

The complaint

Mr M has complained that he is unhappy with the quality of a car he acquired in October 2019, using a hire purchase agreement with N.I.I.B. Group Limited, trading as Northridge Finance ("Northridge").

What happened

Mr M acquired a used Nissan in October 2019, using a hire-purchase agreement with Northridge. The car was three years and four months old, with a mileage of 55,330 shown on the hire-purchase agreement. The cost of the car was £12,077.75, and Mr M borrowed the full amount over a term of 48 months, with a monthly repayment of £210.16. A final payment of £4,141 would be due if Mr M wanted to keep the car at the end of the term.

Mr M said that he used the car without incident before the pandemic lockdown restrictions started in March 2020. The car was then used for short journeys, and in December 2020 it passed an MOT test, at which the mileage was recorded as 61,715. So Mr M had driven just under 6,400 miles since he acquired the car. Records available online show that there were advisories on this MOT, but these related to wear on the rear tyres

Mr M told us that shortly afterwards, in January 2021, the car broke down while he was driving it, and it was then towed to a nearby garage. The garage initially advised Mr M that the car needed a new cam sensor, which was fitted but did not solve the problem – the car still wouldn't start. The mechanic then told Mr M that there was no pressure in cylinder two, which meant engine failure. Further investigation costs were quoted as several hundred pounds, as the engine would need to be removed. Mr M said the garage advised him to contact Nissan as this should not happen in a car of that age (the car was by then about four and a half years old).

It appears the car was towed back to Mr M's home address as the garage could not keep the car indefinitely. Nissan then said that the car should be taken to a Nissan dealership – it was towed to a dealership local to Mr M, and I understand has remained there. Mr M was asked by Nissan to provide the car's service records, and he told us that it had been serviced in June 2019 and June 2020.

Mr M said the Nissan dealership advised him that the car has total engine failure, and requires a new engine, at a cost of several thousand pounds. He further said that the dealership has remained in contact with Nissan regarding the engine. Mr M also complained to Northridge in November 2022 – he said this was at the suggestion of the dealership, it having said that the car was not fit for purpose. Mr M further said that Northridge told him it would pay for an independent report, but that it had not returned calls about who would need to pay upfront.

Nissan has since agreed to meet the cost of the parts in a replacement (reconditioned) engine, and I have a copy of an email dated February 2023 confirming this, but it said that labour costs (estimated at around £2,100) would need to be met by Mr M. But Mr M said he doesn't have the funds to do this.

Mr M is very unhappy about all this, and would like to reject the car and cancel the agreement. He told us that he has health and financial problems, so this situation is very difficult for him.

Northridge wrote to him in December 2022 and February 2023 to say that it hadn't been able to get material evidence to support his complaint, so it was not upholding it. Northridge said that if the engine had been of unsatisfactory quality when supplied, it could not have completed over 12,000 miles in over a year.

Mr M then brought his complaint to this service. Our investigator looked into Mr M's complaint, and thought it should be upheld. Northridge didn't agree and asked that it be reviewed by an ombudsman.

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.

On balance, I've decided to uphold Mr M's complaint. I'll explain why.

Because Northridge supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case the car was three years and four months old, with a mileage of 55,330 when Mr M acquired it. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

Mr M sent in details of the sequence of events, together with copies of estimates for the engine replacement. Northridge sent in copies of the hire purchase agreement, its computer records of Mr M's account and various emails.

I've carefully considered all of the evidence provided. This is a difficult case to decide as the evidence is limited, and I don't have the benefit of an independent inspection report. Northridge said it suggested such a report, but Mr M declined it. However, I can see from one of the copy letters it sent in that it asked Mr M to arrange a report and said it would refund the cost. Northridge has not said anything about calls that Mr M said were not returned regarding about who would need to pay upfront. And I think Northridge could simply have gone ahead and arranged such a report following Mr M's complaint.

However, in any case, Northridge has itself said that as the car has remained unused and SORN (registered with the DVLA as off-road) since January 2021, completing an inspection in August 2023 is not going to provide an accurate appraisal of the quality of goods supplied in October 2019.

What *is* clear is that there is a fault with the engine, and Mr M has been unable to use the car since January 2021. The key issue is whether the fault was present or developing at the point of supply.

At the point the car broke down, it was four and a half years old, and Mr M had had it for about 16 months. Various figures have been noted in respect of the mileage, but I think some have been the result of typing errors. I don't have the mileage listed on any documents later than the MOT in December 2020, at which point it was 61,715. The car broke down shortly afterwards, so I don't think the mileage can have been a great deal higher, especially bearing in mind the pandemic-related restrictions at the time. So I think it's reasonable to take the mileage as being in the region of 62,000, meaning Mr M would have driven the car for about 6,700 miles since he acquired it. This is a relatively low figure.

