

## The complaint

Mrs B complains about the quality of a car she acquired under a finance agreement with N.I.I.B. Group Limited trading as Northridge Finance.

## What happened

Mrs B is represented in her complaint by her husband. However, to keep things simple, I have referred to all submissions from Mrs B's representative as being made by Mrs B. In January 2022 Mrs B acquired a used car which was supplied by Northridge Finance under a finance agreement.

Very shortly after acquiring it Mrs B complained about the quality of the car. Specifically, she complained variously about the infotainment system, Apple CarPlay and the USB connections all of which were not working correctly. Mrs B returned the car to the car dealership who I will call "H" for repair on several occasions. Each attempt at repair failed.

In May 2022 Mrs B told Northridge Finance that she wanted to reject the car following the failed repairs. During this time Mrs B was also unwell and was being investigated to establish the cause of her illness. Moreover, she was also using the car to take a close relative for medical treatment. Mrs B indicates that the way Northridge Finance engaged with her made an already stressful time even more distressing. Mrs B was also unhappy with the behaviour of H on several counts.

At first Northridge Finance was not prepared to accept the rejection of the car. The reason for its refusal was because it ultimately wanted to return the car to H, and H would not accept this.

Dissatisfied with Northridge Finance's response, Mrs B complained to our service. Once Mrs B's complaint was with us an expert was commissioned to inspect the car, I'll call the expert "D". D inspected the car and concluded that the car was not of satisfactory quality when supplied. Specifically D said, "*it is of my opinion that the Infotainment system has an internal failure, that has yet to be rectified, rendering the vehicle of an unsatisfactory condition at the point of [supply].*" Northridge Finance accepted D's conclusion. D inspected the car in July 2022.

The only point of disagreement that remained was the redress. Initially, Mrs B wanted to be put into the position she was in prior to entering into the agreement. Whereas Northridge was offering:

- H will take back the car (subject to a visual inspection).
- The finance agreement will be settled in full.
- Mrs B's liability towards the agreement will be discharged.
- H will refund £6,697 (= deposit of £10,000 – usage charge of £3,303). This charge for usage was based on the mileage of the car up until July 2022 i.e., the date of the report from D and on a mileage calculation methodology used by HM Revenue & Customs.

- Northridge Finance will pay Mrs B £750 as a goodwill gesture.
- Northridge Finance will ask the credit reference agencies to record the agreement as settled on her credit file.

Mrs B rejected Northridge Finance's offer. I've summarised her response. She did not agree that Northridge Finance should deduct the usage from her deposit. She pointed out that the agreement provided for her to do 10,000 miles per year before any excess mileage was charged. Therefore she did not agree that Northridge Finance could fairly charge her excess mileage for any mileage that was under the 10,000 mile limit. She pointed out she had made six monthly payments by direct debit not the five Northridge Finance accepts she has made. It appeared that Mrs B did not agree that Northridge Finance was entitled to retain the monthly payments she had made to date.

Moreover Mrs B considered that any refund should include interest at the rate of 8% simple per year as would be the normal approach in complaints of this kind. Further, Mrs B found Northridge's tone inappropriate, and it was not working in her best interests. She mentioned again that Northridge Finance's customer service fell below the level she was entitled to expect.

Later, Mrs B complained about receiving arrears notices from Northridge Finance even though it was Northridge Finance who had stopped the direct debits not her. She pointed out the arrears had begun to accrue only after this, and this was not her fault. Northridge Finance did not agree that its offer was unfair. And it specifically mentioned that it considered there was no proper basis to ask it to pay 8% interest on any refund. And it reiterated it was entitled to charge Mrs B for usage (using the methodology it chose) and to offset that charge against any refund.

Later still, Mrs B told us that when she had applied for finance with Northridge Finance she had done this using a credit broker. She had paid the credit broker a fee and she wanted this fee refunded. Also Mrs B mentioned that if she wanted to enter into a new finance agreement it was likely the interest rate for the new agreement would likely be higher than the one under her current agreement, she thought it fair therefore that she should get compensation for this. Mrs B also told us she had recently been declined for credit which she indicated was as a direct result of the information Northridge Finance had asked the credit reference agencies to register on her credit file.

One of our investigators looked into Mrs B's complaint. Our investigator recommend that Mrs B's complaint be upheld in part.

