

complaint

Mr B complains that a used car he got with a hire purchase agreement from N.I.I.B. Group Limited (trading as Northridge Finance) is of unsatisfactory quality.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 5 November 2018. A copy of this is attached and it forms part of my final decision. In my provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties.

Both parties have responded. Mr B doesn't accept my provisional conclusions. He has provided detailed submissions over several responses. It wouldn't be practical to reproduce everything here so I hope Mr B will understand if I summarise his comments as follows

- this car is faulty and was not up to the appropriate standard when he got it;
- he was misled about remedial work and asked to let the dealer fix things;
- he's being penalised now because he gave the dealer the chance to repair faults;
- he wasn't told this would affect his right to reject the car - he'd like to know how his rights in relation to rejection were adhered to;
- he didn't accept the repairs and he was never offered a proper refund;
- he was let down by Northridge and the dealer and his options are restricted now so he loses out whatever happens;
- he was forced to keep this car legal and in a roadworthy condition so all of his losses - including every monthly payment, road tax of £240 and insurance of about £867 - should be refunded along with any related cancellation fees;
- he paid about £200 for diagnostic checks at the start of 2018 and £50 for an MOT test near the end of last year; and
- he has experienced excessive stress and inconvenience as a result of Northridge's actions and should receive more than £500 compensation.

Mr B has also discovered some additional issues since I issued my provisional decision. He says tyres fitted at the outset are deteriorating and not in line with the manufacturer's recommended specification or current standards. He had to pay a lump sum of around £500 to renew his car insurance because of this. He wants me to address these matters - along with all of the other evidence - in this decision.

Northridge doesn't agree with my provisional findings either. It says (in summary)

- I have given too much weight to Mr B's evidence and it's wrong to simply accept his version of events which is inconsistent at times;
- further consideration should be given to the car's age and mileage at the point of supply - as many parts would be coming to the end of their natural lifespan;
- an eight year old vehicle with around 68,000 miles on the clock should not be expected to meet a higher standard than the roadworthiness checked in the MOT test passed shortly after supply;
- the dealer is frustrated because many attempts were made to resolve this matter - including remedial work and a refund offer - which were declined by Mr B;
- there wasn't a failure to repair within a reasonable time - Mr B refused repairs that were offered; and

- Mr B should not be entitled to a refund now when he declined an offer last year.

my findings

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

I'd like to thank both parties for their further submissions. Mr B, in particular, has gone to considerable time and trouble to provide very detailed comments and additional information. I know he feels I haven't understood what he's said - or considered his submissions in the proper context. And he thinks my provisional findings are unfair. Northridge, on the other hand, says I've accepted too much of Mr B's evidence and failed to consider properly the car's age and mileage - and earlier efforts to try and sort things out.

I want to assure both parties that I have considered everything they've said and sent. I recognise there are strong feelings on both sides. I am satisfied that I understand the points the parties have made. But, the fact that I understand what's been said by one party or another doesn't mean I must necessarily agree with their view.

I would remind the parties that this service offers informal dispute resolution. I don't have the power to compel or cross examine witnesses or third parties in the way that a court might. It's my job to consider what happened impartially. I have to weigh up *all* of the available evidence. And, where evidence is not clear or it's inconclusive or inconsistent - as some of the evidence is here - I make my decision on the balance of probabilities. This means I think about what seems *most likely* based on the evidence available and the wider circumstances.

I'm going to concentrate on what I consider is material and relevant in this decision. If I don't mention any particular point, that's not because I've failed to take it on board. It's just that I don't think I need to comment on it in order to reach what I consider is a fair and reasonable outcome overall.

right to reject

As I've acknowledged already in my provisional decision, the Consumer Rights Act 2015 gives consumers a "short-term" right to reject goods within the first 30 days. Or, if the consumer agrees to repairs, a final right to reject if the repairs don't resolve the problem within a reasonable time.

There's no dispute that Mr B was unhappy with this car when he first got it - and he raised his concerns with the dealership quite quickly. I am satisfied the dealer offered to fix things and Mr B agreed. I understand Mr B may wish now that he hadn't given the dealer the chance to repair - with the benefit of hindsight. But, I think it was reasonable of him to do so at the time.

