

complaint

Mr O complains that a used car he acquired with a hire purchase agreement with N.I.I.B. Group Limited wasn't of satisfactory condition.

background

In August 2017 Mr O acquired a used car with a three year hire purchase agreement. The car was around seven years old and had a mileage of just over 65000.

Within a couple of weeks of having the car Mr O noted it had some issues with squeaking brakes, losing power when going uphill, high petrol consumption and a worn tyre. He took the car back to the dealership for inspection. The dealership said the brakes were new and needed to be used, the petrol consumption was as expected for an automatic car and that the tyre still had sufficient tread. It also said it couldn't find any fault with the car's power.

Mr O continued driving the car but in October 2017 he had to call out roadside assistance as it wouldn't start. The technician who attended told Mr O that the battery was flat. He said this was possibly due to a fault with the dash display not turning off and so draining the battery. Mr O took the car back to the dealership.

Mr O told the dealership that he'd had problems with the car not starting, with the engine malfunction light coming on, with the radio and satnav not working and that it didn't change gear as it should.

The dealership was only able to confirm that the radio and satnav weren't working. It couldn't find the other faults raised by Mr O. It fixed the radio and satnav by re-setting the electrical system.

Mr O continued to have problems with the car, in particular the alarm and hazard lights kept going off and draining the battery and the engine malfunction light would come on. There were further problems with the radio and satnav so in early December 2017 Mr O made contact with this service. His complaint was raised with N.I.I.B Limited and the car was booked in with the dealership to be inspected again.

Following this inspection the dealership said that the alternator needed to be replaced and undertook this repair. But when Mr O went to collect the car it wouldn't start. The dealership jump-started it so Mr O could drive it home. But unfortunately problems with the battery continued. Mr O even purchased a portable power pack and emergency jump starter.

In January 2018 Mr O had to again call out roadside assistance. The technician said the battery had failed and needed replacing and also suggested that the electrical system required testing. Mr O purchased a new battery for the car.

In February 2018 Mr O asked this service to investigate his complaints about the quality of the car. He said he wanted to reject it. N.I.I.B Limited arranged for the car to be taken back to the dealership for repairs but there was a miscommunication as Mr O didn't receive a message about the car going back until N.I.I.B Limited wrote to him. Mr O said he had lost faith in the car and didn't want to keep it as previous repairs hadn't fixed the problems.

In March 2018 Mr O once more had to call out roadside assistance as the car wouldn't start. The diagnostics carried out by the technician suggested there was an alarm immobiliser fault.

Our investigator looked at Mr O's complaint and recommended it should be upheld. He said that he thought there was a fault with the car's electrical system. This fault had repeatedly caused the battery to go flat. The problems had persisted even after Mr O had got in touch with this service.

The investigator said that the problem had been present within six months of purchase and he didn't think the issue was one of wear and tear. The dealership hadn't been able to rectify the faults after two attempts and so he thought Mr O was within his rights to reject the car.

The investigator said N.I.I.B Limited should cancel the agreement with nothing further to pay, remove the car at no expense to Mr O and reimburse any deposit and value of any part exchanged car provided by Mr O. He also said that it should reimburse Mr O for the battery and power pack he'd had to buy together with one monthly instalment to represent the time he wasn't able to use the car. Finally, the investigator said it would be fair for N.I.I.B Limited to pay Mr O £300 compensation for the distress and inconvenience caused. There had been additional travel expenses incurred as well as the issues with the car which were included into this amount.

Mr O agreed with the investigator's view but N.I.I.B Limited disagreed. It said it didn't think it had had a fair opportunity to inspect the car and it was only an assumption that it had an electrical fault. N.I.I.B said that the dealership had seen the car three times since Mr O acquired it, on the first occasion no fault could be found, on the second only a fault with the satnav had been found and repaired and on the third occasion a new alternator had been fitted so no one ongoing fault had been found. It thought the outcome recommended by the investigator was unfair and unreasonable.

The complaint has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the Consumer Rights Act 2015 ("The Act") goods must be of "a satisfactory quality." And for a used car "satisfactory quality" takes into account the car's age and mileage. I've seen that Mr O's car was seven years old and had a mileage that was around what would be expected for average use of a car of that age.

The Act also provides guidance about a consumer's rights and how they can reject a car if it's faulty. And as Mr O acquired the car via a hire purchase agreement with N.I.I.B Limited then it's the supplier of the car and so is responsible for any complaint about the car's quality. However not every problem with a car means a consumer can hand it back.

