

## The complaint

Mr F complains N.I.I.B. Group Limited trading as Northridge Finance (Northridge) supplied him with a car that he believes wasn't of satisfactory quality.

## What happened

The details of this case are well known to both parties so I won't repeat them. Instead I will focus on the reasons for my decision.

In February 2024, I issued my provisional decision outlining my intentions to uphold the complaint. I said:

*"Mr F was supplied with a used car that cost in excess of £77,000. It was less than 18 months old and had travelled less than 10,000 miles. Given its young age and low mileage, I consider this car to be relatively new although I accept there be some evidence of wear and tear. Given the price, age and mileage of the car, I think it's fair to say that a reasonable person would have high quality expectations of the car and it could be used – free from defects – for a considerable period of time.*

*I've seen evidence of a job card which confirms the car was brought to a manufacturer approved garage in November 2021. At that point, the car had travelled around 9,600 miles. It outlines the car was experiencing restrictive performance as it's reducing speed and it was struggling to start. Based on this evidence, it's clear there was a fault with the engine. I've already set out the expectations of a car of this age and mileage. Having done so, I don't believe a reasonable person would expect to experience such a fault having travelled such low mileage and having acquired it only a few months prior. The CRA says if there is a fault within the first six months it's assumed it was present from supply unless there is evidence to say otherwise. In this case, there isn't such evidence.*

*On balance, I find the engine failed prematurely which may indicate there was a fault present or developing at supply. Therefore I don't find the car was of satisfactory quality as it wasn't reasonably durable meaning there was a breach of contract.*

*Where this happens and it's outside the short term right to reject the car (30 days), the CRA allows for one opportunity for repair. I would expect this repair to be carried out at no cost to the consumer and completed within a reasonable period and without significant inconvenience to the consumer. In this case, although the repair would be under warranty, there was a shortage of the relevant part. It wasn't carried out until July 2022 which is several months after the fault was first reported in November 2021. During this time, Mr F complained to Northridge about the length of time it was taking. However he said he was prepared to wait but he didn't believe it was fair he continues to pay for a car that he couldn't use.*

*I recognise Mr F's frustration about the same. He was paying around £1,400 a month for a car he wasn't able to drive for a significant period of time due to no fault of his own. While the situation was far from ideal, I can't reasonably hold Northridge responsible for such delays which were outside of their control and subject to external factors.*

*From my understanding, the car was repaired and returned to Mr F around July 2022 but a few months later around October 2022, he complained the same fault remained. He asked to reject the car. I've seen the job card that confirms a fault was present and the turbine needed to be replaced. I note this is the same part that was previously replaced during the initial repair so I'm persuaded it was the same fault. Given it was around three months and 3,000 miles after the repair in July 2022, it's evident the fault remained unresolved. In light of the same I find the repair in July 2022 failed to fix the fault.*

*Northridge may argue the reason for the failure is due to the repair garage. This was a manufacturer approved garage so I believe it's fair to say they had the relevant expertise and knowledge of cars of this particular manufacturer. There is no evidence to suggest the repairs weren't carried out with reasonable skill and care. On the balance of possibility, I find it's more likely than not there was an inherent manufacturer fault with the car.*

*I've seen correspondence where Mr F has contacted Northridge to complain the fault was still present and he asked to reject the car. It was clear he had lost confidence in it. However I don't believe Northridge was particularly forthcoming or helpful in the situation. I must emphasise as the supplier of the car, Northridge are responsible for a complaint about its quality. So while they may revert to the dealership for information about what's happened, that doesn't negate their duties and obligations under the relevant law.*

*Job cards confirm a second repair was carried out in November 2022 and by February 2023, Mr F reports the same fault remained. For me, that further supports the car wasn't of satisfactory quality so it's disappointing to see Northridge didn't take appropriate action.*

*The CRA makes it clear the consumer has the final right of rejection if there has been one repair attempt and there is still a problem. Consumers are not expected to accept multiple repair attempts if they don't want to. Here, the initial repair took place in July 2022, the fault remained and Mr F made it clear he didn't want any further repairs and wanted to reject it. I find it would've been fair for Northridge to have allowed rejection once they had the strong evidence the first repair had failed but they didn't do so.*

*The car was fixed for the third time in February 2023 and Mr F has reported there have been no further issues with it since. However he has lost faith in the car and he's concerned the fault will occur again. Given what's happened, I can understand why he feels that way. Based on the timeline of events, I find Mr F should be allowed to exercise his final right to reject the car.*

#### *Putting things right*

*Northridge should end the agreement, collect the car, refund the deposit (£30,000) and remove any adverse information from Mr F's credit file. Similar to the investigator, I find Northridge should refund the cost of the mudflaps and the car's delivery fee.*

*Mr F first reported the fault in November 2021 and it was only on the third repair attempt in February 2023 that the repair appears to have remedied the fault. The engine is a key part of a car's function so for it to be faulty meant its overall use was impaired. So I intend to say Northridge should refund 20% of the monthly instalments paid between November 2021 and February 2023 to reflect that.*

*For all other times outside that time period, I'm satisfied Mr F was able to use the car without the fault being present. I'm aware by August 2023, the odometer showed the car had travelled over 20,400 miles meaning Mr F had covered in excess of 10,000 miles since he bought it. For this reason I won't be saying he's entitled to all of his monthly payments back.*

