

## **The complaint**

Miss S complains about the quality of a car she has been financing through an agreement with MotoNovo Finance Limited, who I'll call MotoNovo.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint Miss S, but I don't think MotoNovo have been unreasonable to reject her claim. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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.

Miss S acquired her car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then MotoNovo, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the service history of the car, its age, and the mileage at the time the car was supplied to Miss S. The car here had a partial service history, was five years old, and had completed about 65,000 miles.

The engine failed in this car after about 84,600 miles and after Miss S had been in possession of it for about a year and a half.

The expert Miss S commissioned has suggested that:

*"This failure occurs from a progressive nature when the vehicle has not been serviced in accordance with the manufacturer's specification. If the engine oil and filter are not*

*replaced, at the correct intervals, the oil becomes contaminated and carbon black particulate debris develops within the engine oil galleries.”*

*The examiner is of the opinion that the failure to have the vehicle serviced correctly, prior to the Claimant purchasing the vehicle, has resulted in the catastrophic engine failure.”*

I don't think the car had been misrepresented to Miss S. There was no false statement of fact as the car was advertised as having “*documented service history*”. I accept that doesn't mean there was a full service history, only that there would be some documentation of services completed. In this case the car had missed two services between 2017 and 2019.

I think a reasonable person would therefore expect that problems the services were intended to prevent happening, such as the carbon build up the expert has identified and that the expert has suggested is the cause of the engine failure, would not have been averted. That doesn't mean the car was supplied in an unsatisfactory condition; it seems it was provided in a condition that was to be expected for a car that hadn't been adequately serviced. I don't think it would be fair to hold MotoNovo responsible for the failure.

The expert mechanic has, more recently commented:

*“...by design, the crankshaft is compact and narrow, meaning it has weak points between the rod bearing journals and counterweights. So, this means the weak point in its construction are stressed due to poor maintenance. ... (the manufacturers) have since upgraded these engines in the Generation Two vehicles to stop this failure from happening clearly confirming a manufacturing defect increased by the failure to correctly service the vehicles in accordance with the manufacturers recommendations.”*

I've considered if that suggests there was a manufacturing fault with the car, but I think it would be unreasonable to suggest that was the case. I say that because it's clear from the expert's earlier detailed report that he believes “*the failure to have the vehicle serviced correctly, prior to the Claimant purchasing the vehicle, has resulted in the catastrophic engine failure*”. The fact that the manufacturer may have improved the engine, and its reliability, in subsequent models does not suggest to me that the earlier engines were of unsatisfactory quality; only that they were less resilient to not being serviced properly.

I know my decision will be very disappointing for Miss S and I sympathise with the position that puts her in. I'm afraid, however, that I don't think it would be fair to ask MotoNovo to take any action.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 16 November 2023.

Phillip McMahon  
**Ombudsman**