

The complaint

Mrs H complains about the quality of a car MotoNovo Finance Limited supplied her through a hire purchase agreement.

What happened

In January 2020, Mrs H acquired a used car under a hire purchase agreement with MotoNovo. The total amount of credit was for £11,990 and Mrs H paid a deposit of £4,000. The agreement was for a term of 49 months and the monthly payments were £204.08. Mrs H says she needed the car for her job and says she was classed as a key worker.

A month after acquiring it, Mrs H experienced an issue with changing gears which she made MotoNovo aware of – she said she wasn't able to drive the car and so it was parked on her driveway. Mrs H says she was told by the selling dealership that the clutch of the car had been replaced by the main dealership in November 2019.

Mrs H says she asked for the car to be taken back for repairs, but the selling dealership didn't agree to this. At this point, due to Covid-19 the country had entered into a lockdown. Mrs H said she wanted to reject the car as she wasn't able to use it.

MotoNovo issued their first final response letter where they explained that as issues had been reported after the first thirty days, the selling dealership had the right to repair the car. MotoNovo confirmed in this letter that the selling dealership were happy for Mrs H to take the car back to the main dealership – who replaced the clutch in November 2019. MotoNovo paid Mrs H £50 in recognition of this inconvenience. They asked Mrs H to contact the selling dealership herself to arrange for the car to be booked into the main dealership once they reopened. Due to the lockdown, Mrs H was only able to return her car to the main dealership for repairs in April 2020 – Mrs H paid £180 for the car to be returned. Mrs H says she wasn't able to use the car during this time.

Upon the car's return, Mrs H says she experienced issues with changing gears which she immediately reported to the main dealership. The car was returned to the main dealership at the end of April 2020 and the clutch and flywheel were replaced before returning the car to Mrs H mid-June 2020. Mrs H says the issue with the gears remained and in fact, worsened. Mrs H says she told MotoNovo she wanted to reject the car.

Mrs H says she then returned the car back to the selling dealership and an independent inspection was carried out in July 2020. The report identified that there had been failed repairs to the clutch which would be the responsibility of the repairer (in this case, the main dealership) to resolve. MotoNovo said as the selling dealership had no knowledge and weren't responsible for the repair, they'd need to be given an opportunity to repair the car.

Mrs H says she felt the selling dealership had been given an opportunity to repair and once again told MotoNovo she wanted to reject the car. In any case, Mrs H agreed to take the car back to the selling dealership who then passed the car back to the main dealership for repairs. When Mrs H drove the car home, she experienced a loss of power with the car but confirmed the clutch issue had been resolved. MotoNovo said Mrs H didn't provide any

evidence to show the car was still faulty after the last repair so therefore, felt the issue had been resolved.

Mrs H says she lost confidence in the car so made the decision to sell it in July 2020. Mrs H settled the hire purchase agreement in August 2020. MotoNovo told us they received a settlement figure of £11,647.32 on 7 August 2020.

Mrs H says this issue has caused her a lot of stress and upset and has asked for a refund of the 6 monthly payments she made towards the agreement. Mrs H has also asked to be reimbursed with the £180 she paid to have the car transported to the main dealership in April 2020. In addition to this, Mrs H has asked to be reimbursed the depreciation value of £1,995 on the car when she sold it as she says she had to sell the car for £14,000 when part exchanging it.

Our investigator looked into Mrs H's concerns. In summary, she said Mrs H had experienced a reoccurring issue with the car which caused her some inconvenience. She said MotoNovo had already had once chance to repair the car by the time Mrs H contacted them in June 2020 asking to reject the car.

Our investigator said MotoNovo should have accepted a rejection at that point which would have resulted in the agreement being ended, the car collected and Mrs H's deposit returned to her. However, as Mrs H sold the car for £14,000, our investigator said its likely she took less than the £4,000 deposit into her new agreement once the outstanding balance on the finance agreement was paid. In addition to this, our investigator felt Mrs H suffered other losses and also some distress and inconvenience as a result of the faulty car. So overall, she asked MotoNovo to:

- Refund payments made from March 2020 until the end of the agreement.
- Reimburse Mrs H up to the amount of deposit she paid after deducting the difference between the settlement paid on the agreement and the amount the car was sold for.
- Reimburse costs of £180 for car transportation in April 2020 on production of evidence.
- Pay Mrs H £100 for the stress and inconvenience caused in addition to the £50 already paid by MotoNovo.

