

## The complaint

Miss C complains that N.I.I.B. Group Limited refused to let her reject a faulty car.

## What happened

On 5 March 2019 Miss C acquired a second-hand car costing £7,827 funded by a cash deposit and the balance with hire purchase agreement. Shortly after acquisition Miss C identified a fault with the car popping out of gear while she was driving. She took it back to the dealer within 30 days and asked to reject it. The dealer said it couldn't find any fault, but it sent the car to Peugeot for further diagnostics. The job sheet (*dated 1 April 2019*) shows no issues.

It didn't find any fault with gear selection but the gear seals were found to be leaking. This was repaired and the gearbox was topped up with oil. NIIB rejected Miss C's complaint and suggested that she may wish to have the car subjected to an independent inspection.

Miss C stopped using the car and brought her complaint to this service where it was considered by one of our investigators who recommended it be upheld.

He noted the car was second hand and therefore would have been subjected to some wear and tear, but he didn't think it reasonable for it to go wrong in less than three weeks. He said he recognised that NIIB had said there was no evidence of a fault with gear selection, but the job sheet dated 1 April 2019 noted there was a fault with the gear seals. He thought it unreasonable to expect such a fault to occur within three weeks.

He considered the faults Miss C complained about (*gears popping out/sticky gears/problems selecting gears*) were linked to the issues with the gear seals leaking. He said that NIIB hadn't put forward any argument to say otherwise. He concluded the car was faulty at the point of sale and as Miss C had asked to reject it within 30 days she was entitled to do so. He recommended that NIIB take the car back.

NIIB said that after it had issued its final response letter Miss C had told it she was going to sell the car and had settled the agreement in full on 15/05/2019. NIIB said it couldn't take the car back. Miss C responded to say she hadn't sold the car but had taken it off the road. A friend had paid off the agreement and she was paying him back.

Our adjudicator said his view remained as before, but NIIB should refund the third party. It said it thought the car had been sold to a third party and it shouldn't be involved in any transaction between Miss C and another person.

## 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. NIIB is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history. Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

There seems to have been a number of misunderstandings in this complaint and the dealer didn't make NIIB aware that the car had been repaired shortly after the point of sale and there is no record of Miss C agreeing to this. I am satisfied that she asked to reject the car within 30 days and if it was faulty this should have been accepted.

NIIB were not aware that the dealer had repaired it and took its assurance that there was no fault. However, that was inaccurate and the gearbox was repaired. Miss C should have been allowed to reject it at that point. The second issue that arises is the matter of redress. Our investigator has suggested that NIIB refund the third party, but I don't agree. The agreement was between Miss C and NIIB. The third party has nothing to do with that contract. He has a separate contract with Miss C in which he lent her money to repay the agreement. I am satisfied the fact he paid NIIB direct doesn't mean he has taken ownership of the car. Any refund should go to Miss C and she can then deal with any debt she has as a separate matter.

### **Putting things right**

My conclusion is that Miss C should be allowed to reject the car.

## **My final decision**

My final decision is that I uphold this complaint and I direct N.I.I.B. Group Limited to:

- collect the car from Miss C at no cost to her.
- return the deposit initially paid by Miss C and pay 8% simple interest from the date of payment until the date of settlement
- return all repayments made under the agreement and pay 8% simple interest from the date of payment until the date of settlement
- return the settlement amount that was paid in May 2019 and pay 8% simple interest from the date of payment until the date of settlement
- remove any information recorded with credit reference agencies about the agreement
- pay Miss C £150 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 15 October 2020.

Ivor Graham  
**Ombudsman**