Neither Mrs B nor Northridge Finance told us they accepted our investigator's recommendation. Northridge Finance did not respond at all. This was taken by us to be a rejection by both parties of the recommendation. Although Mrs B thanked us and asked to be kept informed of progress. Therefore we'd reached an impasse and so I was asked to take a fresh look at Mrs B's complaint. Having considered the available evidence, I was minded to uphold the complaint in part, but I the redress I intended to order was different from that which our investigator recommended. As a result, I thought it was fair to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. Therefore, I issued a provisional decision and I've set out below what I decided provisionally - and why. This forms part of my final decision.

*"What I've decided and why*

*First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made*

*by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.*

*Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.*

*Before I go further into the merits of this complaint, I want to make clear that in this complaint I can't look at how H has behaved. Even though I recognise that Mrs B has a number of misgivings about its behaviour. H is not the respondent in this complaint, therefore I have no power to look into its behaviour in this complaint and make any findings about it.*

*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. Northridge Finance 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".*

*It appears that the issue of whether the car was of satisfactory quality is no longer in play. This is because Northridge Finance has accepted the findings of D that the car was not of satisfactory quality at the point when it was supplied. Therefore the only issue I need to look at is redress.*

*The parties seem to have agreed rejection is appropriate. I think this is a fair outcome if Mrs B and Northridge Finance had not already agreed on this point, I would have found that rejection was appropriate. This is because the faults that Mrs B complained about and wanted fixed made the car not of satisfactory quality, Mrs B complained from the get-go, she gave Northridge Finance the opportunity to repair, and the repairs failed.*

*I accept that Mrs B wanted to reject the car in May 2022, and she was entitled to do so at that point. Normally the redress would include rejection and a return of the full deposit but only if Mrs B had ceased to use the car from the point she rejected it. It would not be fair or reasonable to ignore what happened subsequently that is that Mrs B has continued to use the car after May 2022. I can see that she has because she has told us so and because the mileage has increased since she has had the car. For example, between when she acquired the car in January 2022 and the when the report was done by D in July 2022 the car was driven 7,340 miles. Moreover, the mileage has increased again as I can tell from the latest MOT which was done in November 2022, between July 2022 and November 2022 the car was driven a further 3,632 miles.*

*I accept that part of this mileage was necessary because Mrs B had to take her relative for hospital treatment. Mrs B has told us what treatment was being done, I don't have to be specific about that here. It is enough to say given the nature of the treatment I can well understand why it was important that Mrs B's relative's exposure to other people had to be limited as far as it could be, which ruled out using both public transport and taxis. But the amount of the mileage suggests the car was not just being used for these hospital visits.*

*That said, nothing in the contract between Mrs B and Northridge Finance entitled Mrs B to free motoring. Further, when I take account of relevant law and what remedy Mrs B is entitled to I see nothing that says the remedy should be Mrs B gets free motoring. Moreover, even if Mrs B had rejected the car in May 2022 and acquired or bought a new car she would*

*still have had motoring costs. Therefore I find it is fair and reasonable that Northridge Finance be permitted to charge Mrs B for the use she has had of the car.*

*I find it likely that due to the faults with the car that made it not of satisfactory quality, Mrs B had impaired usage of the car. As I already mentioned, I also take account of Mrs B being obliged to continue to use the car as the means of transporting her relative for hospital treatment even after she wanted to reject the car. Therefore I find that Mrs B should not have to pay the full monthly payments for the use of the car. Instead her payments should be reduced by 15%. This means Mrs B has to pay 85% of the monthly payments that have accrued from June 2022 until the date of the final decision. I realise that Mrs B has already paid June's monthly payment in full, so she'll get 15% of that month's repayment back as a refund from Northridge Finance.*

*I find that Northridge Finance can offset the payments it should have received from July 2022 until the date of the final decision, against the deposit and then it must refund the balance of the deposit. If Mrs B has not used the car since November 2022 she can tell me that in responding to my provisional decision. But in that case I will need to see information from her to demonstrate the car's current mileage. This might change the redress I find is fair and reasonable. This is because I intend that Mrs B only be charged for the use she has had of the car not for the time she has had possession of the car.*