Mrs H agreed. But MotoNovo didn't. They reiterated that the selling dealership didn't carry out the repair to Mrs H's car, nor did they authorise the repair. So, they deemed this to be an unauthorised repair. With that in mind, MotoNovo said their decision remained that the selling dealer should have a chance to repair the car. In addition to this, MotoNovo said as Mrs H decided to sell the car, this has removed any opportunity for further investigation of the fault Mrs H says she experienced when she drove the car home after the last repair. So, 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer hire purchase agreement – so we can consider a complaint 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 Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”.

To be considered “satisfactory”, the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the 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 mileage at the time of sale and the vehicle’s history.

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 goods.

MotoNovo supplied Mrs H with a car that was around two years old and the invoice shows the car had travelled around 39,975 miles when it was supplied. And the price of the car was lower than it would have been if it had been supplied new. So, I think it’s fair to say that a reasonable person would expect that parts of the car might have already suffered wear and tear. And there’s a greater risk this car might need repair and/or maintenance sooner than a car which wasn’t as road-worn when it was supplied.

Based on the evidence I have from both parties, it seems likely there was a fault with the car. I say this because I can see from the inspection report provided by the third party in July 2020 that it noted an issue with the clutch. And that there had been a previous attempt at repairing the clutch but this had been unsuccessful.

As I’ve already explained why I’m persuaded the car has a fault with it, I’ve gone on to consider whether the goods were of satisfactory quality when they were supplied.

I can see from MotoNovo’s contact notes that Mrs H contacted them about the problem she was experiencing with the car on 28 February 2020 – just over a month after she acquired it. Mrs H explained to MotoNovo that the car didn’t seem right, the car seemed to be oversteering and that the faster she drove it, the worse the oversteering was. The notes also explain Mrs H told MotoNovo she didn’t feel safe driving the car. In addition to this, the inspection report notes that the fault with the clutch was present and developing at the point of supply and that the fault didn’t seem related to wear and tear. Additionally, it was known that the clutch was replaced just before Mrs H acquired the car.

Having carefully considered all of the relevant circumstances, including the price, age and mileage of the car when supplied – and when the fault(s) first happened – I don’t think the goods were of satisfactory quality at the point of supply. So, it’s MotoNovo’s responsibility to put things right for Mrs H and I can see from the contact notes that Mrs H made them aware on 2 March 2020, that if the clutch wasn’t repaired successfully, she wanted to reject the car. It seems a successful repair to the clutch took place in July 2020.

MotoNovo have said that they didn’t have a chance at repairing the car. So, I’ve gone on to consider this point alongside whether Mrs H ought to have been able to reject the car.

When Mrs H raised her concerns about the car in February 2020, MotoNovo contacted the selling dealership on 23 March 2020 and advised that they thought a repair was the best option at this stage. Even though Mrs H said at this point she wanted to reject the car, I don’t find it unreasonable for MotoNovo to suggest repairing the car as this was their first attempt and it seems reasonable to me that a repair may have fixed the issue. The selling dealership

then advised they thought it best the car go back to the main dealership – who replaced the clutch prior to Mrs H acquiring the car.

I appreciate MotoNovo's point that the selling dealership didn't carry out the repairs nor did they authorise them. However, in MotoNovo's final response letter to Mrs H they asked her to contact the selling dealership to arrange for the car to be booked into the main dealership for repairs. So, I think MotoNovo did authorise for the repairs to be carried out. I don't think it was unreasonable for Mrs H to contact the main dealership herself, given the selling dealership was closed due to Covid-19 so she wasn't able to arrange the repairs through them, as MotoNovo advised her to do. Additionally, Mrs H has been consistent in saying she needed the car for work, so I can understand why she wanted the repairs done as quickly as possible. I appreciate MotoNovo have questioned Mrs H's role and whether it is a key worker role. However, I can see from the contact notes that Mrs H made clear to MotoNovo that she was still working during the pandemic and needed her car. So, I think it's clear Mrs H needed the car to get to and from work.

