

The complaint

Mr N complains that a car supplied to him under a hire purchase agreement with MotoNovo Finance Limited was of an unsatisfactory quality.

What happened

In February 2023, Mr N was supplied with a used car through a hire purchase agreement with MotoNovo. The agreement was for £12,696 over 37 months, with monthly repayments of £444.24. Mr N also paid a cash deposit of £6,000. At the time it was sold, the car was just over 28 months old and had done 50,755 miles.

In June 2023, Mr N complained to MotoNovo that the car was faulty. He said that there were problems with the rear brake discs, and the front brushes. He said that the airbag sensor and the heads-up display were faulty. And he said that there was damage to the chrome trim on the front seats. MotoNovo arranged for an independent engineer to inspect the car. The independent engineer said he had been able to identify some of the faults that Mr N had complained about but thought they wouldn't have been present when the car was supplied to him. So MotoNovo didn't uphold the complaint. Unhappy with that response Mr N brought his complaint to us.

Mr N's complaint has been assessed by one of our investigators. She said it was clear, from the engineer's report, that the faults Mr N described were present on his car when he complained to MotoNovo. But she said the report was equally clear that it was likely that the problems were not present, or developing, at the time the car was sold. The investigator noted that some of the problems Mr N had identified were likely to be as a result of normal wear and tear during the time he had been using the car. So she didn't think the complaint should be upheld.

Mr N didn't agree with the investigator's assessment. He said that he'd told the car dealer about the problems with the seat trim around two weeks after he'd acquired the car. Mr N said he'd needed to pay for repairs to his car for the brake and suspension issues to prevent any worsening of the car's condition. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr N and by MotoNovo. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Mr N was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of finance used to purchase the car, MotoNovo is responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history.

The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. So given Mr N complained about the problems to MotoNovo around four months after he purchased the car, it would be for MotoNovo to establish that any faults were not present at the time of sale.

The report that MotoNovo arranged makes it clear that the engineer's duty is that of an expert to help the Court. So, regardless of who instructed the engineer, and who paid for the inspection, the engineer is independent of either MotoNovo or Mr N. Because of this, I think it's reasonable for MotoNovo, and me, to rely on the contents of this report.

The engineer's report did identify that there was some corrosion to the rear brake discs. And as a result there was some reduction in the efficiency of both the service brake and the electronic handbrake. It also noted some juddering from the problems with the front suspension bushes. And there was some damage to the chrome and plastic trims of the front seats. The engineer didn't identify any faults with the airbag system or the heads-up display.

But the engineer then went on to apply his professional opinion to the likely time the faults that had been identified would have been present. He noted that since Mr N had acquired the vehicle it had travelled over 4,000 miles. So the engineer concluded that the faults he had identified would not have been present, or developing, at the time of purchase. He thought the usage of the car since the purchase was sufficient to conclude the faults had developed in that period.

I have considered that Mr N first raised the issue of the damage to the seat trims with the dealer around two weeks after his purchase. I think I would first note that those trims appear to be cosmetic in nature, rather than required for the correct operation of the car or its safety features. So in themselves they wouldn't be something that would lead me to conclude that the car could be rejected. Instead they might be something that was suitable for repair.

Mr N hasn't told us what happened when he contacted the dealer about the damage. But given he was purchasing a used car, I would expect that he would have carefully checked the condition of the trims and seats within the car. I understand the car had leather seating that might easily have been damaged by its previous use. So I would have expected Mr N to notice what appears to be very obvious damage to the cosmetic trim of both front seats before he agreed to purchase the car. So I think it unlikely he would have continued with the purchase, or at the very least have raised the problems with the dealer, had that damage been present at the time.

So I'm not persuaded that it would be reasonable to conclude the damage Mr N reported, albeit relatively soon after purchasing the car, was also present at the time of purchase and not readily visible to Mr N. Instead, on the balance of probability, I would conclude that it is more likely that the damage occurred after Mr N took delivery of the car.

But I have also considered the possibility that the damage was present when the car was supplied. Section 9(4)b of the CRA says that where goods are inspected before purchase (as it seems would have happened here), then anything that ought to have been reasonably revealed by that examination is not a valid reason for a complaint about goods not being of satisfactory quality. So, if the damage was present when the car was supplied to Mr N, then he accepted this by going ahead with the purchase.

So in summary, considering all the relevant circumstances, I'm satisfied Mr N's car was of a satisfactory quality when supplied. So I don't think MotoNovo are responsible for the costs of repairing Mr N's car.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against MotoNovo Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 5 June 2024.

Paul Reilly
Ombudsman