*I recognise that Mrs B is unlikely to be happy about having to pay for the use she has had of the car since July 2022, but I have explained above why I think this is fair and reasonable. I also take account of the fact that Northridge Finance has lost out too, whilst the car has been in her possession its asset has depreciated in value. Northridge Finance will now most likely be able to get less for the car if it sells it than it would have done if its asset had been returned in May 2022.*

*Mrs B appears to want a full refund of the monthly payments she made between January 2022 and June 2022. I don't think that is fair or reasonable. She did have use of the car during that period. But as I mention above her use was impaired and therefore I think Northridge Finance must refund 10% of the payments Mrs B made between January 2022 and May 2022. (I have already dealt with what should happen to the June 2022 repayment above).*

*Mrs B talks about excess mileage, but excess mileage comes into play where we are talking about specific termination options. We are not talking those termination options here we are discussing rejection of the car. Neither do I agree with Northridge Finance's suggestion about charging the HMRC usage rate. I think that methodology is irrelevant to this complaint.*

*It is clear that Mrs B was upset at receiving letters setting out that the agreement was in arrears especially since she did not cancel the direct debits and thereby cause the arrears. But Northridge was obliged by law to send these letters so I don't agree I have any proper basis for saying it should not have done this.*

*I also realise Mrs B has found the tone of some of the communications from Northridge Finance to be inappropriate. But I don't it merely set out its position as I think it was appropriate to do and I found the tone business-like. Mrs B raises issues about the specific complaint handling rules that Northridge Finance has to follow as a regulated business. I'm sorry to disappoint her, but I can't look at that part of her complaint. That's because complaint handling isn't an activity listed within the rules that govern this service. Complaints about how a complaint has been dealt with simply are not something that falls within the remit of this service.*

*That said Northridge Finance has been at fault here in some respects and I think these faults most likely caused Mrs B distress and inconvenience. It behaved at times as if H was the supplier of the car and the provider of the finance. I say this because it did not have to wait for H to accept the rejection of the car. Northridge Finance had the power to do that itself, Mrs B has no obligation to return the car to H, who is a third party. Moreover any refunds are the responsibility of Northridge Finance not H. I think all this failure to take responsibility on Northridge Finance's part most likely caused Mrs B unnecessary distress and inconvenience. This was all the more regrettable given this was happening at a time when Mrs B was ill and Northridge Finance ought to have known this. However, I think the £750 it has offered for distress and inconvenience is appropriate. It follows I am not going to require it to pay more.*

*Mrs B tells us she paid a fee for credit broking when she entered into the agreement with Northridge Finance, but it was not a party to this, and therefore I see no basis on which I can ask it to refund this fee.*

*It may well be that Mrs B will have to pay more interest if she enters into a new finance agreement than she currently pays under the agreement with Northridge Finance but that is not the fault of Northridge Finance it is a function of the market, and I therefore cannot fairly or reasonably hold it to account for this.*

*Mrs B indicates she has been rejected for new finance, but lenders decline to lend for any number of reasons. Just because Mrs B has not been declined for finance before does not mean that this current rejection is down to anything Northridge Finance has done wrong. Moreover, Mrs B has sent us nothing from the prospective lender that says its decision is based on something Northridge Finance asked to be registered on Mrs B's credit file.*

*Northridge Finance has disputed the appropriateness of adding 8% simple interest to any refund it makes. It is a rate which I consider to be a fair yardstick for compensating consumers for a wide range of possible losses and lost opportunities. And it is a rate often (but not always) used by the courts in not dissimilar situations. Bearing all of this in mind, and again taking account of the particular circumstances of this complaint, I consider that the 8% simple rate is fair and reasonable.*

#### **Provisional decision**

*My provisional decision is that I intend to require N.I.I.B. Group Limited trading as Northridge Finance to:*

- End the agreement with Mrs B with nothing further owed aside from the payments that I have said it can keep and the payments I have said it can deduct from the deposit.*
- Collect the car from Mrs B at no cost to Mrs B at a time which is mutually convenient.*
- Refund 10% of all the monthly payments made by Mrs B between January 2022 to May 2022. It must add interest to this refund at the rate of 8% simple per year. The interest to run from the date the payments were made until the date of settlement.*
- Refund 15% of the monthly payment made by Mrs B for June 2022. It must add interest to this refund at the rate of 8% simple per year. The interest to run from the date the payment was made until the date of settlement.*
- Return the deposit of £10,000 minus a sum that equals 85% of the monthly*

