

## **The complaint**

Miss K complains that a car she acquired via a hire purchase agreement with MotoNovo Finance Limited trading as MotoNovo Finance wasn't of satisfactory quality.

## **What happened**

In October 2020 Miss K acquired a used car via a three-year hire purchase agreement with MotoNovo. The car was eight years old and had a mileage of 54,000.

Miss K says on the day she collected the car an error message flashed up on the dashboard for the drive train, so she contacted the supplying dealer and returned the car to them a few days later. Miss K also says that when she returned the car the speakers had begun to make a funny noise. The dealer said it couldn't find any faults when it ran diagnostic tests.

In December 2020, Miss K says that a front headlight bulb blew so she took the car to a third-party garage. This garage told Miss K that the car had an oil leak and she returned the car to the supplying dealer who undertook a repair to the sump plug and also arranged for the car to have an oil service at another garage.

The car was returned to Miss K who says that a short time later the car started to lose power. She also says that when she took the car for its MOT it failed at first and she had to have repairs carried out to the lighting units for both of the car's side mirrors.

Miss K was unhappy about the quality of the car and complained to MotoNovo. In her complaint she also raised issues about the heater being noisy, one of the windows not opening properly, noises from the speakers and the failure of the dealership to provide a second car key. MotoNovo arranged for the car to be independently inspected.

The car was inspected, and the independent engineer confirmed the heater, speakers and window all had faults but said they didn't have sufficient evidence to say these had all been present at the point of sale. They said in their opinion these were issues arising from wear and tear. However, the independent engineer also noted that there was "*oil wetness to the offside of the engine block*" which they said might be due to previous oil leaks but should be investigated.

MotoNovo didn't uphold Miss K's complaint as they said the issues with the car hadn't been present at the point of supply and had developed through the car being used. Miss K was unhappy at MotoNovo's decision and complained to this service. She also took the car for a health-check with a manufacturer approved garage.

The manufacturer approved garage said it had found an oil leak that required further investigation as well as faults with the heater motor and a window motor.

Our investigator recommended that Miss K's complaint should be upheld and that it would be fair for her to reject the car. He said there wasn't any evidence that the oil leak was a wear and tear issue unlike the heater and window faults. He said as this oil leak had occurred within the first six months of Miss K acquiring the car, he thought it was more likely

than not that it had been present at the point of supply.

Our investigator also said that he thought the dealer had already had an opportunity of repairing the oil leak in December 2020, but it had been found to be present again in March 2021 when the car had been inspected by the third-party garage. Our investigator said he thought this second leak was likely to be related to the first, and so, the repair hadn't been successful. He also noted the findings of the independent engineer in regard to the oil wetness.

Our investigator recommended that Miss K return the car and for the agreement to be ended with repayment of her deposit. He also said that MotoNovo should pay Miss K £100 compensation for having to deal with the faulty car as well as reimbursing her for the costs of the health-check carried out by a manufacturer approved garage.

Miss K agreed with the view of our investigator but MotoNovo disagreed. It said no oil leak had been picked up when the car had been MOT'd in December 2020 which had been after the supplying dealer had repaired the sump plug. Miss K had been able to drive the car for a further 4,172 miles between the MOT and when the manufacturer's approved garage had noted an oil leak. It said the manufacturer's approved garage had only undertaken a visual inspection and so there was no evidence this leak was due to a failed repair. MotoNovo said both the independent engineer and the manufacturer's approved garage had said the leak needed to be further investigated and it may not be a leak at all.

As the parties were unable to reach an agreement the complaint has been passed to me.

### **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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Miss K is a regulated consumer credit agreement 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.

Under the Consumer Rights Act 2015, there is an implied term that when goods are supplied 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.

The relevant law also says that 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.

Here, the car was eight years old, and with a mileage of 54,000. And I think that, taking into account these things, a reasonable person would have expected there to be issues with maintenance and repair after a reasonable period of time, as components of the car would have been subjected to wear and tear through use. I think there would be an expectation the car wouldn't be free from minor defects.

Looking at the evidence, I think MotoNovo has provided sufficient evidence that the issues with the car's speakers, window motor and heater motor were things that had arisen through wear and tear and although they occurred within the first six months hadn't been present at the point of supply.

