

The complaint

Mrs P complains that misrepresentations were made when she acquired a used car from MotoNovo Finance Limited under a hire purchase agreement (HPA).

What happened

Mrs P took out this HPA in August 2020 for a nine year old used car with around 105,000 miles on the clock. In March the following year the car broke down and she took it back to the supplying dealer. The dealer said there was a gear selection error but the problem continued and the car went back again in May 2021, when gearbox fluid was topped up. In June 2021 (after she'd covered about 3,000 miles) Mrs P was told there was excessive leaking around the power steering and uneven alignment was causing wear on her tyres. She had further issues over the next four months and took the car to a specialist technician for this brand who said (among other things) the starter solenoid had failed, there was an oil leak and the gearbox (which was manufactured by a third party that I'll call M) was harsh and noisy on selection, because of a suspected internal pressure fault.

Mrs P was told that repair costs would be substantial and she complained to MotoNovo that the car was of unsatisfactory quality when it was supplied. MotoNovo asked for more information and (when that wasn't provided) issued a final response rejecting the complaint. MotoNovo thought it was for Mrs P to show that the car had faults present when she got it as the quality issues were raised more than six months after supply. It offered to look at things again if she provided more evidence – such as a report from an independent expert - and said it would refund the cost of such a report (up to £250) if relevant faults were found.

Mrs P didn't think that was fair. She said she wasn't driving normally due to lockdown - or these issues would have appeared much sooner, probably within 4 weeks. She referred the matter to our service and a different ombudsman issued a decision on her quality complaint in 2022. That ombudsman didn't think there was enough evidence to conclude that this car was of unsatisfactory quality when it was supplied.

Mrs P also stated that misrepresentations were made at the outset. The first ombudsman was unable to deal with this in her decision but she said it was open to Mrs P to raise it with MotoNovo and bring another complaint to our service if she was unhappy with the response. Mrs P did so in July 2022 and, when MotoNovo didn't respond, she referred the matter to our service. She said (in summary):-

- the gearbox in her car was incompatible for this model at the time of purchase;
- she was led to believe the car was a 4th generation "new model" and these models (2011 -2013) don't have any engine components manufactured by M so her car is not as described - contrary to section 9(2) Consumer Rights Act 2015 (CRA); she wasn't told about any modifications, she reasonably assumed that this car's gearbox was made by the vehicle manufacturer (as it's a fundamental part of a car) and, if the dealer had told her it didn't, she wouldn't have accepted the car and taken out the finance;
- she wasn't given enough information about the car at the point of sale to enable her to make an informed decision, the car is not as described or fit for purpose, it was

mis-sold and, by default, so was the HPA – as, under principle 7 of CONC, a firm must ensure that its employees and agents communicate information in a way which is clear, fair, and not misleading;

- the supplying dealer guaranteed the car would come with a "brand new MOT and service" but the last MOT was carried out by the previous owner and there's no evidence the car was serviced - meaning the dealer provided false information, which she relied on, contrary to Consumer Protection (Amendment) Regulations 2014;
- the car is not safe and she's been too anxious to use it since July 2021, she relied on family and taxis at first but had to acquire another car on finance - even though she's still paying for this one;
- the whole experience has been very distressing and caused immense anxiety and financial loss so she'd like the car to be collected and her expenses reimbursed with interest plus compensation.

Our investigator considered the evidence and he wasn't persuaded that the car was misrepresented. He accepted it was advertised as being a 'new model' but, having considered the specification and other information, he was satisfied this car is the "new" model referred to and the advertisement wasn't inaccurate in this respect. He noted the advertisement also refers to a 'fantastic service history' but he said that's not the same as a "full" service history and he didn't think this was inaccurate either.

The investigator accepted the gearbox was manufactured by M but he's satisfied this is a separate component to the engine, gearboxes experience wear and tear so may need to be replaced during the lifetime of the vehicle and it's not unusual for used cars to have non-original parts such as this. Taking into account the car's age and mileage at the point of supply, he thought a previous owner might have replaced the original gearbox and replacing a part like this doesn't mean the car wasn't as advertised. He found it unlikely the gearbox was incompatible because Mrs P was able to drive around 1,000 miles before any issues appeared and the specialist technician didn't mention incompatibility.

