

The complaint

Mr Y complains that a car he has been financing through an agreement with FirstRand Bank Limited, trading as MotoNovo Finance ("MotoNovo"), has not been of satisfactory quality.

What happened

Mr Y took receipt of a used car on 21 November 2018. He financed the deal through a hire purchase agreement with MotoNovo. At the point of supply the car had already completed about 53,000 miles and was a little over eight years old.

Within three weeks Mr Y had problems with the car. It was recovered to the supplying dealership on 21 December 2018 and Mr Y told MotoNovo he wanted to reject the vehicle. But in the meantime the dealership repaired a fault with the drive chain and in January 2019 MotoNovo told him the car was ready to collect and they would not allow it to be rejected.

Later in January Mr Y had further problems with the car. An oil pressure and exhaust control fault were diagnosed. In May 2019 he complained again to MotoNovo. He said the Engine Management Light (EML) had illuminated and he'd lost power. A third party provider repaired the car but they advised that the repair would only be temporary.

MotoNovo arranged an independent inspection of the car but no fault was found and as they were not prepared to uphold Mr Y's complaint he referred it to this service.

Our investigator thought MotoNovo hadn't been reasonable. She understood that they thought Mr Y was out of time to refer his complaint to this service but she explained the rules allowed him until 14 July 2019 to complain to us and we'd received his complaint before then, on 11 June 2019.

She thought MotoNovo should have allowed Mr Y to reject the car in December as there was a confirmed fault within 30 days and he had a short term right to reject the car. She didn't think he'd authorised a repair as she noted he'd asked to reject the car on 21 December. She thought if MotoNovo had told the dealership about this earlier a repair would not have been completed. She didn't think it was fair for Mr Y to be disadvantaged by MotoNovo's failure to allow him to reject the car when he'd sought to exercise his right in December 2018.

She therefore suggested that MotoNovo take the car back and terminate Mr Y's contract with them. She said they should refund his deposit and add 8% interest to that refund and she also thought they should pay Mr Y £150 compensation in respect of the distress and inconvenience he'd been caused.

MotoNovo didn't accept the investigator's opinion so the complaint was referred for a final decision by an ombudsman.

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 agree with the investigator's view. I know that will disappoint MotoNovo so please let me 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.

Mr Y acquired his car under a hire purchase agreement. The hire purchase agreement is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

I'm persuaded for the same reasons the investigator was that this complaint was made to this service in time.

The relevant law says, amongst other things, 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 likely include things like the age, mileage and price at the time the car was supplied to Mr Y. This wasn't a new car and it had completed over 50,000 miles but I don't think a reasonable person would expect to break down in the first few weeks of ownership.

Mr Y had a short term right to reject the car if anything was wrong with it when he took receipt as long as he reported that in the first thirty days. I'm persuaded that there was something wrong with this car as it was recovered to the dealership on 21 December 2018 by the breakdown services and they repaired a faulty drive chain. Mr Y told MotoNovo he wanted to reject the car on 21 December; I don't think there's evidence that Mr Y accepted the repairs that were completed and I think MotoNovo should have accepted his request to reject the vehicle.

And, even if I'm wrong about that, the relevant legislation gives the business only one chance to repair a fault that is present at the point of supply. I think that opportunity was in December when the drive chain was repaired. Relevant legislation does not give a business one chance to repair each separate fault that may occur. Whether a vehicle is of satisfactory quality when supplied refers to the vehicle as a whole not each separate component. Indeed the more separate faults - the more likely it is the vehicle isn't of satisfactory quality. I've seen a breakdown service diagnostic from January when there was a report of low oil pressure and I think on balance, as Mr Y had only recently taken ownership of the car it was most likely this fault was developing or present at the point of supply. As MotoNovo had used up their one chance to repair the vehicle this was another point at which rejection would have been appropriate.

Mr Y has been inconvenienced by these issues. I think MotoNovo should have accepted the rejection of the car much earlier and he's had to progress his complaint to this service

unnecessarily. So, in the circumstances, I think MotoNovo should pay him some compensation and I think £150 is about right.

Mr Y has also raised concerns to us about a further fault that's occurred with the car's starter motor. As MotoNovo haven't had a chance to review this yet he'll need to refer that part of his complaint to them if he wants them to consider it further.

Putting things right

Mr Y has been inconvenienced by these issues. I think MotoNovo should have accepted the rejection of the car much earlier and he's had to progress his complaint to this service unnecessarily. So, in the circumstances, I think MotoNovo should pay him some compensation and I think £150 is about right.

He may need the deposit he paid to fund an alternative vehicle. So this should be returned to him and MotoNovo should add 8% interest as he's been deprived of that money whilst funding a vehicle that wasn't of satisfactory quality.

My final decision

For the reasons I've given above I uphold this complaint and tell FirstRand bank Limited to:

- terminate the finance agreement and collect the car at no cost to Mr Y;
- refund Mr Y's deposit and add 8% simple interest per annum from the date of payment to the date of settlement;
- pay Mr Y £150 to compensate him for the distress and inconvenience he's experienced;
- remove any adverse reports they may have made to Mr Y's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 16 July 2020.

Phillip McMahon
Ombudsman