

The complaint

Mr C complains about the quality of a used car that was supplied through a hire purchase agreement with MotoNovo Finance Limited (MotoNovo). Mr C is also unhappy that his repayments were not placed on hold whilst his complaint was being investigated.

What happened

In February 2023, Mr C acquired a used car through a hire purchase agreement with MotoNovo. The car was around seven years old and had travelled 44,069 miles when it was supplied to Mr C. The cash price of the car was £11,243. Mr C paid a deposit of £1000, so the total amount financed on the agreement was £1,243 payable over 60 months.

In his complaint form, Mr C said his car broke down on the same day that he collected it. He provided us with a copy of an email he sent to the dealership about it. He said it had lost power and the steering was very heavy. Mr C said he contacted the broker to raise a complaint. He provided us with a copy of correspondence he sent to the dealership, dated 13 March 2023, requesting a rejection of the car as he'd lost faith in it.

Mr C said the car was recovered to the dealership where he was told the problem was the recalibration of the steering which had been repaired. However, Mr C said the car broke down again soon after.

Mr C said he was told by the dealership to have the car inspected, so in March 2023 he had the car recovered to a manufacturer garage, where they identified an issue with the steering and calibration. Mr C says he was told the steering and anti-roll needed recalibrating. However, on driving the car back from the manufacturer Mr C said the car broke down again.

Mr C said he managed to get a refund from his bank for the deposits he paid, however he said the dealership wanted further confirmation of the faults before going ahead with a rejection of the car.

Mr C said the whole situation has affected him and his family. He said he had to pay £240 for the manufacturer's invoice and for the recovery costs. Mr C says in settlement of the complaint he wants the agreement cancelled, a reimbursement of what he's paid and money for storage of the car on his driveway.

Whilst MotoNovo were still investigating the complaint, Mr C brought it to our service for investigation. As part of their investigation MotoNovo asked that Mr C arrange for the car to be independently inspected which wasn't done.

In May 2023, MotoNovo issued their final response. They didn't uphold the complaint on the basis that they were unable to investigate the issues and confirm the outcome with Mr C.

MotoNovo issued a further response advising Mr C that he was required to maintain the repayments under his agreement. Mr C told us his repayments were being recorded as missed on his credit file.

Mr C confirmed he was not using the car and provided an image of the mileage, which was at 44,358. He also provided an image of diagnostics showing fault codes relating to the steering.

Having considered all the information on file, one of our investigators recommended that Mr C's complaint should not be upheld. The investigator felt there was no evidence to show the car was of unsatisfactory quality when it was supplied to Mr C.

Mr C didn't accept the investigator's recommendation and asked that his complaint be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and 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.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

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

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that MotoNovo supplied Mr C with a used car that had travelled around 44,000 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage, or that it may require maintenance sooner than a less road worn car.

From the information provided I think it's likely there was a fault with the car. This is apparent from the manufacturer's invoice which identified fault codes in relation to the steering angle sensor and calibration. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

satisfactory quality

In his complaint form Mr C provided a chronology of the problems he had with the car since the point of supply. This included issues with the steering, warning lights and with it breaking down.

MotoNovo said they spoke to Mr C about his complaint but haven't been able to reach him to arrange an independent inspection to confirm the issues.

The manufacturer's invoice advised of fault codes relating to the steering and calibration. However, the commentary on the invoice also says:

'carried out sensor calibration – tested all ok, customer to monitor and assess'

Mr C also provided images of a diagnostics screen showing the car had two fault codes relating to the steering and its calibration. Mr C has also said the car continued to cut out.

I acknowledge Mr C has said that he no longer uses the car, and provided an image of the mileage to support this, however, what I haven't seen is evidence that the problem was present or developing at the point of supply. Under the CRA, this evidence is vital to demonstrate that there were faults with Mr C's car (beyond what would be considered reasonable for a car of its age, mileage and condition), that were present or developing when it was supplied to him.

I think it was reasonable that MotoNovo be given an opportunity to have the car inspected by an expert engineer. I acknowledge the manufacturer's garage has provided some fault codes with commentary; however, what they've provided was not conclusive in its diagnosis and suggested the problem was fixed.

By allowing a further and more in-depth investigation to take place, the problems experienced by Mr C would be investigated, along with the fault codes, so both parties could better understand whether there are any underlying issues with the car. Without further detailed evidence, for example in the form of an inspection report or a full diagnosis, I'm unable to say whether any of the issues described by Mr C relate to an underlying issue, or to something more serious which would render the car to be of unsatisfactory quality.

All things considered, I don't have the evidence to conclude that the car wasn't of satisfactory quality when it was supplied to Mr C, and so I won't be instructing MotoNovo to take any action in relation to this part of Mr C's complaint.

repayments

In their final response dated 4 May 2023, MotoNovo advised that Mr C was told during a phone call in March 2023 that his repayments couldn't be placed on hold, but that another option for zero payments was offered to him. And in May 2023 MotoNovo told us that Mr C cancelled his monthly direct debit before any payments could be taken for the agreement. I suspect Mr C would have done so as he intended on returning the car. However, the terms of the hire purchase agreement highlight the consequences of missing any payments which includes a record of the default being passed to the credit reference bureaus.

I acknowledge Mr C expected the repayments to be placed on hold whilst his complaint about the quality of the car was investigated, however I can't see any evidence that MotoNovo agreed to this, made provisions in the agreement terms for it or told Mr C that he should cancel his direct debit with them.

So having considered the evidence provided, I'm satisfied that it was reasonable for MotoNovo to expect that Mr C would continue to make his monthly repayments as agreed, and for reporting missed payments to the credit reference agencies.

As I've concluded that the car was of satisfactory quality at the point it was supplied, and that MotoNovo were acting fairly by expecting Mr C to make his monthly repayments, I don't require MotoNovo to take any action in respect of this complaint.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mr C's complaint against MotoNovo Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 November 2023.

Benjamin John
Ombudsman