I accept the dealer said it would, in effect, buy the car back and settle the finance around this time. I have considered what Northridge says about this offer. I don't think Mr B was offered a complete refund and compensation for his out of pocket expenses or the upset and trouble he experienced. Mr B seems to have explained at the time that he didn't think the offer went far enough - and it's unfortunate the parties weren't able to resolve the matter at that stage. But, I am satisfied Mr B retained a final right to reject if repairs weren't carried out properly or within a reasonable time. And I am not persuaded it would be fair to find he lost that solely on the grounds of the offer that was made.

I realise Mr B feels it was obvious that the repairs undertaken by S didn't fix everything. But, I don't think there was enough evidence to show that the car remained of unsatisfactory quality until the independent expert provided his view in June 2018. And I think it was reasonable to obtain independent expert evidence in these circumstances.

For the reasons I've set out in my provisional findings, I remain of the view that this car was probably of unsatisfactory quality when it was supplied. I'm satisfied Mr B gave S the chance to put things right but the repairs it did were not completely successful and the car was not fixed within a reasonable time. I find it fair that Northridge should take the car back now and refund the deposit Mr B paid with interest.

redress

I know Mr B feels strongly that this finance agreement should be "null and void" as a result of what happened. He wants to be put back in exactly the same position he would have been in if he'd never taken out the finance.

As I've explained, I am satisfied there was a breach of contract here. And this service does generally try to put consumers back in the position they would have been in if a financial business had not done something wrong - insofar as that's reasonably possible. But, I can't simply turn back the clock in this situation. I must consider all of the evidence and relevant circumstances in order to reach a fair and reasonable outcome.

loss of use and enjoyment

I am satisfied Mr B has had some use of this car. He was able to travel a fairly significant distance - over 5,000 miles. And he was kept mobile when this car was off the road for repairs. If Mr B hadn't had the use of *this* car (or the courtesy replacement) he would have had to pay for another vehicle - or some alternative form of transport.

I am not persuaded it is reasonable for Mr B to travel for free in this situation. I think the approach I've taken is fair. And I remain of the view that Northridge should refund 50% of the monthly payments Mr B made under the finance in recognition of his loss of use and enjoyment. The road tax and insurance Mr B paid are expenses that come with running any car. And I am not persuaded that Northridge should have to refund those payments, in these circumstances.

the cost of diagnostic checks and 2018 MOT test fee

Mr B has sent us bank statements that show he made payments totalling £200 to two third party garages in January 2018. He says these were for diagnostic checks in addition to the £82.80 I mentioned in my provisional decision. In light of the timing and recipients of these payments, I think it is likely they relate to diagnostic checks for this car. As I explained in my provisional decision, I think Mr B should have the cost of diagnostic checks refunded as these are charges he would not have incurred but for the breach of contract.

Mr B says he also had to pay about £50 to put the car through an MOT test in December 2018. I understand Mr B's reasons for putting the car through the MOT. I think it likely he'll receive very little benefit from that - if he accepts this decision - as I have found Northridge should take the car back.

I told Northridge about these payments. I explained I was minded to conclude that Mr B should have them refunded - if they haven't been refunded already. Nothing Northridge has said has changed my mind. And I find it fair that Northridge should refund these amounts - if Mr B provides evidence of the relevant payments.

distress and inconvenience

I have no doubt that Mr B is disappointed that this car was not of satisfactory quality when he got it. I realise it has been frustrating for him to have to return to dealers and keep driving the car whilst it had ongoing issues. And I can see he feels Northridge should have done much more to try and resolve matters.

In my provisional decision I said I thought Northridge should pay Mr B £350 compensation for the impact of any breach of contract or mistakes it has made on Mr B. I know Mr B feels he should receive much more than that but I remain of the view that £350 is fair and reasonable compensation overall.

tyres not to specification and the cost of renewing insurance

Mr B asked for some extra time to respond to my provisional decision in December. I considered it was reasonable to allow that, given the time of year in particular. I understand he feels now that I must address everything he put forward in his additional submissions in this final decision. But, as I have already explained to Mr B, the fact that I gave him some additional time does not mean I am obliged to (or should reasonably) consider *new* issues in this decision.

In his response to my provisional decision Mr B says the following issues have come to light

- the MOT test in December identified rear tyres are cracking, deteriorating and in need of imminent change;
- he's been told the tyres the car came with do not meet current standards or the manufacturer's specification - they're the wrong speed rating;
- he says this means the car was not roadworthy when it was sold so his insurance and road tax were void the whole time he's had the car; and
- he's just had to take out specialist insurance because the tyres are not to specification which cost just over £500.

