

## The complaint

Mr B is unhappy that a car supplied to him under a personal contract purchase agreement with N.I.I.B. Group Limited (trading as Northridge Finance) was of an unsatisfactory quality.

## What happened

In March 2022, Mr B was supplied with a used car through a personal contract purchase agreement with Northridge. He part-exchanged his existing car for £19,000, paid an additional cash deposit of £6,500, and the agreement was for £30,112 over 49 months; with 48 monthly payments of £439.39 and a final payment of £17,425. At the time of supply, the car was almost four years old, and had done 43,566 miles (according to the MOT record for 9 March 2022).

On 19 August 2022, Mr B suffered an engine failure which meant the car became undrivable. The manufacturer offered to replace the engine but required Mr B to contribute 20% of the costs towards this. Mr B wasn't happy with this, and he complained to Northridge. However, Northridge didn't uphold the complaint, so Mr B brought it to the Financial Ombudsman Service for investigation.

Our investigator said the evidence showed a fault with the car, but Mr B had been told it had been caused by him taking the car off-road. However, the investigator said that, not only was there no evidence that Mr B had taken the car off-road, but the car he was supplied with was both marketed and sold as being an all-terrain vehicle. So, while the investigator accepted there was damage to the car, he thought the evidence pointed to it being longstanding and present when the car was supplied to Mr B.

The investigator said the car wasn't of a satisfactory quality when it was supplied to Mr B, and that Northridge should do something to put things right. So, he said they should allow Mr B to reject the car, refunding his deposit and any payments he'd made since 19 August 2022, as well as refunding his tax and insurance payments, reimbursing him for the diagnostic costs he'd paid (all with statutory interest), and pay Mr B an additional £300 for the trouble and upset he'd been caused.

Mr B agreed with the investigator, but Northridge didn't. And they provided a report by an independent engineer dated 16 October 2023. Despite the car being at a third-party garage and available for inspection, the engineer didn't inspect the car itself, and relied entirely on a vehicle inspection report dated 19 August 2022.

Based on documentation alone, the engineer concluded that the engine had most likely failed because Mr B failed to adequately maintain it (there was no oil in the car and it needed 9 litres of AdBlue when it was inspected on 19 August 2022) and *"there was no evidence to suggest that the engine has an underlying issue when sold as it would not have covered [4,517 miles] between 07/03/22 and the 19/08/22."*

Northridge said that the independent engineer was the expert on this matter and was *"considerably more qualified to assess the merchantable quality of the goods than the FOS"* and they asked for an ombudsman to make a final decision.

## **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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr B was supplied with a car under a personal contract purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Northridge are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Northridge can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr B to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr B took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Northridge to put this right.

I've seen a copy of the independent engineer's report, dated 16 October 2023, the main points of which have been referred to above. The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report.

However, this report wasn't based on an inspection of the car, but instead on an examination of the documents provided by Northridge, specifically the vehicle inspection report of 19 August 2022. So, while I acknowledge the engineer's expertise on this matter, I also need to consider that his opinion is one based on the interpretation of documentation, and not on the examination of the car. So, as the key issue here is the fault with the car, in this instance, I will be placing more weight on any reports based on an examination of the car than I will on reports based on the consideration of documents.

I've seen the report of 19 August 2022 that the independent engineer relied upon to reach his opinion, and this mainly consists of a checklist of systems that were or weren't checked, and a few lines about what was found. As the independent engineer said, this report did say the car needed 4 litres of oil and 9 litres of AdBlue. And, from this, the engineer concluded the car hadn't been adequately maintained.

However, the vehicle inspection report also said there were oil leaks to the front and rear of the car and that there were no fault codes in the system. Had Mr B driven the car without adequate oil / AdBlue, I would've expected warning lights and the associated fault codes to be present. But there's no evidence they were. So, when taking this into consideration with the presence of oil leaks, I think this is a more likely indicator of a sudden catastrophic failure than the car being persistently used without adequate lubrication.

What's more, I've also seen the video that was produced at the time of this inspection, which the independent engineer makes no reference to. This shows the braking system was badly corroded, as was the underside of the car. The oil leaks are clear and there is damage to the underside of the car at the rear, around the fuel tank, with the shield having been hit and pushed up. The shield and areas of damage were also badly corroded.

Given this, and that the independent engineer didn't examine the car to identify the cause of the oil leaks, I'm not satisfied that the conclusion that the engine failure resulted from Mr B's failure to adequately maintain the car, and that there was nothing to show that there was a fault with the car when it was supplied, is safe to rely upon.

