

Complaint

Mr P has complained about the quality of a car that N.I.I.B. Group Limited (trading as “Northridge” Finance) supplied to him through a hire-purchase agreement.

Background

Mr P’s agreement

In June 2023, Northridge provided Mr P with finance for a used car. The car was just under seven years old and had completed 90,012 miles. The cash price of the vehicle was £26,750.00. Mr P paid a deposit of £3,000.00 and applied for finance to cover the remaining £23,750.00 he needed to complete his purchase. Northridge accepted Mr P’s application and entered into a 60-month hire-purchase agreement with him.

The loan had an APR of 8.9%, interest, fees and total charges of £5,526.80 (comprising of interest of £5,516.80 and an option to purchase fee of £10) and the total amount to be repaid of £29,276.80 (not including Mr P’s deposit) was due to be repaid in 59 monthly instalments of £487.78 followed by a final instalment of £497.78.

Mr P’s difficulties with the vehicle

Mr P says that he found fuel on top of the engine soon after purchase. He reverted to the motor dealer that sold him his vehicle which told him that this was due to previous work carried out and that this was nothing to be concerned about. Mr P says that he then got a mechanic to conduct a health check on the vehicle, on 10 July 2023, and this picked up a number of other problems. Mr P then contacted the motor dealer to address these issues.

As Mr P wasn’t able to liaise with the motor dealer to have the vehicle repaired, he contacted Northridge to complain about the quality of the vehicle that he was sold, in July 2023.

I understand that the vehicle has been in the custody of the motor dealer it was purchased from, shortly after an independent engineer carried out an inspection, in September 2023.

Northridge’s response to Mr P’s complaint

Put simply, Northridge never responded to Mr P’s complaint. It simply acknowledged that the time for it to respond had expired and after in excess of eight weeks of Mr P making his complaint had passed, Mr P exercised his right to refer his complaint to our service.

Our investigator’s assessment

Mr P’s complaint was reviewed by one of our investigators. He thought that Northridge had supplied Mr P with a vehicle that was not of satisfactory quality. So he upheld Mr P’s complaint.

Northridge did not respond to the investigator’s assessment. So the case was passed to an ombudsman as per the next stage of our dispute resolution process. In the period while the

case was awaiting allocation to an ombudsman, Northridge provided an email, containing a couple of attachments, which it said set out the motor dealer's position.

I've noted that this documentation is actually from the broker of Mr P's finance agreement, rather than the selling motor dealer. And, in any event, it provides no commentary or reasoning on why the dealership believed that the vehicle was of satisfactory quality.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

What I need to decide in this case is whether the car supplied to Mr P was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Northridge purchased the vehicle from the dealership Mr P visited. Mr P then hired the vehicle from Northridge and paid a monthly amount to it in return. Northridge remained the legal owner of the vehicle under the agreement until Mr P's loan was repaid.

This arrangement resulted in Northridge being the supplier of Mr P's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Mr P's agreement with Northridge. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The independent engineer's report

Mr P commissioned a report from an independent engineer in September 2023. The independent engineer inspected the vehicle on 8 September 2023. Although it hasn't confirmed this, I understand that Northridge has been provided with a copy of this report.

In the section entitled Report, subsection 6 states:

"R6 Inspection of the engine bay an abnormal diesel odour was noted. There were no visible leakages found. We noted that the steady bar for the engine at the offside had a split rubber mount."

And subsection 7 states:

"R7 However on removing the top engine cover, there was an evident puddle around the fuel injector rail."

Finally, subsection 11 of the report section states:

“R11 We performed a diagnostic test which revealed the following fault codes from the diesel engine fuel system control module:

- *P200900 – Intake Manifold Runner Control Circuit Low Bank 1 – General Failure – No Sub Type Information Available*
- *P106107 – Power Pulse System Leakage – General Fault Information – Mechanical Fault”*

The opinion section of the report covers whether the independent engineer considered the fault was present when the car was purchased.