I can see Mr B has spoken to the several third parties about the tyres - including the tyre manufacturer. He's told me the tyre manufacturer said "*the tyres should be to the manufacturer's specification...in this case the speed and rating would never be attained on our roads but [the manufacturer] has specified them*". And "*if they were winter tyres or special 5 star rated*" (Mr B says they are not) "*then they can be "W" rated and need further investigation*".

I understand it's come as something of a shock to Mr B to find the car has apparently had the wrong tyres on since the outset. I share his surprise as I can see he specifically asked a third party garage (L) to check the tyre specification (when it checked the car in January last year) and L said this was correct at that time. The garages that inspected the car subsequently don't seem to have noticed the tyres weren't to specification either - nor did the independent expert or the December MOT.

I realise Mr B wants me to make findings about these matters in this decision. But I haven't got enough evidence to fairly conclude there was something wrong with the tyres at the point of supply that has adversely affected Mr B or cause him additional loss. I think it's likely to take some time to investigate Mr B's new concerns, in the way that he'd like. And I consider it is fair that Northridge should have the chance to consider what Mr B has said and respond.

I've already found it is fair that Northridge should take this car back and pay any fee for cancelling relevant car insurance. The new information Mr B has provided doesn't make any difference to those findings. And, if Mr B accepts my decision, he won't be troubled with the tyres any further - and Northridge will refund any administration fee Mr B is charged for cancelling the insurance.

Taking everything into account, I am not persuaded it would be reasonable to delay this decision further - at this late stage. And I can't fairly consider the new issues referred to above. It remains open to Mr B to raise the new issues with Northridge and, if he's unhappy with the response, he may be able to bring another complaint (about new issues only) to this service.

I appreciate my conclusions will come as a disappointment both parties. I know Mr B, in particular, will probably feel let down. But, he's not obliged to accept my decision - in which case it remains open to Mr B to seek to resolve this matter by alternative means should he wish to do so.

my final decision

My decision is I uphold this complaint. In full and final settlement I require N.I.I.B. Group Limited (trading as Northridge Finance) to

1. arrange to take the car back at no cost to Mr B;
2. cancel Mr B's finance agreement with nothing further to pay;
3. refund the initial deposit (recorded in the finance agreement as £2,750);
4. refund 50% of each monthly payment Mr B has made since the car was supplied;
5. refund £282.80 in fees Mr B has paid to obtain diagnostic checks and condition reports along with 2018 MOT test fee and any administration fee that Mr B has to pay to cancel or transfer his insurance - on provision of evidence to show these payments were made;
6. pay interest at 8% simple a year from the date of payment to the date of settlement on each of the refunds referred to at above;
7. pay Mr B £350 for distress and inconvenience; and
8. remove any information recorded about the finance agreement from Mr B's credit file.

If Northridge considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B 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 B to accept or reject my decision before 11 April 2019.

Claire Jackson
ombudsman

copy provisional decision

complaint

Mr B complains that a used car he acquired with a hire purchase agreement from N.I.I.B. Group Limited (trading as Northridge Finance) is of unsatisfactory quality.

background

Mr B got this car in late December 2017. He noticed several faults and contacted the selling dealer (that I'll refer to as S) the next day. It was near Christmas so S suggested Mr B take the car to dealership closer to home to have it checked and alleviate any safety concerns. Mr B did that and the local dealer (that I'll call L) identified several issues. Mr B wanted to reject the car at first but he agreed to give S the chance to repair, after further discussion.

S carried out some remedial work but the car battery cracked while it was being charged, leaking a substance that left a smell in the car. Northridge says S offered to buy the car back at this stage but Mr B was prepared to keep it if S arranged a deep clean. Mr B says S offered to get a settlement figure for the finance but he wasn't offered a proper refund.

When Mr B got the car back he found some faults were still present - S hadn't been able to replicate the suspension issue so that wasn't fixed and there was a terrible acrid smell, amongst other things. Mr B took the car back to L for further checks and said the "knocking" sound was still there and the tyre pressure monitoring system doesn't work.

Mr B thinks the car was of unsatisfactory quality when he got it. He agreed (reluctantly) to give S the chance to repair but S has failed to do so. He wants to reject the car now for a full refund and compensation.