Mr O says he started to have problems with the car within a short space of time after he'd acquired it and contacted the dealer. The first time the car went back no faults could be found. But within two months the car then developed the ongoing problem with the battery going flat and the engine warning light showing. Some five months after acquiring the car

Mr O had to replace the battery though, unfortunately, this doesn't appear to have resolved the problems.

N.I.I.B Limited says that there isn't a report saying what is wrong with the car and when the dealership inspected it the only faults found were with the satnav and alternator, both of which were repaired. It says there hasn't been one consistent fault found, and that Mr O's had fair use of the car.

Where evidence is missing or contradictory then it's for me to decide what I think is the most likely thing to have happened. Here the issues for me to resolve are whether this car was of satisfactory quality at the point of sale and whether the faults the car's developed were due to fair wear and tear caused by Mr O's use of the car.

I think Mr O has been consistent about the nature of the problems he says the car's suffered with. His main complaint has been the various causes of the battery running flat, in particular the alarm and hazard lights that would go off without cause. And I've also seen that he was so concerned about the ongoing problem with the battery that he went to the expense of buying an emergency power pack so he could recharge it himself.

I've also seen that the roadside assistance technicians on two of the callouts have identified potential issues with the dash display and immobiliser alarm. These are faults that would result in the battery being drained. It was also recommended by one of the technicians that the electrical system be tested.

However the dealership hasn't been able to find any faults, even though after the alternator was replaced the battery again was found to be flat and required a jump-start. This problem doesn't appear to have been investigated by the dealership at the time as the car was returned to Mr O.

The car was booked in for a further inspection in February 2018 but there appears to have been miscommunication between the N.I.I.B Limited and Mr O meaning this didn't take place. But I think Mr O has already given the dealership a reasonable opportunity to resolve his concerns and the faults with the car. And the fact that the dealership was the one that inspected the car doesn't mean that N.I.I.B Limited now has to be given a further chance to undertake repairs.

Looking at the evidence I don't think I can reasonably say the problem with the battery is one of wear and tear. The issues started fairly soon after Mr O acquired the car. And I've also seen that between August 2017 and March 2018 Mr O had driven just over 5000 miles. This is a lower mileage than I would've expected and supports Mr O's complaint that he's been unable to use the car as he would've wished.

Where a fault has developed after the first 30 days of acquiring a car but before six months has past then the dealership must be given a chance to repair the fault. The dealership wasn't able to rectify the problems despite having the car made available to it on three occasions.

I appreciate that the exact nature of the fault with the car hasn't been established but the problem with the battery going flat has been persistent. Therefore I'm satisfied I've got sufficient evidence to make a decision about whether I think the car was of satisfactory quality or not. I'm also satisfied that I'm able to decide whether it's more likely than not that this problem was either present or developing at the point of sale.

Taking into account that the faults have been present for the majority of the time Mr O has had the car and that, although it isn't new, I don't think most people would expect a car of this age and mileage to have these ongoing issues. I think it's reasonable to say the car wasn't of satisfactory quality. And that it wasn't of satisfactory quality at the point of sale so that a breach of contract has occurred. This means Mr O should be allowed to reject the car.

So I believe Mr O's entitled to reject the car and I'm upholding his complaint. I'm going to ask N.I.I.B Limited to cancel the agreement with nothing further to pay and collect the car from Mr O. It should also reimburse his deposit together with any monthly instalments paid since March 2018.

The parties have confirmed there wasn't any part exchange involved with this hire purchase agreement and the deposit was paid in cash.

I've seen that being unable to use the car has caused Mr O distress and inconvenience as he's had some mobility problems of his own to deal with at the same time. This led to having to use other forms of transport while he couldn't use the car, as well having to deal with the problems the car caused. I think £300 compensation for the impact of this is fair and reasonable.

my final decision

For the reasons I've given above I'm upholding Mr O's complaint. I require N.I.I.B. Limited to do the following:

- End the agreement with nothing further owed
- Allow Mr O to reject the car
- Collect the car at no cost to Mr O and at a time that is convenient to him
- Show the hire purchase agreement as settled on Mr O's credit file and remove any adverse information about this agreement if it is recorded
- Refund Mr O's deposit of £2,201 together with interest at the rate of 8% per year simple from the date of payment until the date of settlement
- Refund 100% of all monthly payments paid after 1st March 2018
- Pay compensation of £300 for the distress and inconvenience of losing the use of the car and having to make alternative arrangements

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 November 2018.

Jocelyn Griffith
ombudsman