cost to repair the same damage on the car Northridge Finance providing lending on may have been less due to specific insurance products she had relating to that car, but nonetheless I can't fairly conclude that this cost is a direct consequence of being deprived of the use of that car.

I accept Miss H has a valid claim for the cost she incurred in renting another car whilst the one this complaint relates to was being repaired. If Miss H had not done this it ultimately would've meant that she could not work, so I think it's reasonable she took steps to procure a car which would allow her to work.

Our investigator made a deduction from the sums she asked Northridge Finance to pay Miss H in respect of rental costs on the understanding that Miss H had not been making her monthly loan payments, which is something she always needed to do. But based on the statement of account we've been provided, it seems that Miss H made all the payments she was required to up until the car was returned. I therefore find that Miss H should be refunded for the full rental costs of alternative cars, and simple interest at 8% per year should be added to those sums. I'll detail the specific costs I'm minded to require Northridge Finance to pay in the summary of my findings.

Miss H also made a number of additional claims in respect of insurance costs as well as administrative costs associated with the rental of alternative cars. Our investigator made a reasonable point that Miss H always would have needed to pay a sum to insure a car, regardless of whether it's the one this complaint is about. I agree, and in summary, I intend to require Northridge Finance to pay the majority of the costs Miss H has asked for. But, there are some I won't, and I'll explain why.

Miss H has provided evidence to show that she paid two sums to swap her insurance policy to a hire car. Whilst I accept that Northridge Finance should pay any administrative fees in relation to this, I'm not satisfied that it should pay any increase in premium. I say this because I don't know exactly why the premiums seem to have increased. I can see that Miss H paid sums of £205.88 and £278.27 in respect of swapping her insurance policy, but it could be the case that her premium increased due to the type of car she chose to rent for example. Given that I can't fairly say that the increase in premium was a direct result of being supplied with a car which wasn't of satisfactory quality, I don't intend to require it to be repaid.

Additionally, Miss H has asked to be compensated with £2,500 for inconvenience, distress and stress caused. I accept that what happened would've been a worrying time for Miss H and she ought to be compensated for it, especially as it seems the situation went on for around 11 months. That being said, I think it's fair to say that Miss H took reasonable steps to mitigate the impact the situation had on her and her business. I intend to reward the majority of the costs she would have incurred, as well as interest on sums already paid, so she shouldn't be out of pocket. With that in mind, as well as having regard for the nature of awards we've made in cases of a similar nature, I think that £250 compensation would be a reasonable amount for Northridge Finance to pay Miss H for the impact things had on her.

For the reasons explained above, my provisional decision is that I'm minded to uphold this complaint and require N.I.I.B Group Limited trading as Northridge Finance to pay Miss H; -

- Simple interest at 8% per year on her £5,000 deposit from the date it was paid until the date it was refunded.*
- Simple interest at 8% per year on the £419.99 paid for diagnostics tests from the date they were paid for until the date they were refunded.*
- A £300 rental cost she paid for an alternative car on 18 September 2019 plus simple interest at 8% per year from the date it was paid until the date it is refunded.*
- £489 for each month she was forced to rent another car (between September 2019 and July 2020, so a total of 11 payments) plus simple interest at 8% per year on those sums from the date paid until the date they are refunded.*

- A £37.39 insurance cost paid on 18 September 2019 plus simple interest at 8% per year from the date it was paid until the date it is refunded.
- A non-refundable deposit of £195 paid toward hire car rent on 25 September 2019 plus simple interest at 8% per year from the date it was paid until the date it is refunded.
- An administrative insurance charge of £74.80 paid on 25 September 2019 plus simple interest at 8% per year from the date it was paid until the date it is refunded.
- A non-refundable deposit of £195 paid toward hire car rent on 24 September 2019 plus simple interest at 8% per year from the date it was paid until the date it is refunded.
- An administrative fee of £45 for car hire paid on 24 September 2019 plus simple interest at 8% per year from the date it was paid until the date it is refunded.
- Sums of £115 in respect of driving school vinyl decals as well as costs to cover the installation of dual controls of £489.60 paid in July 2019, on the basis that Miss H provided evidence of the costs of this (which she hasn't currently) plus simple interest at 8% per year from the date it was paid until the date it is refunded.
- £250 compensation for the trouble and upset caused.