Our investigator didn't hear from Northridge initially so she issued her view with limited information. She was satisfied, from information Mr B provided, that the car was probably of unsatisfactory quality at the point of supply and Northridge hasn't been able to repair all of the faults. She recommends Northridge should

- cancel the finance and collect the car at no cost to Mr B;
- refund finance payments from 2 January 2018, when Mr B first said he wanted to reject the car;
- refund the deposit plus 8% simple interest a year from the date of payment until the date of settlement;
- remove any adverse information from Mr B's credit file; and
- pay £50 compensation for inconvenience caused.

Mr B says he's incurred out of pocket expenses of about £600 for various diagnostic tests, road tax and insurance which should be taken into account.

Northridge arranged for an independent expert to inspect the car in June. He found a "knock" in the suspension and the car "would not be considered as of satisfactory quality". But, Northridge says

- this doesn't mean there was an inherent issue at the point of supply
- the car was of satisfactory quality for a car of that age and mileage
- it passed an MOT test in December 2017
- S offered to take the car back and provide a refund early on but Mr B chose to keep it and accept repairs
- those repairs were carried out and Mr B has been able to drive the car since
- it's unreasonable to let Mr B reject the car now.

Northridge asked for the matter to be passed to an ombudsman for review.

my provisional findings

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

Mr B acquired this car with finance from Northridge so Northridge was obliged to ensure it was of satisfactory quality at the point of supply. The level of quality that is to be considered "satisfactory" varies according to individual circumstances. But it's generally considered reasonable to take the car's age, mileage and cost when it was supplied into account.

This car was eight years old with over just over 65,000 miles on the clock and cost over £14,000 when Mr B got it. As such, I don't think Mr B could reasonably expect the car to be fault free - as some parts are likely to be worn and need replacing at some stage.

I understand Mr B took some time and went to some trouble to find this car. He wanted this model but eventually chose this particular car - even though he could have paid less for similar elsewhere - because it was sold under the manufacturer's approved used scheme.

This scheme says approved used cars have been serviced in accordance with the manufacturer's recommendations and undergo a "stringent" detailed technical inspection and "comprehensive" road test before sale. I am satisfied this was a material factor in Mr B's decision to accept this particular car and take out the finance. And I think it's reasonable to take that into account here.

I can see the car passed an MOT test shortly before it was supplied with no advisories. And I accept that shows it was roadworthy on the day of the test. But, I am not persuaded this means the car must have been of satisfactory quality when Mr B got it - I think he reasonably expected the car to meet a somewhat higher standard than that.

There's no dispute that L identified the following issues when it checked the car shortly after Mr B got it

- stone chips on front had been touched up but are substandard - at least one splitting and lifting
- sill light on driver's side not working
- tracking issues - full alignment recommended
- noise from suspension at lower speeds on rough terrain - road test and investigation recommended
- tyre pressure system doesn't work - needs investigation
- poor valet pre sale
- first aid kit out of date and used
- battery doesn't seem to hold power - current charge around 81%

I'm satisfied some of these at least should reasonably be considered faults - notwithstanding the car's age and mileage. I appreciate Mr B wishes now that he'd rejected the car outright last January - under the short term right to reject provided by the Consumer Rights Act 2015 (CRA). But, I think it was reasonable to give S the chance to repair in the circumstances.

I accept S seems to have carried out some successful repairs but I am not persuaded it fixed everything. L says the suspension knock was still present in March. When Mr B had the car checked again last June by another third party, it found

- both rear bottom shock absorber bushes showing signs of corrosion
- both rear lower arm bushes split
- noise from NSF lower rear arm
- noise from steering rack and vibrations through steering wheel - would require further inspection of steering rack to clarify exactly

- tyre pressure monitoring system will not reset - requires further diagnosis to clarify
- the car has "run flat" tyres so caution is needed as the driver might not be aware of a flat tyre without the monitoring system - which is potentially unsafe.

And the independent expert instructed by Northridge says the car is of unsatisfactory quality because he experienced

- a suspension knock
- vibration through the steering
- the vehicle "wanders slightly"
- air condition doesn't blow cold
- slight movement in the anti-roll bar bushes and rear suspension arm bushes.