Subsections 1-3 of the opinion section of the report states:

“O1 In our opinion, based on the available evidence at the time of our inspection, we can confirm that there was an abnormal odour within the engine bay and we found that there was an evident pooling around the fuel injector rail. On road test there as a rattling noise from the offside front of the vehicle when driving on gravel type roads or other uneven surfaces.

O2 A diagnostic test revealed fault codes in relation to the intake manifold runner having a general failure and the power pulse system leakage having a mechanical type fault.

O3 At this stage, with the current evidence available, we would consider that these faults would have been developing at the time of purchase.”

For the sake of balance and completeness, it's probably worth me noting that subsection O5 of the opinion section of the report states:

“O5 We note from the information provided in our instructions that the vehicle has covered 250 miles in 16 days since purchase to the reported failure date. We also note that the vehicle has now covered 869 miles since purchase to the date of our inspection on 08/09/23.”

Finally, the conclusion section of the report sets out the independent engineer's conclusions. The main conclusion is set out in subsection 1 of this section which states:

“C1 We can conclude, based on the available evidence available at the time of inspection, that at this stage we would consider the faults identified would have been developing at the time of purchase. The issues requiring attention are the fuel injector rail fault, a rattling noise from the offside front of the vehicle when driving on gravel type roads or other uneven surfaces and fault codes in relation to the intake manifold runner having a general failure and the power pulse system leakage having a mechanical type fault.”

The vehicle's MOT prior to the sale

According to government's check MOT website, the vehicle failed an MOT test on 22 September 2022. The vehicle did subsequently pass its MOT on 6 October 2022. But it is worth noting that the MOT failure was because the shock absorbers had a serious fluid leak and a negligible damping effect. Furthermore, the nearside front track rod end ball joint had excessive wear.

Is the vehicle faulty?

Having carefully considered matters, I'm satisfied that there is currently a fault on the vehicle. I say this because Mr P has provided a report from an independent engineer, which states that the vehicle has a fuel injector rail fault, a rattling noise from the offside front when driven on uneven surfaces, fault codes in relation to the manifold and a power plus system leakage.

Mr P has also provided an invoice for a health check carried out by a third-party mechanic he consulted, in July 2023. The summary of the health check performed confirms that faults similar to the ones confirmed by the independent engineer appear to have been present on the vehicle in July 2023.

The independent engineer has provided expert evidence and in the absence of any counter argument from Northridge, I don't have much, if anything at all, to contradict it. As I've explained, Northridge has provided an invoice from a third-party garage and a vehicle inspection checklist, which it states are submissions from the motor dealer. Although there is no explanation around what argument this documentation is proposing to support.

The checklist is dated 23 June 2023. So just before Mr P took possession of the vehicle. The checklist suggests that a number of checks were carried out around the time. I accept that a check of the vehicle may have been carried out and the boxes in relation to the '*Fuel line for leaks and security*' and '*Road springs / hydraulic units, pipes, shock absorbers and mounting for corrosion, leaks and security*' have been ticked.

However, while I expect that some kind of visual check is likely to have taken place, I don't think that this is the same as a full check having been carried out. It's also worth noting that the independent engineer's report stated that any leak only became apparent once the engine cover was removed and there is nothing in the checklist to indicate that the engine cover was removed at that stage. So I'm satisfied that this checklist does not amount to any kind of certification that where a tick is placed in the box the parts in the corresponding section are free from any defect.

Furthermore, the third-party invoice is dated some three months after the vehicle was collected from Mr P. Given the lack of narrative surrounding this (and Northridge's lack of engagement with this case), it's unclear what this document is supposed to show. Nonetheless, the majority of the commentary is in the advisory section.

The commentary confirms things like the fuel pump is not clipped in properly and the power pulse plus pipe is not fitted correctly. I don't know whether this invoice is confirming the identification of any faults on the vehicle by an alternative expert commissioned by the motor dealer; or whether it being supplied to us is an attempt to demonstrate that any faults identified have, in any event, since been repaired. Although I'm mindful that this invoice is for only £95 and it would seem to be low for repairs to what is in the advisory section to have been carried out.