Following the report of 19 August 2022, the manufacturer's dealership who carried this out said the engine needed replacing, but only 80% of the cost would be covered by the warranty. Leaving Mr B with a bill of £3,583.14 for the engine and £2,540.68 for the repairs to the braking system.

In a letter dated 2 December 2022, Northridge told Mr B that the damage to the car "*may have been as a result of the goods being taken 'off-roading'*" and because of this they didn't accept liability for this. And they asked Mr B to obtain a report from an independent engineer to demonstrate the car was of an unsatisfactory quality at the point of supply.

However, as the engine failed within six months of supply, the CRA implies it's for Northridge to prove the car was of a satisfactory quality, and not for Mr B to prove it wasn't. What's more, Northridge refused to accept the report dated 19 August 2022 as proof of a fault – the same report they were later happy to accept as sufficient (and the only) evidence that needed to be seen by the independent engineer they instructed, in lieu of an actual inspection of the car.

While the damage to the underside of the car could indicate it was caused by the car being used off-road, the amount of corrosion showing in the video would indicate that this was long standing damage, and not something that'd just occurred. What's more, while I haven't seen anything that shows me the car was damaged due to being used off-road, I have noted the manufacturer produces cars that can be used off-road, and the particular model provided to Mr B is advertised as being an all-terrain vehicle i.e., it's designed to be used off-road. As such, if Mr B had chosen to use the car off-road, this would be considered a reasonable use of the car.

Based on everything I've seen; I'm satisfied the most likely cause of the engine failure is due to one of two scenarios:

1. The car suffered some damage, possibly due to being used off-road, that caused a subsequent catastrophic and immediate loss of oil that resulted in engine failure. Given the amount of corrosion to the underside of the car, I'm satisfied that this damage was present when the car was supplied to Mr B. OR
2. The car suffered a catastrophic loss of oil that resulted in engine failure for some reason other than the damage to the underside that was present when the car was supplied to Mr B. As the car was less than five years old, and had done less than

50,000 miles, such a failure would not be something that could be reasonably expected. Which means the engine wasn't sufficiently durable.

While the exact cause of the engine failure isn't known, either of the two scenarios I've described above means that the car wasn't of a satisfactory quality when it was supplied to Mr B. And Northridge need to do something to put things right.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. However, section 23(2) of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must –  
(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given that the engine failed in August 2022, within six months of the car being supplied to Mr B; and given Northridge insisted that Mr B prove the car wasn't of a satisfactory quality when it was supplied, and the CRA implies it's for them to do the opposite; I'm satisfied that Northridge have unreasonably delayed any repair and have thereby failed to comply with Section 23(2)(a) of the CRA. In these circumstances, Mr B should be able to reject the car.

### **Putting things right**

The car has been off the road and undrivable since 19 August 2022, since which date Mr B hasn't been supplied with a courtesy car. As such, he was paying for goods he was unable to use. For the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Northridge failed to keep Mr B mobile; I'm satisfied they should refund all the payments he made since the date of the engine failure.

Mr B has provided evidence of the £396 cost he's incurred in having the car inspected on 19 August 2022. There is also an indication that there may be outstanding recovery and inspection costs of £1,082. Given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Northridge reimburse / pay these costs.

While Mr B wasn't able to use the car since 19 August 2022, he still continued to pay road tax and car insurance. Had Northridge acted within a reasonable timeframe, and in line with the CRA, the car would either have been repaired and put back on the road, or Mr B would've been allowed to reject it. However, as this wasn't the case, I think it's only fair that Mr B is reimbursed these costs.

Finally, it's clear that Mr B has been significantly inconvenienced by what's happened. So, I think Northridge should compensate him for this. The investigator had recommended Northridge pay him £300, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Northridge should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr B (which includes covering any storage costs that may have been incurred as Mr B was unable to drive the car);
- remove any adverse entries relating to this agreement from Mr B's credit file;

- refund the £25,500 deposit Mr B paid (if any part of this deposit is made up of funds paid through a dealer contribution, Northridge is entitled to retain that proportion of the deposit);
- refund any payments Mr B has paid since 19 August 2022;
- upon receipt of evidence of payments, reimburse Mr B with the road tax and car insurance costs he's incurred since 19 August 2022;
- reimburse Mr B for the £396 inspection costs he's incurred;
- upon receipt of evidence that the £1,082 inspection and recovery costs were either paid by Mr B or remain outstanding, reimburse / pay these costs;
- apply 8% simple yearly interest on the refunds and reimbursements, calculated from the date Mr B made the payment to the date of the refund<sup>†</sup>; and
- pay Mr B an additional £300 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires Northridge to take off tax from this interest, Northridge must give Mr B a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr B's complaint about N.I.I.B. Group Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 December 2023.

Andrew Burford  
**Ombudsman**