*repayments which should have been made by Mrs B between July 2022 and the date of the final decision. It must add interest to the balance at the rate of 8% simple per year. The interest to run from the date the deposit was paid until the date of settlement.*

- *Pay Mrs B £750 for distress and inconvenience.*
- *Ask the credit reference agencies to mark the agreement as settled in full on Mrs B's credit file and ask the credit reference agencies to remove any adverse information it has asked them to register on Mrs B's credit file in relation to the finance agreement it has with Mrs B.*

*It must pay the total compensation within 28 days of the date on which Mrs B accepts the final decision that may be issued after this provisional decision. If it pays later than this it must also pay interest on the £750 from the date of the final decision until the date of payment at the rate of 8% simple per year.*

*If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mrs B can reclaim the tax if she is able to. Mrs B should refer back to Northridge Finance if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation. “*

As far as I am aware we received no response from Northridge Finance to my provisional decision, however, Mrs B did respond. I've summarised her response below.

- Mrs B indicated that my provisional decision was inaccurate in several respects which she found concerning. However, she told us *“I will only be pointing out the significant inaccuracies and there are points that have not been addressed clearly.”*
- Mrs B indicated that she did respond to the investigator's recommendation. Moreover, she has been *“penalised”* because Northridge Finance did not respond to our investigator's recommendation. Mrs B added, *“I should not have to pay 85% of monthly repayments from January 2023 to date for the finance company not responding to the original findings feel it is only fair that between January 2023 to date it should be a 50% split on monthly payments.”*
- Mrs B pointed out that she had made several attempts to return the car, reinstate payments and resolve the complaint, but Northridge had not responded, and I had not noted down individually each of these attempts and commented on them, which she appeared to consider to be an error.
- She told us she had no choice but to use the car to take herself and another close relative to hospital (not the relative mentioned in the provisional decision) and to do the school run. Mrs B gave reasons why she could not have used her husband's car. Mrs B added *“I was unable to purchase another car until I received my deposit back and it would have been unwise for me to hire a car as this would have put me in a financial deficit”.*
- Mrs B pointed out other ombudsmen in different decisions have said 20% is a more appropriate percentage to use than the 15% I mentioned in my provisional decision. *“When I compare your outcome to the Ombudsman's, there is a gap in analysis and views”.*
- Mrs B made it clear she is rejecting the provisional decision. And she also told us we had taken too long to deal with her complaint which she indicated had caused her detriment.

## 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 reviewed the file again and revisited my provisional decision. I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I thank Mrs B for her response to my provisional decision. It has been particularly helpful that Mrs B took the time to set out her views on the redress which I proposed in my provisional decision, so that I have been able to gain a fuller understanding of her position and concerns about some elements of the proposed redress. I've thought about her further points.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I don't agree that my provisional decision was inaccurate although I regret to hear that Mrs B thinks it was. We received no response from Mrs B specifically about our investigator's recommendation she neither said she accepted it or rejected it. Rather the response we received dated 12 December 2022 said.

*"Thank you for sharing your view.*

*Please do keep us posted."*

I was not aware from this response that Mrs B wished to accept the recommendation.

In any event, Mrs B is not being penalised for the lack of response from Northridge Finance. Rather, we have merely followed our process. This process provides that if either one of parties or both do not accept the recommendation at the investigation stage and the consumer still wishes to proceed with the complaint then the complaint goes to an ombudsman to take a fresh look at it.

As I already said in my provisional decision I think it is fair and reasonable that Northridge Finance be able to charge Mrs B for the use she's had of the car as a starting point. But it is also fair and reasonable to take account of the impaired use she had, and that Mrs B used the car to transport her close relative to get medical treatment in very special circumstances that is why I suggested that Mrs B should only pay 85% of her contractual monthly repayments from June 2022 onwards.

I note that Mrs B suggests that she should pay 50% of the monthly repayments from January 2023 to date. She seems to be saying that this is fair because Northridge Finance did not respond to our investigator's view. But what I am looking at is what Northridge Finance should fairly or reasonably be able to charge for the use Mrs B has had of the car. She had this use regardless of whether Northridge Finance responded to our investigator's recommendation or not. So I don't see that there is any fair or reasonable basis for her proposal. It follows that I am not going to endorse this proposal.