Despite the main dealership repairing the car in May 2020, Mrs H has provided us with an email where she explained that despite this repair being carried out, she experienced the same issues with the clutch just two days later. So, Mrs H contacted MotoNovo in June 2020 and said she wanted to reject the car as she was still experiencing issues with the clutch.

Under the CRA, MotoNovo are allowed one attempt at repair. If the repair isn't successful, the consumer can reject the vehicle. And I think MotoNovo had this attempt – when the car was taken back to the main dealership for the clutch to be repaired. As explained, MotoNovo advised Mrs H to return the car back to the main dealership for the repair, so I do think they authorised this repair. It's clear from the inspection report from July 2020, that the car was still of unsatisfactory quality as they confirmed the clutch was still faulty (despite the attempted repair in May 2020) and that this fault was likely present at the point of supply. So, I think MotoNovo ought to have allowed Mrs H to reject the car in June 2020 – after the attempt of repair.

Putting things right

I've thought about what MotoNovo should do to put things right. As I've already concluded, Mrs H should have been allowed to reject the car. However, MotoNovo didn't allow her to do so. Understandably, due to the cars' issues, Mrs H says she felt unsafe driving it. And she says she had no other option but to sell the car, which I don't feel is unreasonable in the circumstances of this case. Mrs H paid a deposit of £4,000. So, I think MotoNovo should refund Mrs H this amount. However, Mrs H tried to mitigate her loss and sold the car for a reasonable amount. With this in mind, I think MotoNovo should offset any of the excess from the £14,000 she received from the sale of the car against the settlement figure of £11,647.32.

I've next gone on to consider fair usage. As previously explained, looking at the contact between Mrs H and MotoNovo, I can see Mrs H says she wasn't able to use the car. In the email from Mrs H to MotoNovo in July 2020, Mrs H says her car was on her drive as she wasn't able to use it due to the clutch issue. Mrs H also expressed when she first reported issues with the car in February 2020 that she didn't feel safe driving the car. The mileage on the car when it was first acquired by Mrs H in January 2020 was 39,975. The reported mileage on the inspection report from 1 July 2020 confirms it was 42,193. Mrs H says the mileage of the car when it was supplied to her was nearer to 40,500 than 39,975. However, there's no evidence of this. In any case, I think it's reasonable to suggest Mrs H has had some usage of the car. Having thought about this, I think the February 2020 payment of £204.08 should be retained as a fair usage payment. And I think Mrs H should receive a

refund of all the payments she made towards the agreement from March 2020 to when the agreement ended.

Mrs H says she was asked by the main dealership to get her car to them for the repair to be carried out. And Mrs H says she paid £180 to a third party to transport the car. As I've made the finding that the car wasn't of satisfactory quality, I think MotoNovo should reimburse Mrs H of this cost upon receipt of proof of payment.

I note MotoNovo have already paid Mrs H £50 for the inconvenience caused to her, but I don't think this sufficiently recognises the distress caused. Mrs H made clear that she needed the car to get to and from work due to her job. As she was unable to use the car at times and understandably, didn't feel safe using it, Mrs H says she had to use her husband's van to get to work on some occasions. Mrs H also told us she had to rely on others where possible to give her a lift. I can imagine this caused Mrs H stress and inconvenience especially as she had a car she wasn't able to use. Having thought about this, I agree with our investigator's recommendation that MotoNovo should pay her £100 compensation. This is in addition to the £50 they've paid Mrs H.

My final decision

For reasons explained above, I uphold this complaint. And I require MotoNovo Finance Limited to:

- Refund the monthly payments Mrs H made from March 2020 until the agreement ended.
- Refund Mrs H the £4,000 deposit. But offset any excess from the sale amount of £14,000 against the settlement figure of £11,647.32.
- Reimburse costs of £180 for car transportation in April 2020 on production of proof of payment.
- Pay 8% simple yearly interest on any refunds due from the date of payment to the date of settlement.*
- Pay Mrs H £100 compensation (in addition to the £50 MotoNovo Finance Limited have already paid) for the distress and inconvenience.

*If MotoNovo Finance Limited consider that they're required by HM Revenue & Customs to withhold income tax from that interest, they should tell Mrs H how much they've taken off. They should also provide Mrs H with a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 14 December 2021.

Leanne McEvoy
Ombudsman