The investigator didn't think there was enough evidence to find the car was mis-described or misrepresented and he didn't recommend MotoNovo should have do anything further. Mrs P disagreed and she asked for the matter to be referred to an ombudsman. She said (in summary):-

- MotoNovo agreed that she was misled in an email and apologised but then focussed on the quality complaint relying on fact she had the car for more than six months (the six month "rule" in the CRA) which is based on the assumption a vehicle would have driven 6,000 miles (on average) in that time so any fundamental problems would be apparent;
- she'd only driven this car around 1,000 miles – the average equivalent of one month - because of covid restrictions and, if she'd been able to drive the car "as normal", the fault would probably have appeared within 4 weeks of purchase;
- she was sold a car with an incompatible gearbox, which is the reason it broke down after 1,000 miles and it has been diagnosed as unsafe to drive after many repairs and 4,000 miles;
- the advertisement clearly stated that the next MOT was due to expire on "08/2021" and the dealer's website says "all our cars are backed up by up to 6 months warranty and a full service and MOT before collection", but the last MOT before supply here (on 13 August 2020) was on 2 June 2020 by the previous owner; and
- the dealer may have carried out an MOT and full service in August but discovered a leak in the gearbox and patched it up before sale.

Having considered the available evidence, I wasn't minded to uphold Mrs P's complaint. My

reasons weren't quite the same as the investigator's and I thought it was fair to give the parties the chance to see my provisional findings and respond (if they wanted) to before I made my final decision. I issued a provisional decision on 21 July 2023. I've set out what I decided provisionally (and why) below (in italics) – this forms part of my final decision.

My provisional decision

Where 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.

Both parties have provided a good deal of evidence here and made fairly detailed submissions so I'm going to have to summarise things in my decision. The rules of our service allow me to do this. I want to assure both parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. I'm going to concentrate however on what I consider is key to reaching a fair and reasonable outcome.

I should also make it clear at the start that the Financial Ombudsman Service provides alternative dispute resolution which is free to complainants. I'm not a regulator. I don't have the power to tell MotoNovo how to operate on a day to day basis and it's not within my remit to punish a financial business or any individual. My job here is to look at all of the information available about this particular complaint, without taking sides, and consider the merits on a fair and reasonable basis.

MotoNovo supplied this car to Mrs P under a HPA and it was obliged, under the CRA, to ensure (amongst other things) that the car was as described and of satisfactory quality at the point of supply. I can see that Mrs P remains unhappy about the quality of this car but that's not something I'm able to look at in this decision because her quality complaint has already been determined by our service.

I'm satisfied that this car should have been described accurately (under the CRA) and I can also consider any representations made during the course of pre-sale negotiations in this complaint against MotoNovo, under section 56 of the Consumer Credit Act 1974.

Mrs P says a number of misrepresentations were made here – specifically the car was not a 4th generation model as set out in the advertisement and she was given incorrect information about the MOT and service history. For me to uphold this part of her complaint, I'd need to be satisfied that it's likely the dealer made misrepresentations (that is, told Mrs P something that wasn't true) and that untrue statement induced her to accept the car and take out the HPA.

I realise Mrs P is very disappointed with this car and I think it's understandable she was concerned to find it had a brand of gearbox fitted that she wasn't expecting. However for much the same reasons as the investigator, I'm not persuaded that means the car was misrepresented or mis-described and I'll explain why in more detail below.

I'm satisfied the gearbox forms part of a vehicle's transmission. I can see (from an online search) that some models of this brand were factory fitted with a transmission manufactured by M (as the two brands were linked for a time). I can't be certain if that was the case here, from the evidence I've got. But, even if this car had a replacement gearbox, I can't fairly find that means it wasn't as described - or it was misrepresented.

