

The complaint

Mrs D complains that a car acquired with finance from NIIB Group Limited wasn't of satisfactory quality.

What happened

In October 2019 Mrs D was supplied with a brand-new car and entered into a hire purchase agreement with NIIB.

In August 2021 Mrs D experienced issues with the engine. The car was returned to the supplying dealer for repairs under warranty.

Mrs D experienced further issues with the car in April 2022 and December 2022. The car was returned to the supplying dealer for repairs under warranty.

Mrs D has told this service that the dealership took a long time to complete the repairs and that she was left without a car or provided with a courtesy car which wasn't suitable for her needs, for several weeks at a time.

Mrs D raised a complaint with NIIB in January 2023. She said the car had gone to the dealership in early December 2022 and still hadn't been returned to her. Mrs D said the car had been back to the dealership seven times in 2022 for the same issue (cylinder misfire fault code) and that in 2021 the head gasket had been replaced. Mrs D said she didn't think the car was of satisfactory quality and asked to reject it.

Mrs D didn't receive a response from NIIB so she brought her complaint to this service.

NIIB told this service that it hadn't issued a final response because it had been waiting for confirmation that the car had been repaired to Mrs D's satisfaction. It said it didn't think it could be held responsible for the matters raised in Mrs D's complaint because of the time and mileage which had passed at the time when the issues arose.

Our investigator didn't uphold the complaint. He said there was no evidence that the issues with the car had been present or developing at the point of supply, and that there wasn't enough evidence to suggest that there was a durability issue.

Mrs D didn't agree. She said that major issues had arisen with the engine in August 2021 which was only 21 months after the car had been supplied to her. She also said she'd been told by the dealership that the car wasn't old enough to be having engine problems of this sort.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard

that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mrs D was brand new. So I'd expect it to be of a high standard and to be free from faults for a reasonable period of time.

Under the Consumer Rights Act 2015, where a fault occurs within 6 months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car.

Under the same legislation, where a fault occurs outside of the first 6 months after the point of supply, the burden of proof is reversed and it's up to the consumer to show that the fault was present or developing at the point of supply.

In this case, I would need to be satisfied that the faults with the car were present at the point of supply or that the faults suggested that there was a durability issue with the car.

I've reviewed the available evidence about the issues which Mrs D experienced with the car. Based on what I've seen, I'm satisfied that the car has faults. This isn't disputed by the parties. I've seen evidence that the faults have been repaired by the dealership under warranty.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

The car was brand new when it was supplied to Mrs D. Mrs D has told this service that she first experienced issues with the engine in August 2021 which was around 21 months after she got the car. I've seen a copy of an invoice dated 30 November 2021 which states that there was coolant in the exhaust system. The cylinder head was replaced. At this point the car had covered around 33,537 miles.

I've taken the age and mileage of the car into consideration. And although I understand the point which Mrs D makes about why the mileage is high, I'm not persuaded that the fault was present or developing at the point of supply. I say this because the fault was a coolant leak which caused issues with the performance of the car. There's no evidence to suggest that the car had poor performance prior to August 2021. If the fault had been present at the point of supply, I don't think Mrs D would have been able to drive the car for 21 months and cover the mileage that she did.

Further issues occurred in 2022. I've seen a copy of an invoice dated 29 April 2022 which shows that the engine management light was illuminated due to a faulty O2 sensor. I've also seen a copy of an invoice dated 11 October 2022 which shows that the injectors and spark plugs were replaced.

There's no evidence to suggest that there were issues with the O2 sensor or the injectors and spark plugs at the point of supply. If there were faults with these component parts at the point of supply, I don't think Mrs D would have been able to drive the car for the length of time she did and cover the mileage she did.

I appreciate that Mrs D doesn't think the car should've had engine problems when it was less than 2 years old. I've thought about whether there is sufficient evidence to say that the car wasn't durable. On balance, I'm not persuaded that the car wasn't sufficiently durable. I understand that it can be frustrating when things go wrong with a car but in the

circumstances of this case, I think it's reasonable to expect that a car which has covered around 33,000 miles is likely to have some faults commensurate with its age and mileage.

Taking everything into account, there isn't enough evidence for me to say that the car wasn't of satisfactory quality at the point of supply, or that the car wasn't sufficiently durable. So I won't be asking NIIB to do anything further.

Mrs D has expressed concern at the length of time she's been without the car because of the length of time it's taken to complete repairs. Whilst I acknowledge that the repairs do seem to have taken a long time, this isn't something I can fairly hold NIIB responsible for. But it would be open to Mrs D to raise a complaint with the dealership directly.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 25 October 2023.

Emma Davy
Ombudsman