*I've thought about Mr F's comments about the courtesy car he was supplied with. I accept it wasn't like for like but Mr F hasn't said this car caused him any material inconvenience. I don't have evidence to suggest the courtesy car's specification differed significantly and was valued considerably less than Mr F's car. So I can't fairly accept his comments that the monthly payments he paid towards this agreement was worth notably more than the value of the courtesy car.*

*Mr F has provided detailed comments as to why he believes he has been further financially disadvantaged by this situation. He has explained he purposely decided to enter into a hire purchase agreement as he intended to own the car at the end. This meant his monthly payments were higher when compared to other types of car finance agreements such as a personal contract purchase (PCP). He also says the car has depreciated significantly while this matter has been going on and if he was to sell it, he would receive less for it given the history of the faults.*

*It's clear he feels strongly about this and I appreciate the situation he finds himself in. Working out how to put consumers back in the position they would've been in had there not been a breach of contract isn't an exact science. However as a service, we try to put the consumer as close to that position as we can.*

*This is a hire purchase agreement meaning Mr F would've had the option to own the car when it ended. There isn't a large balloon payment which is often seen in PCP agreements where the monthly payments tend to be lower. This means Mr F's monthly payments are for the use and the ultimate purchase of the car. However it isn't possible for me to work out exactly how much of Mr F's repayments were contributing to the eventual purchase of the car.*

*As I'm saying Northridge should allow rejection, I understand Mr F's concerns that these monthly payments will essentially be 'lost' which is why he feels he will be financially disadvantaged. He has provided detailed information on the figures about the equity had the agreement been a PCP agreement and other variables. I thank Mr F for taking the time to do so, it's clear a lot of thought has been put into this. However I'm unable to comment on what a PCP agreement may have been for this car or the variables concerned so I don't find I can reasonably rely on this information. I can only comment on this particular agreement.*

*Additionally, the value and depreciation of cars over time is extremely difficult to predict. In recent years, cars are holding their value and not necessarily depreciating at a rate as previously seen. So it's difficult to say how much the car has depreciated.*

*Overall, I've taken a broad view in this case. Given I'm saying Northridge should refund the deposit amount (£30,000), refund 20% of the monthly payments between November 2021 and February 2023 with compensatory interest, amongst other things, I find this is fair in the circumstances.*

*Lastly, I've thought about the impact of this situation on Mr F. This includes multiple trips to the garage, the extent of his communication attempts with Northridge to resolve the issue, the worry of not knowing whether the car would perform as it should, the poor level of service by Northridge, etc. The investigator has recommended £400 for the trouble and upset due to the faulty car and £200 for Northridge's level of service. I find these amounts to be fair in the circumstances meaning in total Northridge should pay £600 compensation for the overall trouble and upset caused"*

*Response to the provisional decision*

Mr R said given he was without the car between November 2021 and February 2023, he believes it would be fair to be refunded 50% of the repayments he made during that period. He said that would recognise that neither him nor Northridge were responsible for the delays of the parts that needed to be replaced.

He also said he first asked to reject the car in November 2022 but this was refused. However since then he's continued to pay the monthly instalments. He says as Northridge failed to act correctly, he should be refunded the interest from that point plus receive 8% simple interest per annum.

Northridge said Mr F arranged to have the car repaired via a third party in February 2023 and there have been no reported issues with it since. They said just because Mr F has lost faith in the car that isn't enough to warrant rejection. They further commented the car passed its MOT in May 2023 without any advisories.

### **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.

Concerning Northridge's response, I wish to reiterate that I've determined there's been a breach of contract because the car wasn't of satisfactory quality at supply. Where that happens, the CRA allows one opportunity to repair and if that fails (which I've said it did), Mr F can exercise the final right of rejection. In this case, he done so around November 2022 however Northridge denied this. I don't believe they fairly considered the circumstances nor what the CRA said. While the car may now be performing as expected that doesn't negate Northridge's obligations. I would've expected Northridge to have allowed Mr F to reject the car and to do so sooner. Given the overall circumstances, I remain of the opinion Northridge must allow Mr F to reject the car.

Turning to Mr R's response which I've carefully thought about, my provisional thoughts remain unchanged. I've already explained why I believe a refund of 20% of the monthly payments between November 2021 and February 2023 is fair so I won't repeat them again. Given he was provided with a courtesy car during this time that was of similar specification, I won't be asking Northridge to refund 50% of the instalments paid.

While I agree Northridge should've allowed rejection sooner, for reasons already outlined I won't be saying Northridge need to refund the interest. I must emphasise I've already asked them to pay 8% simple interest per annum on the refunds specified, I won't be asking them to pay interest over and above that.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision

### **My final decision**

For the reasons set out above, I've decided to uphold Mr F's complaint. To put things right, N.I.I.B. Group Limited trading as Northridge Finance (Northridge) must:

- End the agreement with nothing further for Mr F to pay;
- Collect the car at no cost to Mr F;
- Refund the deposit;
- Refund the cost of the delivery fee and mudflaps;
- Refund 20% of monthly instalments paid from November 2021 to February 2023 to reflect the impaired use;
- Pay 8% simple interest per year on the above refunds from the date of payment to the date of settlement;
- Remove any adverse information about this agreement from Mr F's credit file;
- Pay £600 compensation to Mr F for the trouble and upset caused.

\*\*If N.I.I.B. Group Limited trading as Northridge Finance considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 8 April 2024.

Simona Reese  
**Ombudsman**