The only information about the engine failure was the comment from the first garage about no pressure in cylinder two, which it said shouldn't happen in a car of this age. That does suggest premature failure of a component.

The car wasn't particularly old, so I think the reasonable person would expect to use it free of major issues for a reasonable period of time – and wouldn't generally expect there to be a fault that required a full engine replacement at around 62,000 miles. It looks as though the car was regularly serviced, and I've not seen anything to make me think that Mr M has caused or contributed to the fault occurring. And I note that the manufacturer has agreed to cover the cost of the parts on a replacement engine.

In response to our investigator's view that the complaint should be upheld, Northridge raised a number of points. I have mentioned the independent inspection report above. Otherwise, it said that a used car of this age and mileage is most certainly durable, and represents reasonable use. There is no material evidence which supports the view the issue was in any way inherent from supply.

Northridge further said that if this service were minded to uphold this complaint, it would expect this to be based on material evidence (taking account of the timeline and mileage) rather than speculation about a manufacturing defect because Nissan agreed to assist Mr M. There are no recall notices for this vehicle recorded on the Government website. Had there been a manufacturing defect, which Nissan accepted liability for, guidance notes would have been issued to all customers. As there is nothing recorded on the Government website for this vehicle, it therefore follows that Nissan has not accepted liability.

Northridge went on to say that, given the overall age and mileage, many parts connected to the engine would have been reaching the end of their natural lifespan. There is no material evidence that supports the view that this was a manufacturing problem. And no one qualified to assess the merchantable quality of the goods determined there was a manufacturing problem, or the engine failure was related to the supply of the goods.

I've considered the points Northridge has made. I accept that there is a lack of definitive evidence, but I have to make my decision based on what I think is most likely to have happened, taking account of the evidence and information I do have. Northridge itself has said that an independent inspection report would not now provide an accurate appraisal of the car as at the point of supply (as I noted above, I do think Northridge could simply have arranged the report at an earlier stage, albeit there are differing accounts of why this didn't happen). So I don't think it likely that any more definitive evidence would be available.

I accept that there is no recall notice registered against Mr M's car on the Government website. However, looking at the relevant Government website regarding recalls, I can see the following:

"Faults in the way vehicles, vehicle parts and accessories are designed or made have to be registered with the Driver and Vehicle Standards Agency (DVSA) if they:

- mean it could become unsafe in the future if it's not fixed*
- could mean that the vehicle, part or accessory no longer meets the legal standard*

Other types of general faults are not registered with DVSA."

So I don't think the lack of a recall notice is conclusive in terms of whether there was a manufacturing fault with Mr M's particular car. I also have to place weight on the manufacturer's agreement to cover the cost of the parts on a replacement engine. I don't see any reason why a manufacturer would agree to do this if the issue was simply one of wear and tear. This does suggest a manufacturing issue of some kind – at least in relation to Mr M's particular car. I've also kept in mind Mr M's testimony about the first garage's comments about the cylinder issue in a car of this age and the Nissan dealership's liaison with Nissan about the engine replacement.

Taking all this together, I think it's more likely than not that there was a fault that was present or developing at the point of supply, and therefore I'm not persuaded that the car was of satisfactory quality at the point of supply. So on balance, I've decided to uphold this complaint.

I can't fairly say that Mr M should be able to reject the car without Northridge having had the chance to arrange the repairs in line with the requirements of the CRA. But I do think it fair to require Northridge to cover the labour and other sub-costs in relation to the replacement engine, on the basis that Nissan has agreed to meet the parts costs.

I also think it fair to require Northridge to refund the monthly payments made by Mr M for the period during which he's been unable to use the car and to pay an amount of £100 in recognition of the distress and inconvenience caused to Mr M because of the issue with the car.

I note that Mr M said he had incurred other costs in relation to the car being towed to garages, and the replacement of the cam sensor. However, as he has not been able to provide receipts for these costs, I cannot fairly require Northridge to refund them.

Putting things right

Northridge should:

- Pay for the labour costs and other sub-charges regarding the repair.
- Refund any monthly payments made by Mr M from January 2021, when the vehicle broke down, until the date the car is repaired.
- Add 8% simple interest* per year to the amounts refunded, calculated from the date each amount was paid to the date the compensation is paid.
- Pay £100 for the inconvenience Mr M has experienced due to the faults with the car.
- Remove any adverse information from Mr M's credit file (if any has been added).

**if Northridge considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

For the reasons given above, I have decided to uphold Mr M's complaint. N.I.I.B. Group Limited, trading as Northridge Finance, should pay Mr M the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 December 2023.

Jan Ferrari
Ombudsman