Responses

Northridge didn't agree with my colleague's provisional decision. They said that, in August 2020, they instructed the dealership to "refund [Miss H's] monthly repayments/consequential losses" and Miss H accepted the payment from the dealership in full and final settlement. So, they believe that Miss H's consequential losses claim has already been concluded.

Northridge also said they consider the provisional decision "fundamentally flawed" as it was done "without any evidence of the (consequential losses) the customer claims they have incurred." And they've specifically referred to the rental payments with regards to this. And that the provisional decision is asking them to cover the full cost of these, not just a proportion of the payments as detailed in the investigator's original view.

They don't accept that, even though there were issues with the car, the faults were present when the car was supplied to Miss H. And, because she used the car for driving lessons, the fact the car "will have been driven by multiple drivers, in a manner that would differ significantly from regular driving" means they didn't think durability was a valid argument.

Finally, Northridge said that the vinyl decals were non-transferrable, so Miss H would always have had to bear these costs herself.

Miss H has said that the dealership settled the outstanding finance. But this was only as low as it was because she'd made monthly payments towards the agreement. So, she feels she should also be refunded these payments.

She also said the dealership didn't collect the car from her home, and she had to return it to them. Which meant she incurred an insurance cost. Which she thinks should be refunded to her, along with the other insurance costs.

Miss H said that, although the other cancelled driving lessons were reinstated, she was forced to cancel a test on 11 September 2019. And, as a result, she had to pay £62 to re-book this for her student. So, she thinks this cost should be refunded to her.

Finally, Miss H has said that "the stress, inconvenience and distress caused by [the car] being unfit and the long and protracted claim [she's] had to make" has exacerbated her

health conditions. So, she doesn't feel that £250 compensation is fair, and that £2,500 is a more reasonable figure.

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.

Northridge have provided a copy of an email they sent to the dealership on 28 August 2020. In this email they say they *"feel customer is entitled to claim back monthly payments on this one as they didn't have use of the vehicle. They have also suffered consequential losses as they had to lease a new car (as she is self-employed driving instructor). Ie [sic] they would not have incurred these costs had the vehicle being supplied been of a satisfactory quality."*

It's clear from this email that Northridge are accepting that the car wasn't of a satisfactory quality when supplied. And, as a result, Miss H has suffered some consequential losses (including having to rent another car) which should be reimbursed.

In reply, on 3 September 2020, the dealership confirmed to Northridge that *"we have received notification from the customer that they accept the offer made by the branch and the branch are in the process of resolving this."* Correspondence from the dealership confirmed this offer was to repay the £5,000 deposit, refund the £413.99 diagnostic charges, and settle the agreement. And, even through Miss H (in an email of 23 August 2020) raised the issue of the rental payments being refunded as well, and Northridge's email of 28 August 2020 saying that these rental payments and other any other consequential losses should be refunded to Miss H, the dealership only refunded the deposit and diagnostic costs.

Given this, I don't agree that Miss H accepting the payment from the dealership was in full and final settlement of the matter, as it didn't cover the consequential losses Northridge confirmed she was entitled to. What's more, as Northridge accepted on 28 August 2020 that the car wasn't of a satisfactory quality, and as they haven't provided any evidence i.e. a report from an independent engineer, to show anything different, I don't accept their subsequent arguments about the faults not being present when the car was supplied, and that they were somehow caused by how the car was driven.

Moving on to what the consequential losses should include, I've seen Miss H has supplied us with evidence of the rental payments she's made. Given this, and the above, I'm therefore satisfied that these should be refunded to her.

As self-employed a driving instructor, Miss H had several options with regards to the car she chose to use. And she initially chose to finance this herself through Northridge, rather than taking a package through a driving school, or driving school supplier. It's my understanding she did this as it worked out cheaper for her. However, in doing so, she also took the risk that, if her car was off the road unexpectedly, she wouldn't have a replacement (which is something that would've been provided through a driving school package). And this may result in additional costs relating to the need to cancel lessons and or tests at short notice.

