

## **The complaint**

Mr H is unhappy with a car supplied under a hire purchase agreement provided by N.I.I.B. Group Limited trading as Northridge Finance ('Northridge').

## **What happened**

In October 2019 Mr H acquired a used car funded by a hire purchase agreement with Northridge. The car cost £18,264.99, was around one year old and had covered around 11,046 miles.

Mr H paid a deposit of £1,000 and was due to pay £293.20 for 48 months, followed by a final payment of £8,155.55 if he wanted to keep the car at the end of the agreement.

Mr H says the car immediately had issues with it. He said the engine lacked power, it was leaking oil and had trouble going into gear.

Around February 2020 it appears Mr H asked to reject the car. Northridge explained he couldn't reject it, but he had a right for the car to be repaired. The clutch and flywheel were replaced.

Mr H continued to say the car had issues with it, and at the end of March 2020 the gearbox failed when Mr H was on the motorway. Mr H again asked to reject the car.

In June 2020 the gearbox was replaced on the car, it having covered 16,565 miles. It appears the dealer gave Mr H a courtesy car for this period, but there was a dispute over returning this once the car was repaired. Mr H stopped making payments towards the agreement in August 2020.

In October 2020 Mr H says the car failed again on the motorway. In November 2020 it appears the car went in for a repair and a courtesy car was provided. In January 2021 the dealer said Mr H wouldn't collect his car or return the courtesy car.

Mr H said the car wasn't repaired as it was making a tapping noise. Northridge wrote to Mr H explaining he had to collect the car. It said he couldn't reject the car as it had been repaired.

At this time Mr H first made our service aware of the issue.

In May 2021 the car broke down again. Mr H says he again asked to reject the car and didn't authorise repairs. At this point the car had covered 20,096 miles. The car's engine was replaced by the dealer. It didn't provide Mr H a courtesy car as it said he wouldn't return the previous ones and it had to get the Police involved.

The car was returned to Mr H, but he said the gearbox was still rough and the engine rattled. In July 2021 he again asked Northridge to reject the car. Northridge said Mr H would need to take the car to the dealer.

In August 2021 Mr H said the car broke down again as it overheated. It was returned to the

dealer who repaired a coolant pipe. Mr H still said the engine and gearbox had issues. The mileage around this time was 22,762.

Mr H said the issues continued. At this point Northridge said to Mr H that it would arrange for an independent inspection to be carried out on the car, as it didn't think there was anything wrong with it. Mr H declined this.

In September 2021 Northridge issued its final response. It said, in summary, that the issue with the engine failing didn't mean the car was of unsatisfactory quality when it was supplied as when the engine failed the car had travelled over 11,000 miles since Mr H got it. And it said the car was now fault free.

Mr H disagreed. He said, in summary, that the car still had ongoing issues with the gearbox and lack of power. He also said the car had other issues with the sunroof, parking system, engine management lights, batteries, traction control and the hill assist function.

Our investigator issued an opinion. He said, in summary, that he thought the car had issues with the gearbox and engine when it was supplied to Mr H. He said Mr H had a right to get the gearbox repaired, but not to reject the car at this time. He said Mr H lost his right to reject the car for the engine issue as he agreed to a repair. And he said he didn't have enough evidence to say if there were ongoing issues with the car.

Mr H disagreed. He said the gearbox was replaced for a second time in October 2020. He said he didn't agree for the car to be repaired and tried to hand it back. Our investigator explained there wasn't any evidence of a second gearbox replacement. And he said by driving the car after it was repaired Mr H had accepted the repairs and so lost the right to reject.

Mr H remained unhappy and so the case was passed to me for a decision. I asked Northridge to send some further information about when Mr H agreed to the repairs. I'll comment on this below.

I sent Mr H and Northridge a provisional decision on 9 November 2022. My findings from this decision were as follows:

*Mr H complains about the quality of a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts like this is a regulated activity, so I'm satisfied I can consider Mr H's complaint against Northridge.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Northridge here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. The CRA also explains that the durability of goods can be considered as part of whether they are of satisfactory quality.*

*I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, I'll consider that Mr H's car was used. But, it was only around one year old and had covered just over 11,000 miles. So, I think a reasonable person would expect it to be in good condition, free from anything other than very minor faults and would expect trouble free motoring for some time.*

*I'm satisfied this car had issues with the clutch and flywheel, gearbox and the engine. I say this as all of these parts needed to be replaced, which I can see was completed from the job*

sheets.