As the investigator explained, a gearbox is separate to the engine, it's a part that's subject to wear and tear and may need to be replaced from time to time. I don't think it's out of the

ordinary for a gearbox to be replaced in a vehicle of this age and mileage. And replacing a part like this isn't a modification (of the sort that might need to be notified to insurers, for example) - so I wouldn't expect the dealer to point this out.

I understand Mrs P feels the gearbox fitted was incompatible but I find that unlikely. If it was incompatible in some way, I'd expect the specialist technician to have said so specifically, but he doesn't. And, considering the way a gearbox has to fit and work with the rest of a vehicle's transmission, I don't think an incompatible gearbox could be fitted and the car would remain driveable. I'm satisfied Mrs P was able to drive this car for around 1,000 miles over several months before she had any issue.

Mrs P has also referred me to information in the advertisement and available on the dealer's website – where it says every car receives a full service and MOT before sale. She thinks the dealer may have serviced this car, found a fault and fixed this before sale. I accept the original advertisement for the car states that the MOT would expire in August 2021 and it had a “fantastic” service history. Looking at the car's MOT history, the last MOT before supply was on in June 2020. I don't know why the advertisement referred to August instead - this may have been a typographical error – but I accept it's not right.

As I explained earlier, for me to find misrepresentations were made here, I'd need to be satisfied not only that Mrs P was told something untrue but she also reasonably relied on this when she made the decision to purchase. I think it's unlikely – given all the considerations that go into choosing a vehicle – that a difference of one month or so in the MOT expiry date would materially influence most purchasers. I'm satisfied it would have been fairly easy to check the MOT date so, if this was of particular importance to Mrs P at the relevant time, I consider it would have been reasonable for her to have done so.

Like the investigator, I don't think a “fantastic” service history is the same as a “full” service history so I can't reasonably find this was misrepresented. Nor do I have sufficient evidence to reasonably find Mrs P was misled about whether the car had a full service before supply. I've seen nothing to show that she saw the information on the dealer's website before she accepted this car. And, if even I was persuaded she reasonably relied on this, she seems to accept the dealer did carry out a full service - so that wasn't misrepresented.

I realise Mrs P thinks the dealer may have deliberately patched up a fault during the course of that full service but I've seen nothing to show that's what happened. And, as I explained above, I'm unable to look into quality issues further here as service has already issued a decision about that.

Ultimately, similarly to the MOT date, if the car's service history played a material part in Mrs P's decision to accept it, I think it would have been reasonable for her to check this before purchase. I can't see that she raised either the service history or the MOT expiry date for some time after she got the car which, I think, also suggests these weren't particularly significant to her. It follows, I'm not presently persuaded that the incorrect information supplied is likely to have been a material factor in Mrs P's decision to accept the car and take out the finance. Taking everything I've seen into account, I think it's more likely than not this car was the “new model” described in the advertisement and I can't fairly find it was mis-described or misrepresented.

Mrs P has referred (in some of the correspondence I've seen) to additional concerns about commission, interest and charges relating to the HPA. She hasn't raised those issues in her complaint form with our service however and I haven't considered them here. So, if Mrs P remains unhappy with MotoNovo's response to her complaint about interest, commission and fees, she may be able to raise a separate complaint with our service.

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.

I invited the parties to consider my provisional findings and let me have any further comments or new evidence by 4 August 2023 and I'd look at all the evidence available after that and make my final decision.

The time set for responses has now passed, Mrs R hasn't sent us anything else and MotoNovo has nothing further to add. I see no reasonable grounds to depart from my provisional decision in the circumstances. I remain of the view there aren't sufficient fair and reasonable grounds to uphold this complaint and I'm unable to require MotoNovo to do anything else.

I realise this decision is likely to come as a disappointment to Mrs P and I'm sorry if she feels let down. Mrs P isn't obliged however to accept what I've said, in which case it remains open to her to pursue the matter by any other means that may be available.

My final decision

For the reasons set out above, my decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 5 September 2023.

Claire Jackson
Ombudsman