In any event, whatever the motor dealer's documentation is supposed to show, given the lack of a clear narrative and the sparseness of detail in comparison to the independent engineer's report, I'm more persuaded by the independent engineer's report. The independent engineer's report was provided after the engineer carried out an inspection, which was for the specific purpose of determining whether faults were present on the vehicle, rather than a perfunctory checklist, or an invoice for a service.

In light of this, the fact that the independent engineer signed a declaration confirming that their duty was to the court not to the party that paid for the report and the report confirming the existence of a fault, I'm satisfied that it is more likely than not that there is a fault on the vehicle.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied was present on the vehicle in September 2023, means that the car wasn't of satisfactory quality at the point it was supplied to Mr P in June 2023.

Why I don't think that Mr P was supplied with a vehicle of satisfactory quality

Mr P acquired a car that was used – it was approaching seven years old when it was sold and had completed just over 90,000 miles. I accept that there would be different expectations regarding its quality when compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors.

In this case, Mr P almost immediately reported having difficulties with the vehicle. The available evidence from the third-party mechanic Mr P consulted suggests suspected difficulties with a leak in the engine/exhaust manifold, a leak in the power pipe and a fault on the off-side shock absorber. The independent report corroborates that these faults were present when the independent inspection took place in September 2023.

One of the considerations of whether goods are of satisfactory quality is durability. Here, the vehicle needs substantial repair work to the manifold, the fuel line and power system. And it is likely that shock absorbers need attention as well. I appreciate that the vehicle had completed over 90,000 miles by the time of purchase and (according to the independent engineer's report) it had also completed a further 869 miles by the time of the independent inspection.

But even though the vehicle had been driven for over 90,000 miles, I still need to weigh this against the fact that Mr P had paid £26,750.00 for it. I think that a reasonable person would expected him to have had far more use of a vehicle costing £26,750.00 – notwithstanding the milage completed prior to the purchase - before such a substantial repair would be needed.

Indeed, I'm mindful that Mr P's third-party mechanic confirmed the existence of potential faults mere days after purchase and these faults went on to be confirmed as being present on the vehicle by the independent engineer. Furthermore, while I accept that the vehicle did pass a MOT a month later, the government's MOT check website, confirms that the vehicle failed an MOT because of issues with the shock absorbers and fluid leakage, nine months prior to when the vehicle was sold to Mr P. So I think that there may well be a link between the shock absorber issues experienced at the time of the September 2022 MOT and the rattling issues experienced at the time of the independent inspection.

Taking all of this into account, I think that the aggregation of parts which need repair and/or replacing – engine/exhaust manifold, fuel line and potentially the off-side shock absorber means that the vehicle was not durable. It follows that I don't think the car was of satisfactory quality when Northridge supplied it to Mr P.

What Northridge needs to do to put things right for Mr P

I've gone on to think about what Northridge needs to do to put things right as a result of supplying him with a vehicle that was not of satisfactory quality.

Mr P has provided evidence to show that he paid for a vehicle check at a cost of £40, on 10 July 2023, in an attempt to diagnose the problem with the vehicle. I'm satisfied that this was a reasonable attempt to understand whether things could be put right and therefore

mitigate any loss. So I'm satisfied that he should be refunded the cost of the diagnostic check with interest at 8% per year simple.

Mr P then paid a further £120 for the report from an independent engineer. According to Mr P, Northridge advised him that it would refund this payment if it were the case that the vehicle wasn't of satisfactory quality. I don't know if Northridge did say this. But even if it didn't as this was a cost Mr P incurred because he was sold a vehicle that wasn't of satisfactory quality, I'm satisfied that he should nonetheless be refunded the cost of the report with interest at 8% per year simple.

I now turn to the vehicle itself. I've considered whether repair or a rejection of the vehicle would be an appropriate remedy here – particularly as the CRA sets out that a supplier can have one attempt at a repair.

Mr P has told us that he is no longer prepared to accept a repair of the vehicle. And, in any event, I'm mindful that if a repair is carried out it must be done so within a reasonable time and without significant inconvenience to the consumer. As I've explained, all Northridge has provided is an invoice from a third-party garage indicating that a service was completed, at a cost of £90, in December 2023. Bearing in mind the cost of this service and the content of the advisory section of the invoice, I think this invoice merely confirms the faults that are present, rather than the fact that the faults have been repaired.