I acknowledge Mrs B did try to return the car on more than one occasion. Also Mrs B raised reinstating her direct debits and she contacted Northridge Finance about trying to settle the complaint on more than one occasion too. However, I cannot fairly or reasonably then discount the use she has had of the car solely because she tried to do these things more

than once. If I did this I would be requiring Northridge Finance to give Mrs B free motoring and that would be manifestly unfair given that this is not something they ever agreed between them would happen under the contract and this is not a remedy the law gives Mrs B.

Mrs B has mentioned that she also used the car to take herself and another close relative to hospital appointments and admissions. But she has not explained why these visits could not have been done using alternative transport such as her husband's car, or public transport or taxi for example. This seems to be a very different situation from the situation I wrote about in my provisional decision where it was clear that it was imperative that Mrs B made sure that this particular relative was kept isolated from other people as far as was possible. Mrs B also tells us about the day to day use she made of the car. Which it appears she also thinks she should not be charged for. Mrs B would always have had to pay for this kind of use in any event, in the normal course of affairs. In the circumstances, for all of these reasons, I have no proper basis for saying that Northridge Finance should not be able to charge her for this use.

I recognise that Mrs B did not purchase or acquire an alternative car or hire one. However, that does not mean she should not be charged for the use of the car she had that belongs to Northridge Finance. If Mrs B had purchased or acquired an alternative car she would still have had motoring costs that related to the alternative car. In other words under either scenario she would always have had motoring costs regardless of anything that Northridge Finance had to take responsibility for.

Mrs B points to the decisions of other ombudsmen. She appears to be suggesting that this service has a blanket approach that I have not followed. This is not the case there is no such blanket approach. Moreover, I am not bound by my ombudsmen colleagues' decisions, because ombudsmen's decisions are not binding precedents in the way that the courts' decisions are. Instead, I am required to form my own view of this complaint, based on the very individual circumstances of this complaint, rather than to follow the views of others in other complaints. So I don't agree I must change the percentage to 20% in order to reach a fair and reasonable outcome.

I regret how long it has taken this service to deal with Mrs B's complaint and I recognise Mrs B has complained about this separately as a service complaint. I have no power to deal with service complaints about our service here. However, the redress I have suggested is based on the use Mrs B has had of the car and I am satisfied that is a fair and reasonable approach.

I have not been persuaded by Mrs B's responses to my provisional decision. It follows in this final decision, I have reached the same conclusions for the same reasons as in my provisional decision

### **My final decision**

My final decision is that I require N.I.I.B. Group Limited trading as Northridge Finance to:

- End the agreement with Mrs B with nothing further owed aside from the payments that I have said it can keep and the payments I have said it can deduct from the deposit.
- Collect the car from Mrs B at no cost to Mrs B at a time which is mutually convenient.
- Refund 10% of all the monthly payments made by Mrs B between January 2022 to May 2022. It must add interest to this refund at the rate of 8% simple per year. The interest to run from the date the payments were made until the date of settlement.
- Refund 15% of the monthly payment made by Mrs B for June 2022. It must add interest to this refund at the rate of 8% simple per year. The interest to run from the date the payment was made until the date of settlement.



- Return the deposit of £10,000 minus a sum that equals 85% of the monthly repayments which should have been made by Mrs B between July 2022 and the date of the final decision. It must add interest to the balance at the rate of 8% simple per year. The interest to run from the date the deposit was paid until the date of settlement.
- Pay Mrs B £750 for distress and inconvenience as it has already offered to do.
- Ask the credit reference agencies to mark the agreement as settled in full on Mrs B's credit file and ask the credit reference agencies to remove any adverse information it has asked them to register on Mrs B's credit file in relation to the finance agreement it has with Mrs B.

It must pay the total compensation within 28 days of the date on which Mrs B accepts the final decision that may be issued after this provisional decision. If it pays later than this it must also pay interest on the £750 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mrs B can reclaim the tax if she is able to.

Mrs B should refer back to Northridge Finance if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 April 2023.

Joyce Gordon  
**Ombudsman**