From the evidence I've seen so far, I am satisfied this car was probably of unsatisfactory quality when Mr B got it. I think it was reasonable of Mr B to give Northridge the chance to repair. But, it looks as if Northridge has failed to do so within a reasonable time. I can see Mr B has experienced considerable inconvenience as a result. And I don't think he should have to keep this car any longer. I agree with our investigator that it's fair and reasonable for Mr B to be allowed to reject the car now and get his deposit back with interest.

putting things right

I can see the car was off the road for some time in the early part of the year while S undertook some repairs. Mr B has confirmed he was supplied with an alternative vehicle and kept mobile throughout. And I don't think it would be reasonable to require Northridge to refund all of Mr B's monthly instalments in this situation.

I know Mr B feels very strongly that he should have nothing less than a complete refund here. He says the car is dangerous, he takes it out as little as possible and he should be put back in the position he would have been in if Northridge had not supplied it.

I accept the third party that inspected in June mentioned the faulty tyre pressure monitor is a "potential" safety issue - because the run flat tyres could deflate and the driver wouldn't know. But, I note the independent expert doesn't say the car is not roadworthy or it is unsafe.

Where a business has done something wrong we will generally tell it to put things right by putting the consumer back in the position they'd have been in otherwise. But, it's not my role to punish Northridge - or any individual employee. I am satisfied Mr B has had some use of this car and he's driving it still - albeit to a limited extent. And I think it is reasonable to acknowledge that he would have had to pay some transport costs, in any event. If Mr B hadn't had this car it seems likely he would have acquired another - in which case he would have paid for the cost of running that - including road tax and insurance.

I'm not persuaded that Mr B should reasonably have all of his instalments back here. I do accept however that he's probably used this car less than he reasonably expected to. Mr B seems to have driven the car about 4,000 miles since he got it - although I note he says about 500 of those were the result of taking the car back and forth to the dealer.

As far as I can see Mr B has driven the car about half the average mileage to be expected over the time he's had it. I think it is reasonable he should pay something for that. And I am minded to find it is fair and reasonable for Northridge to refund 50% of each monthly payment made by Mr B to reflect the limited use he's had of it.

I am not persuaded that Mr B should have the cost of insurance or road tax refunded - as I think he would probably have incurred these costs in any event. If Mr B has to pay a fee to cancel or transfer his insurance as a result of rejecting the car then I consider it fair that Northridge should refund that - if Mr B supplies evidence of the relevant payment.

There's clearly been some disagreement between Mr B and the dealer and Northridge about what's wrong with this car. I don't think it was unreasonable of Mr B to want to get his own diagnostic tests done in this situation. He wouldn't have had to do that if Northridge had not supplied a faulty car - or taken the car back earlier. And I consider it is fair and reasonable for Northridge to refund the related fees which I understand amount to £82.80.

I have considered everything that has happened here carefully. I understand Mr B's frustration and considerable disappointment in receiving this faulty car after he'd taken such care to select it. And I can see he feels let down by the after sales care he received from S in particular. But, I should make it clear that I am unable to hold Northridge responsible for that.

I am satisfied Mr B has experienced a good deal of upset and inconvenience as a result of getting a faulty car and having to take it for repairs and inspections. I don't think Northridge has helped in the way it responded when Mr B complained and asked for help. And I am minded to find Northridge should pay Mr B £350 compensation for the distress and inconvenience he's experienced.

I realise these provisional findings are likely to disappoint both parties. I invite Mr B and Northridge to consider what I've said and let me have any further comments or evidence by 19 November 2018. Then I'll consider everything again and make my final decision.

my provisional decision

For the reasons I've given above, subject to any further comments or evidence I may receive from the parties by 19 November 2018 my provisional decision is I am minded to uphold this complaint. And I intend to require N.I.I.B. Group Limited (trading as Northridge Finance) to

- 1 cancel Mr B's finance agreement with nothing further to pay
- 2 arrange to take the car back at no cost to Mr B
- 3 refund the initial deposit (recorded in the finance agreement as £2,750)
- 4 refund 50% of each monthly payment Mr B has made since the car was supplied
- 5 refund £82.80 in fees Mr B has paid to obtain reports in respect of the car's condition
- 6 refund any administration fee that Mr B has to pay to cancel or transfer his insurance on provision of evidence
- 7 pay interest at 8% simple a year from the date of payment to the date of settlement on each of the refunds referred to at above
- 8 pay Mr B £350 for distress and inconvenience
- 9 remove any adverse information recorded about the finance from Mr B's credit file.