I'm also mindful that Mr P was in contact with both the motor dealer and Northridge about his issues with the vehicle within 30 days of it being sold. While I don't know whether Mr P told the motor dealer and/or Northridge that he wanted to reject the vehicle at this stage, the vehicle appears to have been with the motor dealer since September 2023 and I haven't been provided with sufficient evidence to be persuaded that the faults have now been rectified either. So I'm not persuaded that any repair will have been carried out within a reasonable period of time and without significant inconvenience to Mr P.

Considering all of this, I'm satisfied that the fair and reasonable resolution here would be for Mr P to reject the vehicle and for Northridge to collect it from the motor dealer/or garage (holding it on its behalf) where I understand it currently is. As Mr P will have rejected the vehicle I'm satisfied that Northridge should end its agreement with him and ensure that he has nothing further to pay on it.

This will seek to place Mr P in the position he would be in had he not entered into the hire-purchase agreement in the first place, so I'm satisfied that Northridge should refund Mr P the £3,000.00 deposit he paid to the motor dealer with interest at 8% per year simple.

There appears to be no dispute Mr P has had no use of the vehicle from September 2023. And our investigator suggested that Mr P's payments from September 2023 onwards should be returned to him, with interest, as a result of this. However, I don't think that our investigator considered that any usage Mr P received from the vehicle was, at the absolute best, impaired. I think it's also important to keep in mind that a significant proportion of the miles Mr P completed in the vehicle were with a view to getting the faults rectified.

In view of all of this and bearing in mind that Mr P contacted Northridge as well as the motor dealer about these faults within 30 days of the sale, I think that it would be fair and reasonable for Northridge to actually refund all of the payments that Mr P has made to this agreement, plus interest at 8% a year simple.

I've also considered the distress and inconvenience that Mr P experienced in light of the impact of him being without a vehicle, at all, since September 2023. I appreciate that Mr P has been without a vehicle since September 2023 and so will have incurred some alternative

travel costs. But he is now being placed, as close as possible, to the position he would be if he didn't have the vehicle to begin with. And, in these circumstances, he would always have incurred some alternative transport costs.

I also think that there have been delays in getting the faults diagnosed and by the time of writing, I've not been provided with any persuasive evidence that the faults have actually been rectified. As I've explained, Northridge has offered Mr P little help and hasn't even responded to his complaint.

Nonetheless, I have to be mindful of the fact that complaint handling isn't an activity that I'm able to consider a complaint about. So, while I can consider whether Northridge supplying a vehicle that wasn't of satisfactory quality caused distress and inconvenience to Mr P, I cannot make an additional award of compensation for Northridge's poor complaint handling – its failure to issue a final response or engage with Mr P's complaint.

Having kept all of this in mind, I'm persuaded that the distress and inconvenience caused to Mr P by him being without a car; having to travel in order to seek diagnostics and independent reports; as well as having to chase Northridge to try and put things right all because he was supplied with a car that was not of satisfactory quality means that Northridge should pay Mr P a further £200 in compensation.

Fair compensation – what Northridge needs to do to put things right for Mr P

Overall and having considered everything, I think it is fair and reasonable for Northridge to put things right for Mr P by:

- collecting the car from Mr P (or the motor dealer should that now be where the vehicle is) at no cost to him;
- ending the hire-purchase agreement and ensuring that Mr P has nothing further to pay. Northridge should also remove any adverse information it may have recorded against Mr P as a result of this agreement from her credit file;
- refunding his deposit and all of the payments that he made to the agreement;
- reimbursing him the £40 he paid for the initial diagnostic check on the vehicle and the £120 he paid to the independent engineer for their report;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Mr P to the date the complaint is settled†;
- paying him £200 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires Northridge to take off tax from this interest. Northridge must give Mr P a certificate showing how much tax it has taken off if he asks for one.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before DATE.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 August 2024.

Jeshen Narayanan
Ombudsman