*Separately and individually, I'm satisfied all of these faults meant the car wasn't of satisfactory quality when it was supplied. I say this as the clutch and flywheel needed to be replaced quite soon after Mr H got the car. So, I'm satisfied this fault was likely present or developing at the point of supply. In relation to the gearbox and engine failure, these parts failed far sooner than I think a reasonable person would expect. So, I'm satisfied this meant the car wasn't durable when supplied and so also of unsatisfactory quality for these reasons.*

*Putting the other potential later issues aside, collectively the fact the car needed a new clutch, gearbox and engine in the time it did also paints a picture of the overall quality of the car when Mr H acquired it.*

*So, having found the car wasn't of satisfactory quality, I need to consider if Northridge needs to do anything further to put things right. It says the car has now been fully repaired, which means Mr H's rights under the CRA have been met.*

*One of the remedies under the CRA for goods being of unsatisfactory quality is a repair. So, potentially, Mr H's rights have been met here. But, Mr H says he continually tried to reject the car.*

*This is important. I say this because, as Northridge have correctly pointed out, Mr H would lose his right to reject the car if he agreed to have it repaired. Northridge says Mr H "willingly and knowingly" entered into agreements to repair the car. Mr H says he continually asked to reject it. So, I think the crux of this complaint is whether Mr H had a right to reject the car at any point and if he exercised this right – or if he agreed to the repairs.*

*At the point of the first fault with the clutch, I agree with what Northridge explained to Mr H in the letter it sent to him in February 2020. It explained as Mr H had raised the concerns outside of the first 30 days of the car being supplied to him, he had a right for the car to be repaired, but not to reject it. I can see a repair was carried out here.*

*But, at the point of the second and third failures – the failure of the gearbox and engine - I'm satisfied Mr H did have a right to reject the car. I say this as the CRA explains a consumer has the right to reject if:*

*"after one repair or one replacement, the goods do not conform to the contract"*

*I'm satisfied at the time the gearbox failed, the car had already been subject to a repair for an issue which meant the car wasn't of satisfactory quality. As another issue arose which also meant the goods were not of satisfactory quality, the goods did not 'conform to the contract' following the repair.*

*The same logic can be applied to the point the engine needed replacing – except here two attempts at repair had been completed. And given the issue with the coolant leak appears to be linked to the engine repair, this would also apply.*

*So, in summary, I'm satisfied Mr H had a right to reject the car at the points the faults occurred with the gearbox, engine and coolant leak.*

*What I then need to consider is whether Mr H exercised his right to reject or if he, as Northridge has said, authorised the repairs.*

*I've considered what Mr H says here. He has been consistent in saying he continually tried to reject the car. It appears this was the case when he initially complained to Northridge from*

*its response. I can see from emails that between the gearbox failing and it being repaired he asked to reject the car several times. And on a phone call from this time with Northridge he said "I'm still trying to get a rejection on this car".*

*So, on balance, I'm satisfied it's most likely Mr H exercised his right to reject when he had the right to.*

*Northridge have said Mr H asked to reject the car but then willingly and knowingly accepted repairs – effectively changing his mind. I've asked it several times for some evidence of this, for instance by providing a copy of its contact notes from the time to see what was discussed with Mr H. But it hasn't provided these. I haven't seen any evidence Northridge discussed rejection of the car with Mr H as an option, despite him exercising this right.*

*Mr H says he only agreed to repair the car because Northridge refused to allow him to reject it. The key point here is that I haven't seen enough to make me think it's most likely Mr H agreed to the repairs as an alternative to being given the option to reject as he wished.*

*So, in summary, I'm satisfied the car wasn't of satisfactory quality when supplied. I'm satisfied under the CRA Mr H had the right to reject it when it went wrong following the initial repairs. I'm satisfied he attempted to exercise this right. And I haven't seen evidence to suggest this was discussed, nor that he changed his mind and agreed to the repairs instead of the rejection. It follows all of this that I'm satisfied Mr H should have the right to reject the car.*

*I've considered that Northridge believes Mr H damaged the car through his driving style. But I haven't seen enough to make me think on balance it's likely this was the case. So, this doesn't change my opinion.*

*I've considered that Mr H says the gearbox was also replaced for a second time and he asked to reject at this point as well. Northridge says it has provided all of the job cards from the time, which don't appear to show this. I'm not sure what happened here, but ultimately I don't need to make a finding on this as it wouldn't affect the outcome I've reached nor the redress.*

*I now need to consider what would be fair and reasonable to put things right.*

*I think it's fair to say the car hasn't performed as it should since Mr H got it. I appreciate Northridge's stance that the car was successfully repaired each time it went wrong, but given Mr H complained about gearbox and engine issues very shortly after he got it, has continually complained about the same issues, and multiple repairs needed to be done, I'm not convinced it's likely this was the case.*

