

complaint

Mr P complains that a used car he got with finance from N.I.I.B. Group Limited (trading as Northridge Finance) ("Northridge") was of unsatisfactory quality.

background

Mr P got this car near the start of October 2018 with a hire purchase agreement (HPA) from Northridge. He took the car back to the dealer about six weeks later, after he noticed an abnormal noise when the car was in first gear. The dealer replaced the clutch but the noise returned and Mr P took the car back again. The dealer replaced the dual mass flywheel and slave cylinder in December 2018 but the noise persisted and Mr P complained to Northridge.

Northridge was satisfied that the dealer had repaired the car so it asked for more evidence and Mr P arranged for a third party expert to carry out an inspection in February 2019. Amongst other things, the expert confirmed there was an abnormal noise coming from the clutch. Northridge didn't think this was sufficient to show that the car was of unsatisfactory quality when it was supplied. Northridge says any issues still present were probably caused by Mr P using the car as a taxi - given how far he was able to drive the vehicle after supply.

One of our adjudicators looked at the evidence. He's satisfied that Mr P reported unusual clutch noise within two months of supply, the dealer accepted there was a problem and carried out repairs and the noise was still there when the independent expert checked the car in February 2019. He thinks it's likely the car has a fault that was present at the point of supply. He says it was fair the dealer had the chance to fix things (in line with legislation) but he's satisfied those repairs were not successful.

He recommends the complaint should be upheld and Northridge should cancel the HPA, take the car back and refund any deposit along with the expert's fee of £272, plus interest. He doesn't think Northridge should have to refund any monthly finance payments - as Mr P was able to use the car most of the time. But, he considers Mr P probably experienced upset and inconvenience and Northridge should pay him £100 compensation for that.

Northridge didn't agree so the matter was referred to an ombudsman. Northridge said (in summary)

- the car was subject to a pre-delivery inspection that gave it a clean bill of health and, while that was some months before sale, the car was only driven about 99 miles after that, before supply;
- Mr P used the car as a taxi and drove around 12,000 miles in four months - which is a typical annual usage - meaning the car was put to abnormal use;
- no qualified party has deemed the goods to be of unsatisfactory quality and the expert did not say the issues he found were present at the point of supply;
- the expert did note a number of wear and tear items - such as worn tyres, scuffed wheels and a low oil level (but no leak) - and he highlighted that "further regular expenditure is likely in order to maintain vehicle roadworthiness";
- issues recurred due to substantial use over a relatively short period of time;
- the adjudicator speculated that parts being replaced and repairs completed during Mr P's use means there was an inherent fault without taking into account the much higher degree of wear and tear due to commercial use; and

- it is contradictory for the adjudicator to both accept that Mr P had “fair use” (and shouldn’t have any monthly payments refunded) but also find the car was of unsatisfactory quality when it was supplied.

my provisional decision

I issued a provisional decision on 5 May 2020 and my provisional findings are set out below (in italics).

the Consumer Rights Act 2015 (CRA)

When considering what’s fair and reasonable, I must have regard to relevant law and regulations - amongst other things. For the purposes of the CRA a “consumer” is an individual who is not acting wholly or mainly in the course of a business or trade. There’s no dispute that Mr P used this car as a taxi but he told us he didn’t acquire it with that use in mind. He said he got the car for private use mainly but lost his job not long after and started work as a taxi driver. I think what he says sounds credible and Mr P seems to come within the definition of a consumer under the CRA, meaning its provisions are relevant here.

satisfactory quality

Northridge supplied the car to Mr P under a HPA and Northridge was required - under the CRA - to ensure the car was of satisfactory quality when Mr P got it. What amounts to “satisfactory” quality varies, depending on individual circumstances, but it’s generally considered reasonable to take the age, cost and mileage into account in the case of a used car. The car supplied to Mr P was about three and a half years old, cost around £10,000 and had just over 21,000 miles on the clock. I think most people would accept that a car like this wouldn’t meet the same standard as a brand new vehicle - some parts would be worn and need to be repaired or replaced sooner or later - and that’s reflected in the lower price paid.

what, if anything, went wrong with this car?

I’ve seen paperwork from the dealer that shows Mr P took the car back in late November 2018 because he was concerned about a “noise in 1st gear, crunching noise”. The dealer confirmed this sound was present on a road test with Mr P and, on checking the gearbox, found some fluid contamination. The dealer didn’t think this would affect the service life of the gearbox but agreed to book the car in for investigation and flush and renew this fluid.

The dealer removed the gearbox and inspected the clutch about a week later. The car had just over 27,200 miles on the clock at this stage so Mr P had driven about 6,000 miles since supply. The dealer found an automatic repair validation code using the manufacturer’s diagnostics system and the clutch was replaced at no charge to Mr P under a warranty he got with the car. I’m satisfied (from documents the dealer provided) that Mr P took the car back again about a week or so later - having only driven about another 600 miles since the previous repair - as the clutch noise was still present. The relevant job card says a master technician carried out a road test and the flywheel was found to be “leaking grease between the mating faces causing a noise when taking up the drive” and the flywheel and slave cylinder were replaced under warranty.

satisfactory quality

I accept engine parts like the clutch and flywheel will wear over time and need to be replaced at some point. But, I don't think most people would expect to have to replace a clutch and flywheel in a three and a half year old car with around 21,000 miles on the clock - that they'd only acquired about six weeks before and driven about 6,000 miles.

