

The complaint

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

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute so instead I'll focus on giving the 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

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.

The car was some three years old and had covered approximately 30,000 miles so it would be reasonable to expect the car to be in good condition. There were a couple of minor issues such as a broken mirror which were rectified by the dealer. A matter of days after she took delivery the rear window shattered. This has been repaired and we cannot say what was the cause, but I have no reason to presume the window was inherently faulty. It is possible that a chip had led to the shattering, but this is not clear.

However, there is another fault which I believe was present at the point of sale. The car failed its MOT in January and again in June 2020 for the same reason. The tyre pressure monitoring system malfunctioned on both occasions and each time it was reset or repaired

and the car passed the test.

However, the issue arose again shortly after the point of sale. Miss E has supplied this service with a date stamped photo showing this had happened again on 26 August 2020 which was only a few days after the sale. Furthermore, Moneybarn's system notes refer to the fault as having been reported to the dealer within 30 days. She obtained a diagnostic on 24 September which confirmed there was a recorded fault with the tyre pressure monitor. This also shows a number of history codes.

Moneybarn has argued that this issue wasn't raised with it within 30 days and so the dealer has the right to attempt one repair. I don't agree. She sent an email to Moneybarn on 25 August and she was told not instruct any repairs or diagnostics. So, Miss E was aware of the fault (she had already notified the dealer) and was ready to arrange a diagnostic test but was instructed not to do so.

It has also queried whether the date stamping may have been edited. I have no reason to think that has happened. Miss E submitted it as part of her evidence when she first brought her complaint to this service and I am satisfied it is genuine.

I also note that she made little use of the car. Her recorded mileage on 22 January 2021 was 30,829. I gather she has been using another car, the one she had intended to sell after buying the one which is the subject of her complaint.

In summary the car has a fault which caused it to fail two MOT tests and as such I am satisfied that it was faulty at the point of sale and as Miss E raised the issue within 30 days, she is entitled to reject the car.

Putting things right

Miss E should be allowed to reject the car.

My final decision

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

- End the agreement with nothing further to pay
- Collect the vehicle at an arranged date that is mutually agreed between both parties.
- Remove any adverse information from Miss E's credit file as a result of rejecting the vehicle.
- Refund Miss E her monthly payments, minus two months for use of the car
- Pay the cost of the diagnostic test of £60.
- Pay 8% interest on the monthly payments- from the date of payment until the settlement date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 2 June 2021.

Ivor Graham

Ombudsman