

The complaint

Mrs S complains about the quality of a car supplied via a hire purchase agreement by N.I.I.B. Group Limited trading as Northridge Finance ('NF').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mrs S says she has been having quality problems with the car from a very early stage which are still not resolved (despite attempts at repair). The problems centre on a rattling noise from the engine along with the persistent appearance of engine warnings.

Mrs S says she is nervous to drive the car and wants to reject it. NF does not accept rejection so the matter has come to this service.

Our investigator upheld the complaint but NF does not agree so the matter has come to me 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. NF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance

and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

In late January 2023 NF supplied Mrs S with a second-hand car that was around 3 years old and had done around 26,500 miles at the point of supply. The dealer priced it at £15,500 which is less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered some wear and tear – and was likely to require maintenance sooner than you might see on a newer, less road worn model.

However, with that said, this was not a particularly old or high mileage car. And almost £16k on a car is not a small amount to spend. I think there would be reasonable expectations that the car would not have any significant issues for a while. However, that is not what appears to have occurred here.

Mrs S has provided credible testimony to say that from an early stage she noticed the car was making an unusual rattling noise from the engine. And I can see from the other evidence that Mrs S's account is corroborated. Namely that there is a job sheet showing that in June 2023 warranty repairs were carried out by a main dealer to the clutch and gearbox in response to a reported engine rattling noise. These appear to be significant repairs (I note they cost around £1,000).

I don't think a reasonable person would expect a car of this age and mileage to be having such significant problems at an early stage. Even noting that Mrs S had covered about 3,000 miles herself at the point the repairs took place. And in any event I note that Mrs S says the rattling noise developed at an even earlier stage.

I note the dealership says it is confident that the fault was down to 'driver error' yet it has provided no credible information to support this. Therefore, I am broadly satisfied the car was not of satisfactory quality at the point of sale. And that Mrs S was entitled to a remedy under the CRA. A repair is not an unreasonable remedy in the first instance. And it appears Mrs S was not out of pocket for this. However, Mrs S has claimed those repairs were not successful and the car still has the same problems.

Mrs S says that the rattling noise is persistent. And she says it is not normal as her partner has the same car which does not have this noise. Mrs S also says that her engine management light has been on since May 2023 and remains on despite the repairs. Mrs S's testimony is credible and consistent and she has provided videos to support her claims. I also note she has provided a diagnostic report from November 2023 which confirms the engine management light is on and confirms a fault code. It also states the 'engine mount' appears to have been damaged as a result of removal/replacement of the gearbox.

NF has provided testimony from the dealership which appears to allege the report which Mrs S obtained is biased and should be disregarded. However, I don't consider there to be persuasive evidence that is the case. Nor do I think there is persuasive evidence that supports the allegations that Mrs S's partner works at the garage that prepared it (which Mrs S has denied and provided information to disprove).

Where information is unclear I make my findings on the balance of probabilities. And on balance I consider that the car still has underlying significant issues with the engine and/or gearbox causing ongoing noise and engine light illumination. And that the original issues that made the car of unsatisfactory quality from the time of supply have not been remedied by the repairs. What is more, these repairs appear to have caused further damage to the car in any event.

As there has been a failed attempt to repair the car I consider Mrs S now has the right to reject it in accordance with her consumer rights under the CRA. I know she has carried on driving it despite the issues – but this would appear to be out of necessity. She has explained her nervousness to continue using it due to the underlying issues but has explained she has no alternative options. It follows, that I don't consider her actions should reasonably prevent her from rejection now. Furthermore, although Mrs S has travelled notable mileage in the car – I don't think this shows the current issues with the car are down to wear and tear because it appears the engine issues she is having now are connected with those issues she had at an early stage.

Furthermore, NF's submissions indicate that it considers the dealer has the final word on whether to accept rejection of the car. To be clear, NF is the supplier here, so it is responsible for the quality of the car and also subject to the provisions of the CRA. As a result it could have decided to accept rejection sooner.

So, to put things right I consider that NF should now fairly accept rejection of the car – taking back the car at no further cost to Mrs S and ending the finance agreement. It should ensure there is no adverse credit information on her credit file in respect of this agreement.

NF should also refund Mrs S her cash deposit of £500 and part exchange contribution of £1541.41.

I understand Mrs S has continued to drive the car and covered notable mileage (in excess of 10,000 miles) – so it would not be fair for her to get her rentals refunded to date. However, it appears she was without the car for a period during the repairs in June 2023 (and she didn't have a courtesy car). This appears to have been for about a week – so NF should refund Mrs S a weeks rental via pro rating her June 2023 payment.

Mrs S has described the distress and inconvenience caused to her by the issues with the car including the impact on her mental health. I am sorry to hear about this. I can see that she has felt unsafe in the car even though she has had to drive it for work. The matter has been going on sometime now and I think NF could have done more to assist. I have factored this in when deciding what is a fair payment of compensation.

Our investigator has recommended a £500 distress and inconvenience award. This is higher than I would have recommended usually in such circumstances. However, I note our investigator did not make a separate award for impaired usage (which here would have been the impairment from the ongoing rattling noise in the car over time). So in the circumstances I think that a £500 award is fair and reasonable here.

I note Mrs S does not appear to be disputing the redress proposal our investigator has put forward either. So with that in mind I consider what I am proposing to be fair and reasonable here.

I note that since our investigator viewed the case Mrs S has referred to some suspension repair costs of about £200 she incurred from June 2024 resulting from when the car last had an MOT. There isn't anything clearly linking these issues with the ongoing engine noise and warning light. And although this matter has been going on for some time I note Mrs S has continued to drive the car and covered notable mileage in it. It follows that she fairly would have had some fair wear and tear maintenance costs as a result of her use regardless of her early rejection of the vehicle. The costs here are relatively low and overall I think it is fair and reasonable in the particular circumstances that Mrs S bears this cost.

Putting things right

NF should put things right as I have set out below.

My final decision

I uphold this complaint and direct N.I.I.B. Group Limited trading as Northridge Finance to:

- Take the car back at no further cost to Mrs S and end the agreement with nothing further to pay (ensuring there is no adverse information on Mrs S's credit file from said agreement);
- refund Mrs S's deposit of £500 and part exchange contribution of £1,541.41;
- refund 1 week of the June 2023 rental payment;
- pay 8% simple yearly interest on all refunds from the date of payment to the date of settlement; and
- pay £500 compensation.

If NF considers it should deduct tax from my interest award it should provide Mrs S with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 4 November 2024.

Mark Lancod
Ombudsman