The CRA says (broadly speaking) that faults which appear within the first six months are deemed to have been present at the outset - unless there's good reason to think otherwise. I'm satisfied that abnormal clutch noise appeared here within two months of supply when Mr P had driven about 6,000 miles. I don't think cars normally make this sort of sound. On balance, I am not persuaded that it's likely the work done by the dealer was required as a result of Mr P's use of the car. I think it's more likely than not there was something wrong when it was supplied, meaning the car was of unsatisfactory quality at the outset.

Under the CRA, Northridge was entitled to one opportunity to have the car fixed and I think it was reasonable of Mr P to agree that the dealer should have the chance to carry out repairs. If those repairs had resolved the problem, I think that would probably have been the end of the matter. But, Mr P says the repairs didn't work, the noise returned very soon after and the car is still faulty. Northridge, on the other hand says Mr P has been able to carry on using the car - and drive it much further than average - so the car must be of satisfactory quality.

the expert's report

Mr P got an expert to inspect the car in February 2019. I'm satisfied the expert is independent and seems to have relevant qualifications and experience. He took the car on a test drive, carried out a visual inspection and provided a report. I think this is fairly detailed and makes sense. I find it reasonable to give some weight to what the expert says and I have summarised his conclusions below.

The expert found the car had "essential" issues as follows:-

- *two tyres close to the legal tread limit; and*
- *a "droning type noise coming from the clutch system and/or flywheel... which... is present while taking up drive at clutch bit point...the reported noise is particularly noticeable when reversing from [the] driveway which is slightly sloped upwards" and further investigation was needed to diagnose "this present fault".*

The expert also found several "desirable items" that needed fixing including

- *a fly within the lamp of a tail light*
- *out of date spare tyre gel repair liquid*
- *engine oil level showing half level on dipstick, he couldn't see a leak but recommended this should be investigated;*
- *nail in tread of one tyre;*
- *the rim of one wheel was scuffed;*
- *air conditioning was inoperative during static checks; and*
- *the rear parcel shelf was missing.*

The expert said the defects he found "may prove costly to rectify". I am satisfied the expert considered the noise he heard was not normal and suggested the car still had a fault that needed investigation and may prove costly to repair. In light of the expert's findings, I am not persuaded the repairs undertaken by the dealer were successful.

Mr P's use of the car

I accept Mr P used this car as a taxi and he had driven more than 12,000 miles by the time of the expert's inspection. But, I'm satisfied he'd only travelled about half that distance when he first reported the problem with the clutch. And there's no mileage limit - or prohibition on commercial use - in the HPA terms. I don't think the relatively minor issues noted by the expert - like a nail in tyre tread and a scuffed wheel - mean Mr P's use was out of the ordinary. And I think other "desirable" items the expert noted - such as the inoperative air conditioning, out of date spare tyre gel and the missing parcel shelf - could easily have been present when the car was supplied.

If there had been signs of "abnormal use" when the expert checked the car I'd expect him to say so in his report. I acknowledge the expert found wear and tear present when he saw the car but - aside from specific faults noted above - he considered this was consistent with the car's age and mileage. It was open to Northridge to have the car checked elsewhere if it disagreed with the expert's view but it chose not to do so.

I appreciate Northridge considers the fact Mr P carried on driving the car means it must be of satisfactory quality. But, I'm satisfied satisfactory quality involves considering more than a car's basic roadworthiness. The CRA says it includes fitness for purpose, appearance and finish, freedom from minor defects and durability, amongst other things. And I am not persuaded I can fairly find this car must be of satisfactory quality just because Mr P continued to use it in the way that he did.

putting things right

For the reasons I've set out above, I'm satisfied this car has parts that are not performing as they should. I can't say what the problem is exactly - or what the long term effect may be - from the evidence I have. But, I don't think Northridge has done enough to demonstrate that this car didn't have faults present at the point of supply - or show that any issues present then were fixed within a reasonable time.

The CRA says Mr P has a final right to reject in this situation. And, taking everything I've seen so far into account, I am minded to find it's fair that Northridge should take the car back and refund his deposit. The sale invoice says Mr P paid a deposit of £1,000 plus a £500 part-exchange contribution so I'm inclined to find Northridge should refund £1,500. Northridge asked Mr P for more evidence so he arranged for the expert's inspection that cost £272. I think it is reasonable for Northridge to refund that as well - and pay interest on the refunds.

