

The complaint

Miss H complains that MotoNovo Finance Limited refused to let her reject a faulty car.

What happened

In June 2019 Miss H acquired a second-hand car at a cost of £10,859 funded by a deposit of £560 and the balance with a hire purchase agreement. It was some five years old and had done 34,252 miles. Within a few days she discovered the air conditioning was slow to respond and when it did the car was filled with the smell of cigarette smoke. She also noticed stains on the rear seat and roof liner. She had the car cleaned to remove the smell and then noticed it was suffering from severe vibration. She took it back to the dealer which kept the car for a day, but Ms H says the car still suffered from vibration. She took it to an independent specialist and had the wheels balanced at a cost of £40.

It continued to vibrate so Miss H returned to the dealer which corrected two tyres and replaced the valves. It asked Miss H to pay £66, but she refused. She contacted MotoNovo which commissioned an independent report. The inspector stated: *"We can conclude that the vibration transmitting throughout the vehicle does require attention and there is evidence of previous repair attempts in relation to this. However, all other concerns evident would not have been developing at finance inception and may have occurred thereafter. The air conditioning system was fully operational with no faults found."* MotoNovo offer Miss H £50 for the distress and inconvenience she had suffered.

She then brought her complaint to this service where it was considered by one of our investigators who recommended it be upheld.

He said he believed there was a fault with the car, namely the severe vibration. He thought the car ought to have been fault free at the point of sale. He noted that after the inspection took place the dealer made repairs which seem to have resolved the problem.

As far as the problem with the air conditioning was concerned he thought that although it was a minor issue it wasn't reasonable to have supplied that car in that state. He also noted Miss H had raised some further issues during the course of the complaint, but MotoNovo hadn't had the opportunity to address those. However, he thought these were most likely wear and tear matters and not of such significance as to merit rejection.

Overall, he didn't think the faults were such that he could recommend rejection, but he thought MotoNovo should pay for the repair to the air conditioning, the wheel balancing and also pay her £200 compensation. Miss H agreed but MotoNovo didn't. It said that Miss H had the air conditioning cleaned without the fault being verified by it or the dealer. Nor could it say that the tracking had been at fault at the point of sale as Miss H had this repaired by a third-party garage. It added that the dealer was always willing to help and any delay had been due to Miss H pursuing rejection. It also said the independent report concluded the faults weren't present to the point of sale.

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 need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

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

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

It is regrettable that Miss H encountered several issues when she acquired the car. I think it reasonable to conclude that the air conditioning needed to be cleaned and at that point Miss H had no intention of seeking rejection and took the view it needed to be sorted. Not least because she was using the car to transport her young child. I believe that to be sufficient to conclude there was fault and it is only fair that MotoNovo pay for the work.

In much the same way I think it should also pay for the tracking work. It is clear there was a problem with car vibrating which hadn't been solved initially by the dealer and so it was only reasonable that Miss H took it to a specialist. It noted that the tracking was out and that cause me to wonder what the dealer had done to resolve the problem. In any event it did deal with the issue after the independent inspection.

Overall Miss H has had the stress of trying to get the car fixed and I can see that she has made little use of it while there was uncertainty about its reliability. The mileage records from various documents demonstrate that limited use.

Putting things right

I consider it only fair she be compensated regardless of whether she notified the dealer or MotoNovo of the minor work she had done to the car.

My final decision

My final decision is that I uphold this complaint and I direct MotoNovo Finance Limited to:

- Pay the cost of the air conditioning system being disinfected, subject to an invoice being provided.
- Pay £40 for the cost of having the car repaired by a third-party garage
- Pay Miss H £200 for the trouble and upset she has suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 9 November 2020.

Ivor Graham
Ombudsman