I've also seen that Miss K was upset that no second key had been provided with the car. There appeared to have been a misunderstanding with the dealership over this and the dealership had offered her a sum of money to obtain her own key. In light of that, I don't think I need to look at that matter any further.

However, I've seen Miss K has also raised issues with the performance of the car and an intermittent issue with a drive train fault appearing. I've also seen that that the supplying dealer wasn't able to find any fault relating to that when it took the car back.

In December 2020 Miss K was advised that the car had an oil leak while getting a light bulb replaced. This leak isn't disputed as the supplying dealer carried out repairs to the sump plug. Later that same month, the car was subjected to an MOT which it passed once issues with some lights had been repaired. MotoNovo says there was no oil leak found during the MOT, but I am not surprised by that as it would appear there was a round one week between the repair by the dealership and the car receiving an oil service and the MOT testing. So, I don't think it would be reasonable to give much weight to the fact an oil leak wasn't raised at the time the car was MOT'd.

The car was the subject of an independent inspection in January 2021, I've seen that this engineer noted "*oil wetness*" and said that although it could be due to the recent repairs it should be investigated. I don't think it would be reasonable, in light of an oil leak being found in March 2021, to say that this oil wetness wasn't more likely than not to be due to an oil leak.

MotoNovo says that there isn't any evidence that the second oil leak was due to failed repairs or that it was an actual leak since the health-check was a visual inspection only. But I'm satisfied that the engineer who undertook the health check in March 2021 found an oil leak as opposed to a potential leak. I also think it's fair to take into account that there were signs of an oil leak in January.

I think it's reasonable to consider that it's more likely than not there is a link between the oil leak that was repaired in December 2020 with the oil leak that was found in March 2021. I also think it's reasonable to consider that there was a failed repair since it re-appeared within a relatively short space of time. I don't have any evidence that the car was undrivable due to this leak, so I am not giving weight to the distance Miss K has driven between December 2020 and March 2021. I don't think I can reasonably say that driving around 4,000 miles means that the second leak must be a separate event unlinked to the first.

The car has suffered two oil leaks within the first six months of Miss K acquiring it and under the Consumer Rights Act there is a presumption that if a fault occurs within the first six months it would have been developing or present at the point of supply unless there is evidence to the contrary. I haven't seen any evidence that would suggest the oil leak was due to wear and tear. And as set out above, I think it's also reasonable to link these two leaks. So, I think it's fair to say the supplying dealer has already had an opportunity to repair and failed to do so. This means Miss K doesn't need to agree to further repairs and it's fair she now rejects the car, ends the agreement and is reimbursed her deposit.

As Miss K has had to deal with the faulty car, I also think it would be fair for MotoNovo to pay her £100 compensation for the distress and inconvenience this will have caused her. However, as Miss K has had fair use of the car, I'm not going to ask it to reimburse her any of the monthly instalments made under the agreement.

MotoNovo should also reimburse Miss K the cost of the health-check as this has provided the evidence of the oil leak. This cost £49.50. But I am not going to ask it to reimburse the costs of the MOT as under the agreement this was Miss K's responsibility and the repairs undertaken were for issues of wear and tear.

For the reasons given above, I'm upholding Miss K's complaint.

### **Putting things right**

I'm asking MotoNovo to do the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Miss K.
- Refund Miss K her deposit of £1000 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement,
- Pay Miss K £100 compensation for the distress and inconvenience caused dealing with the faulty car.
- Refund Miss K £49.50 being the cost of the health-check together with yearly interest of 8% simple from the date of payment until the date of settlement.
- Remove any adverse information about this agreement from Miss K's credit file.

### **My final decision**

As set out above, I'm upholding Miss K's complaint. I'm asking MotoNovo Finance Limited trading as MotoNovo Finance to do the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Miss K.
- Refund Miss K her deposit of £1000 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement,
- Pay Miss K £100 compensation for the distress and inconvenience caused dealing with the faulty car.
- Refund Miss K £49.50 being the cost of the health-check together with yearly interest of 8% simple from the date of payment until the date of settlement.
- Remove any adverse information about this agreement from Miss K's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 21 July 2021.

Jocelyn Griffith  
**Ombudsman**