There's no dispute that Mr P continued to use the car - I understand he would have preferred not to but he had no alternative. I'm inclined to agree with our adjudicator that Northridge shouldn't have to refund any monthly payments in these particular circumstances. But, I think Mr P is likely to have experienced some upset and inconvenience as a result of being supplied with a faulty car. I can see he had to take it back several times for investigations and repairs. He arranged the expert's inspection and he's also had to drive a car that makes an odd droning sound - which is probably unsettling. I am minded to find it is fair for Northridge to pay £100 compensation in recognition of that, overall.

I invited the parties to consider my provisional conclusions and let me have any further submissions by 5 June 2020 and explained that I would review all of the evidence available and make my final decision after that. .

the responses received from the parties.

Mr P accepted my provisional conclusions. Northridge provided a detailed response over several emails, which included some comments and paperwork provided by the dealer, so I've summarised what's been said below:-

- paperwork Mr P completed when he took out the finance shows he was employed as a taxi driver at that time meaning he got the car in the course of a business and doesn't meet the definition of a consumer under the CRA so provisions in respect of the supplier having only one opportunity to repair don't apply;
- if Mr P acquired the car for private use that's not consistent with the mileage covered;
- the car was not faulty at the outset, it was fit for purpose and Mr P is still using it;
- the noise didn't appear until the car had travelled over 6,000 miles and there's no reasonable basis to conclude that it was faulty at the point of supply;
- the expert's report was some four months after supply – by which time the car had covered 12,000 miles since supply but also 6,000 miles since Mr P reported that the noise had returned but I have not considered whether Mr P's continued use caused the problem or made things worse;
- I have overlooked the fact that Mr P did not just use the car for essential travel such as commuting – he used it as a taxi and MOT records (as at December 2019) show he was able to cover over 20,000 miles after supply; and
- on the figures I proposed in my provisional decision Mr P would only pay about 14p a mile for usage, which is too low (especially as he used it as a taxi), the courts would allow a higher rate and Mr P should pay more – specifically 45p a mile for the first 10,000 miles and 25p a mile after that.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. 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've considered the additional evidence provided and the comments made, carefully. I've seen some paperwork from the dealer that says Mr P declared that he was working as a taxi driver when he took out the finance for the car. But, I'm not persuaded that must mean Mr P intended to use this particular vehicle for his work as a taxi driver when he first got it.

Mr P told us that he first noticed a problem with the car when he took his family on holiday - which suggests he made some personal use of the car at the outset. I appreciate that doesn't exclude using the car for work at the same time but Mr P has consistently stated that this was not his original intention - and he only decided to use the car as a taxi after he took out the HPA. I don't think what he says sounds unreasonable or implausible. And I'm not persuaded, on balance, that I can safely conclude he was *not* an individual acting for purposes that are wholly or mainly outside his business when he first got the car.

For the reasons I've explained already, I'm satisfied Northridge was required to provide a car of satisfactory quality here. And I don't think a reasonable person would expect to find the sort of issues that were present here in a three and a half year old car with around 21,000 miles on the clock that cost about £10,000. I'm satisfied that Mr P took the car back to the

dealer because he thought there was something wrong with it within a reasonable time - less than two months after supply. I think the issues the independent expert found sound similar to the problems Mr P reported early on. And I remain of the view it's more likely than not the car had a fault that was present at the outset and persisted, notwithstanding the repairs the dealer carried out. I'm not persuaded this car was repaired within a reasonable time and without causing Mr P significant inconvenience. And I find it's unreasonable to expect Mr P to keep the car, in this situation.

I appreciate Northridge thinks Mr P hasn't paid enough for the use he had of the car – and a court would require him to pay more for that. This service provides informal dispute resolution as an alternative to the courts. I'm obliged to take account of relevant law, regulations and industry practice (amongst other things) - and I have done so here. But, I make my decision based on what I consider to be fair and reasonable overall.

I'm satisfied that the HPA doesn't prohibit Mr P from using this car as a taxi or require that he put it to "essential use" only - nor does it impose mileage limits or additional mileage charges. I think it was open to Northridge to include this sort of thing in the HPA terms and conditions, if it wanted to do so - but it didn't. And I am not persuaded it would be reasonable to apply additional charges retrospectively now. For the reasons I've explained already, I find it fair that Mr P should pay something for the use he had of the car and Northridge should retain the monthly payments made - as set out in my provisional findings.

Having considered all of the available evidence, I think the outcome I proposed in my provisional decision is fair and reasonable overall, in these particular circumstances. And I am not persuaded that there are reasonable grounds to depart from my provisional conclusions.

my final decision

For the reasons I've given, my decision is I uphold this complaint and I require N.I.I.B. Group Limited (trading as Northridge Finance) to:-

1. end the HPA with nothing further owing and mark the finance as settled on Mr P's credit file;
2. take the car back at no cost to Mr P;
3. refund the deposit of £1,500 along with the expert's fee of £272;
4. pay interest on those refunds at 8% simple a year from the date of payment to the date of settlement; and
5. pay Mr P £100 compensation for upset and inconvenience.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 26 November 2020.

Claire Jackson
ombudsman