

### **The complaint**

Mr L complains that a car acquired with finance from Motonovo Finance Limited wasn't of satisfactory quality.

### **What happened**

In July 2020 Mr L was supplied with a car and entered into a hire purchase agreement with Motonovo.

In October 2020 Mr L experienced issues with the car, including the car shaking and not accelerating correctly.

Mr L reported the issue to the supplying dealer who advised him to book the car in with a third-party garage. Whilst Mr L was waiting for his appointment with the third-party garage, he had the car inspected at a local garage. A diagnostic test showed five different fault codes.

The third-party garage carried out repairs to the car in November 2020 including replacing the coil pack.

Mr L collected the car but the following day he had problems getting it to start and once started, it wouldn't accelerate. The car was also shaking badly.

Mr L contacted the supplying dealer again. It advised him to take the car back to the third-party garage.

Mr L contacted Motonovo to complain. He asked to reject the car.

Motonovo arranged for an independent inspection of the car. The inspection found that the car displayed several fault codes and concluded that the car had a misfire fault. The engineer said the fault related to an unsuccessful repair.

Based on the findings in the report, Motonovo rejected Mr L's complaint. It advised Mr L to take the car back to the supplying dealer to repair the failed repair.

Mr L wasn't happy with the response and complained to this service. He wants to reject the car.

Our investigator upheld the complaint. She didn't think the car was of satisfactory quality when supplied and said that because there had already been one failed attempt at repair, Mr L should now be allowed to reject the car.

Motonovo didn't agree. It said there was no evidence to show that the fault was present at the point of supply.

### **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.

Because Motonovo supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality. Satisfactory is what a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. Satisfactory quality also includes fitness for purpose, safety and durability.

I would expect a second-hand car – such as that supplied to Mr L – to have a degree of wear and tear. So, in order to uphold the complaint, I would need to be satisfied that there was an inherent fault with the car, as opposed to a fault due to general wear and tear.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, there's a presumption that it was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car. After 6 months the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality at the point of supply.

An independent inspection can help to decide whether the car was of satisfactory quality. I've looked at the independent inspection in this case. I've also looked at the diagnostic test carried out by Mr L's local garage and I've taken into account Mr L's photos of the cars on board diagnostics.

Mr L's photos are dated 23 October 2020. These show that the fault log is displaying 6 codes. Three of these relate to the power train, of which one was a misfire on cylinder one. The other two powertrain faults were pending and related to the powertrain system running too rich and powertrain random/multiple cylinder misfire detected. This evidence suggests to me that there was a misfire fault as at October 2020.

The diagnostic carried out by Mr L's local garage shows fault codes relating to a misfire in cylinders two and three, as well as other faults. The diagnostic, which is dated 6 November 2020, confirms that the car has a misfire fault (as already indicated by the car's fault log). This evidence supports a finding that the car had a misfire fault as at November 2020.

I'm aware that there was a repair attempt by the supplying dealers nominated third party garage in November 2020. Motonovo hasn't been able to provide the job card for the repair but based on what Mr L has said, and based on the comments of the independent engineer, I'm satisfied that a repair was attempted.

The independent inspection report identifies a misfire fault. This is consistent with the car's fault log and the diagnostic carried out by Mr L's local garage. It also suggests that the attempt to repair the misfire was unsuccessful. This is because the independent inspection found 6 fault codes on a diagnostic interface, three of which were identical to those identified on the diagnostic carried out by Mr L's local garage before the repairs were carried out by the third-party garage.

I've thought about whether the misfire fault identified in the independent inspection was likely to have been present or developing at the point of supply. As I've already said, because the fault occurred in the first 6 months, there's a presumption that it was a point of sale fault and it's for the business to show otherwise. Taking all the circumstances into account, I don't think the fault was caused by the repairs because it's clear from the fault codes on the diagnostic prior to repairs that there was a misfire fault.

The independent report isn't particularly helpful as to whether the misfire fault was a point of supply fault or not. The engineer's comments are contradictory. He says (at A1) that the fault

had been present at the point of sale and that the repairs were unsuccessful. At A3 he says that the fault isn't due to wear and tear. At A7 he says he doesn't think the fault is a point of sale fault but is related to a previous repair. At C2 the engineer says that due to the time and mileage elapsed since the point of sale, he doesn't think it is a point of supply fault.

The independent report is, at best, contradictory. I'm not persuaded that the report is strong enough evidence to rebut the presumption that the fault was present at the point of supply. Because of the contradictory statements made by the engineer in the independent report, I've reviewed all of the other engineering information. Having done so, I'm persuaded that all the evidence points towards there being a misfire fault before the repairs were attempted in November 2020. The car's fault log shows that the misfire fault was present as early as October 2020.

I've taken into account the age and mileage of the car. At the point of sale, the car was around 10 years old and had covered 47,000 miles. By the time of the independent inspection in November 2020 the car had covered 50,900. So around 3000 miles had been covered by Mr L since the point of supply. I don't think this is a significant amount of mileage to cover over a 4 month period, and there's nothing to suggest that the misfire fault was due to excessive use of the car.

The fault occurred around 3 months after the point of supply. I don't think a reasonable person would expect to experience this type of fault so soon after the inception of the agreement. Given the relatively low mileage of the car and taking into account the engineers view that the fault wasn't due to wear and tear, I'm of the view that the fault was more likely to have been present or developing at the point of supply, and that the component part causing the fault wasn't reasonably durable. This means the car wasn't of satisfactory quality.

### **Putting things right**

I appreciate that Motonovo has said that it wants the supplying dealer to repair the unsuccessful repair. But I don't think this is a fair resolution, because there has already been one attempt at repair which wasn't successful. The relevant legislation says that Mr L can reject the car in these circumstances.

I acknowledge that repairs were attempted before Mr L complained to Motonovo. But I don't think Motonovo has been prejudiced here, because it's likely that Motonovo would have referred Mr L back to the supplying dealer in any event.

Taking everything into account, I think Mr L should be allowed to reject the car.

Mr L hasn't used the car since November 2020. He's explained that the fault made it difficult to drive the car and that he feels unsafe driving it because it shakes and doesn't accelerate properly. I don't think in the circumstances that Mr L has acted unreasonably by stopping using the car. Because he's stopped using the car, I don't think he should be responsible for making payments for the time he hasn't used the car, so any payments he's made since November 2020 should be refunded.

I can see that Mr L has been caused a significant degree of distress and inconvenience by the issues with the car. He's had to take the car a significant distance to the third party garage nominated by the supplying dealer, which has impacted on his work. Mr L has described how unsafe and nervous he felt driving the car and I have no reason to doubt him. In the circumstances I think it's fair to ask Motonovo to pay compensation to Mr L.

Finally, Mr L has paid a fee to his local garage for the diagnostic. He took the car here

because there was a delay before the third party garage nominated by the supplying dealer could inspect the car. I don't think it was unreasonable for Mr L to take the car for a diagnostic, because he was reliant on the car to get around and wanted the issues diagnosed and fixed as quickly as possible. I think it's fair to ask Motonovo to refund Mr L the diagnostic fee.

### **My final decision**

My final decision is that I uphold the complaint. Motonovo Finance Limited must:

- End the agreement with nothing further to pay
- Arrange for the car to be collected at no cost to Mr L
- Refund the deposit together with 8% simple interest from the date of payment to the date of settlement
- Refund any monthly payments made by Mr L since 3 November 2020 plus 8% simple interest from the date of payment to the date of settlement
- Refund Mr L the cost of the diagnostic report upon proof of payment
- Pay compensation of £200 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 May 2021.

Emma Davy  
**Ombudsman**