Miss H has said that she needed to cancel a test on 11 September 2020, because the car supplied by Northridge was off the road. But this is the risk she took by choosing to finance the car herself, rather than taking a more expensive driving school package that would've included a replacement car under these circumstances. Given this, I don't think it would be fair for the cost of this test to be refunded.

Between September 2019 and June 2020 Miss H rented a car so she could continue to work. And, once she'd received the initial refund back from the dealership, she used this to

help enable her to purchase this car through finance from another company. So, for the period in question, Miss H was paying both Northridge and the rental car.

Miss H believes she should be refunded the payments she made to Northridge during this period. However, if this were to happen, Miss H would essentially have had 11-months of no-cost driving as both the Northridge and rental payments would be refunded to her. Which isn't a fair outcome. If the car supplied by Northridge hadn't broken down, Miss H would always have had to make payments towards this. So, as Northridge (in their 23 August 2020 email) agreed that the rental car costs should be refunded, which covers the additional costs Miss H incurred, I won't be asking them to also refund the monthly payments Miss H made.

I agree with Northridge that the dual controls and decals were always something Miss H would need to pay, given her option of how she financed the car. However, because the car they supplied wasn't of a satisfactory quality, this is something Miss H would need to pay again when obtaining a replacement car. And something that normally she wouldn't need to pay again so soon. So I agree that these costs should be refunded to her.

But I don't agree that Miss H should be refunded for the cost of insuring the car to return it to the dealership. I haven't seen anything to show me that the dealership refused to collect the car. Nor have I seen anything to show me what Miss H paid for this, or that she didn't have alternative insurance she could've used for this journey – a standard comprehensive insurance policy would normally allow the insured to drive another vehicle on a third-party only basis, without the need to obtain additional insurance. And, as Miss H had another car she was using at the time, she would've had car insurance.

Finally, Miss H has asked that the compensation be increased from £250 to £2,500. She's explained that the prolonged period she didn't have the car caused her distress and upset. While I don't doubt that Miss H did suffer some distress, she arranged for a replacement car which mitigated the fact that the car Northridge supplied had broken down. As, as stated above, the costs associated with this are being refunded.

Miss H has also said that the prolonged period the complaint process has taken has caused her some distress. Unfortunately, complaint handling isn't a regulated activity, so it isn't something I'm able to consider. And, just as Miss H is entitled to make a complaint, Northridge are entitled to defend their position. I also appreciate this matter took a long time for us to deal with, and I apologise for this. But the Financial Ombudsman Service is a free alternative to the courts and isn't a fact-track complaints process where we can guarantee a swift resolution. What's more, by using a representative, Miss H has been able to step away from some of the stresses of dealing with the complaint. Because of this, I won't be increasing the recommended compensation.

Putting things right

So, given the above, Northridge should:

- pay Miss H 8% simple yearly interest on the deposit and diagnostic refund she's already been paid, calculated from the dates she made these payments to the date of the refund †;
- reimburse the £300 she paid for an alternative rental car on 18 September 2019, and the £37.39 insurance cost associated with this;
- upon receipt of evidence of when she made these payments, reimburse the rental costs for the alternative car for the period September 2019 to July 2020 inclusive, including the £195 non-refundable deposit and the £74.80 and £45 administrative charges;

- upon receipt of evidence of when she made the payments, reimburse the £115 decal cost and the £489.60 dual control cost;
- apply 8% simple yearly interest on the above reimbursements, calculated from the date Miss H made the payments to the date of the refund †; and
- pay Miss H an additional £250 to reflect the trouble and upset she's been caused.

†HM Revenue & Customs requires N.I.I.B. Group to take off tax from this interest. N.I.I.B. Group must give Miss H a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained above I uphold Miss H's complaint. N.I.I.B. Group Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 26 May 2022.

Andrew Burford
Ombudsman