*I can appreciate Northridge's point that it may have been helpful if Mr H agreed to the independent inspection it offered. But, that being said, Mr H has provided some pictures and videos that show some of the issues with the car he's recently described. So I think on balance it's most likely these faults are occurring on the car and it still isn't performing as it should.*

*That being said, I also need to consider that at the most recent MOT, the car had covered around 33,470 miles – or roughly 22,000 miles since Mr H got it. So, while I'm satisfied Mr H has had impaired use of the car, I'm also satisfied he's been able to drive it and has had reasonable use from it.*

*So, thinking about all of this, I think it's reasonable Northridge reimburse 10% of all repayments made towards the agreement. I'm aware Mr H stopped paying for the car some*

*time ago, so Northridge can use this amount to reduce the arrears on the account. From when Mr H stopped paying, it should reduce the arrears by 10% of the monthly amount due.*

*I have considered whether an additional award should be made for the times Mr H wasn't given a courtesy car when his was being repaired. I don't know for sure what happened here. But, from what I've seen from the direct contact between the dealer and Northridge, I can see why the dealer thought it was reasonable not to provide Mr H with a courtesy car. I think, effectively, Mr H hasn't mitigated his losses here. So I don't think an additional award should be made for this.*

*I'm also satisfied Mr H has suffered distress and inconvenience because of what went wrong. He's had to take the car to be repaired on multiple occasions and it must have been distressing for it to breakdown. So, I think Northridge should pay him £100 to reflect this.*

*I understand Mr H stopped paying for the car. It appears he did so after he had the right to reject it. So, I think the negative information should be removed from his credit file.*

*Finally, it appears Mr H will be left here with a significant amount of arrears on the account. I'd like to politely remind Northridge to treat his situation with forbearance and due consideration.*

I gave both parties two weeks to come back with any further comments or evidence. Mr H didn't reply. Northridge got in touch and said it wasn't happy with my decision. It made various points for me to consider.

### **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.

I've carefully thought about what Northridge said in response to my provisional decision.

Northridge again said Mr H agreed to the repairs knowingly and willingly and so he lost his right to reject the car. But it still didn't provide any evidence to show what happened here. I still haven't seen enough to persuade me Mr H didn't only agree to the repairs after he was refused the right to reject. So, I still don't agree it's most likely Mr H authorised the repairs as an alternative to being allowed to reject the car - which I'm still satisfied he had a right to.

Northridge also said Mr H continued to drive the car after it was repaired and so he doesn't have the right to reject. I agree, ideally, that Mr H would've stopped driving the car as he was seeking to reject it. But, I need to consider what's fair and reasonable here. I still think, on balance, the car was only repaired after Mr H asked to reject it. Practically, I assume at this point Mr H needed a car. So, I don't think the fact he drove it after the repairs should mean he loses his right to reject.

Northridge reiterated that it offered Mr H an independent report to be carried out on the car. I agree with it here that this would likely have been of benefit. But, Mr H didn't have to agree to this. And, I'm satisfied I have enough evidence to make a fair and reasonable decision without it.

Northridge also said Mr H hadn't always been truthful in his submissions. But, I've based my decision on the evidence at hand and what I think likely happened.

I appreciate Northridge said it doesn't believe Mr H ever intended to pay for the car and has driven thousands of miles in it. But, as I explained above, even when allowing him to reject, I

still think it's reasonable Mr H is responsible for the large majority of the repayments due towards the agreement. So I don't think Northridge is unduly losing out here. Mr H should discuss the arrears due with Northridge directly. And as I said in my provisional decision, it should treat his situation with forbearance and due consideration.

I want to reassure Northridge I've carefully considered everything else it said in response to my provisional decision. But, this doesn't change my opinion.

After considering everything again, along with Northridge's comments, I still think this complaint should be upheld. This is due to the reasons I explained in my provisional decision and set out above.

### **My final decision**

My final decision is that I uphold this complaint. I instruct N.I.I.B. Group Limited trading as Northridge Finance to put things right by doing the following:

- Cancel the agreement with nothing further to pay
- Collect the car at a time and date suitable for Mr H
- Reimburse the deposit of £1,000 from 31 October 2019\* \*\*
- Reimburse Mr H 10% of all repayments made towards the agreement\* \*\*
- For the period Mr H wasn't paying towards the agreement, reduce the arrears by the equivalent of 10% of the monthly repayments due
- Remove any adverse information from Mr H's credit file
- Pay Mr H £100 to reflect the distress and inconvenience caused \*\*\*

\*These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Northridge considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

\*\* Northridge can use these amounts to reduce the level of arrears on the account

\*\*\*Northridge should pay this directly to Mr H

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 December 2022.

John Bower  
**Ombudsman**