

### **The complaint**

Miss S complains that MotoNovo Finance Limited rejected her claim under S 75 Consumer Credit Act 1974 in respect of a faulty car.

### **What happened**

In July 2020 Miss S acquired a second-hand car at a cost of £10,846 funded by a deposit of £500 and the balance by hire purchase agreement. It was some four years old and had covered some 29,000 miles.

Miss S says she encountered problems in the first few weeks with the engine management light (EML) and the boot sensor warning light appeared. The car was taken back to the dealer which repaired it. Miss S says she asked to be allowed to reject the car but was told it would be fixed and if it broke down again, she could reject it. The dealer says the only record it has of her asking to reject the car was on 1 October.

When the car was returned there was a problem with the mileometer not giving a proper reading. She also said the boot had not been repaired properly and the EML was coming on. She took the car back to have the faults investigated and says she asked that they carry out no repairs.

Miss S complained to MotoNovo and it contacted the dealer which said that during the last inspection it had adjusted the tyre pressures and updated the software, but no faults had been found. MotoNovo commissioned an independent report which was carried out in late November. The inspector found no faults.

In January 2021 Miss S had the car inspected by a third-party garage and it identified a faulty fuel sensor. It said the fuel pump needed to be replaced and estimated this would cost £491.47. It noted the data recording this fault showed it had been present for some time. MotoNovo contacted the company which had carried out the independent inspection. The inspector had left the business, but it said that given the pump had failed after some 3,333 miles had been covered by Miss S it could not say the fault had been present at the point of sale.

After MotoNovo rejected Miss S's claim she brought her complaint to this service. It was considered by one of our investigators who recommended it be upheld. She concluded that after the initial repair the car remained faulty as evidenced by the third-party garage estimate. She noted that a fuel pump should last around 100,000 miles. Overall, she said that while the car was second hand, considering the age and mileage she didn't think a reasonable person would expect as many faults as had occurred.

She said that the fact that Miss S started to experience issues so soon after purchasing the car and had continued to encounter more issues, led her to believe the vehicle wasn't of satisfactory quality. MotoNovo didn't agree and said the independent report showed the car was of satisfactory quality. Miss S agreed and more recently has reported a number of other issues.

## 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.

I will address the more recent problems Miss S has reported. In short these all appear to be wear and tear issues and not faults that were likely to have been present at the point of sale. These include the warning light that the brake pads need to be replaced coming on and the need for tyres to be replaced.

Turing to the issue which gave rise to this complaint I have given the matter much thought and consider this to be a finely balanced decision. However, after deliberation I have concluded the complaint should be upheld. I will explain why.

It is accepted the car had issues within 30 days and it was taken back to the dealer. It repaired those faults, though Miss S says she would have preferred to reject the car. I cannot say that the fault she refers to were such that rejection was merited at that point, but in any event she accepted the repairs.

Shortly after this she had issues with the mileage recording and the fuel gauge. The dealer said it found no issues save for incorrect tyre pressures and it also updated the software. The car was then inspected by an independent engineer who found no faults. However, not long after this Miss S took the car to another garage which identified that the fuel pump was faulty and needed to be replaced.

As our investigator has pointed out the pump should last or some 100,000 miles and so there is an issue of durability. Also, this service regards a car a single entity and the dealer had one chance to repair it, but the fuel pump was overlooked. The car was acquired in July 2020 and the pump was identified as faulty in January after Miss S says it had been misbehaving for some months. The garage has also noted the data records show the fault had been present for some time.

I appreciate that the company which supplied the independent engineer has suggested it

was likely that this fault wasn't present at the point of sale. That said it didn't spot the issue and given the other evidence I think it more likely than not it was present at the point of sale.

The dealer had one chance to repair the car and this didn't prove to be successful therefore I agree with our investigator that rejection is appropriate.

### **Putting things right**

Miss S 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:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Miss S,
- refund the deposit and pay 8% annual simple interest from the date of payment until the date of settlement,
- remove any adverse information from Miss S's credit file,
- refund any payments made for the diagnostics/ repair including the recent MOT, but not the cost of replacement tyres.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 August 2021.

Ivor Graham  
**Ombudsman**