

The complaint

Mrs O complains that a car she got with a hire purchase agreement (HPA) from MotoNovo Finance Limited was of unsatisfactory quality.

What happened

Mrs O got the car in January 2020 and it broke down the following August, after she'd driven over 2,000 miles. A third party garage (TPG), specialising in this particular make of car, ran diagnostic checks that suggested there was a problem with the ECU. That part was replaced but the problems persisted. After further investigations, the TPG found some damaged wiring to the ECU that seemed to be due to poor workmanship. The TPG replaced some wiring and got the car started but it broke down very soon after and Mrs O hasn't driven it since.

Mrs O complained to MotoNovo. She considers the car was of unsatisfactory quality at the outset because of this faulty wiring and repairs needed to the parking brake and suspension bushes following an MOT in August 2020. She wanted to reject the car for a refund. But MotoNovo said Mrs O needed more evidence to show that these issues were faults present when the car was supplied - as she had it for about eight months before they appeared. MotoNovo asked Mrs O to get a report from an independent expert but she didn't think that was fair – as she'd already provided evidence from the TPG.

The matter was referred to our service and one of our investigators recommended the complaint should be upheld. She thought the repairs to the parking brake and the suspension bushes were likely wear and tear related so she couldn't reasonably hold MotoNovo responsible for those. But, she was satisfied information from the TPG suggests the car had faulty wiring that was probably present when it was supplied. She thought it was reasonable to give some weight to this evidence and - after repairs carried out by the TPG didn't work - she considered Mrs O should be entitled to reject the car. The investigator recommended MotoNovo should end the finance, take the car back and provide refunds in respect of the deposit, monthly payments (from 18 August 2020), repairs to the ECU and the cost of towing the car to the TPG. She thought MotoNovo should also pay Mrs O £200 compensation for distress and inconvenience.

MotoNovo asked for an ombudsman to review the matter. It didn't think the TPG was sufficiently independent and considered an independent expert should be instructed to inspect the car and provide a report.

What I provisionally decided – and why

I considered the relevant information about this complaint and, whilst I was minded to uphold it, my reasoning wasn't quite the same as the investigator's. I'd also seen some new evidence and I was minded to reach a slightly different outcome overall. I thought it was fair to give the parties the chance to consider my provisional findings and respond before I made my final decision. So, I issued a provisional decision on 18 June 2021. I've set out my provisional conclusions below and these form part of my final decision.

I make my decision based on what I consider to be fair and reasonable but I must have regard to relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) good industry practice at the relevant time. I'm satisfied the Consumer Rights Act 2015 (CRA) is relevant here.

MotoNovo supplied this car under a HPA and (under the CRA) there's an implied term that it would be of satisfactory quality at the point of supply. Quality of goods includes their general state and condition as well as fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. And I'm satisfied that this car needed to meet the standard a reasonable person would expect – taking into account the age, price and mileage at the point of supply.

The car was about seven and a half years old, with 83,000 miles on the clock and cost about nearly £6,000 when Mrs O got it in January 2020. I think a reasonable person would accept that a car like this wouldn't meet the same standards as a brand new vehicle – in that some parts were likely to be worn and might need to be repaired or replaced sooner or later. That's reflected in the lower price paid for a used car. But it doesn't mean that an older car with higher mileage can be supplied with significant faults present.

evidence about the car's condition

I have considered what Mrs O says about the repairs she paid for when the car underwent an MOT on 18 August 2020. For broadly the same reasons as the investigator, I think it is more likely than not those repairs were required as the result of the sort of normal wear and tear that's to be expected for a car of this age and mileage. I don't think the fact that these issues were mentioned in advisories in previous MOT paperwork means they are faults that were not addressed. And I am unable to reasonably hold MotoNovo responsible for the cost of related repairs.

There seems to be no dispute however that this car also had an electrical issue in August 2020. Mrs O provided evidence, in the report from the TPG, which says the car has faulty wiring which was probably there at the outset. Whilst this isn't a report from an independent expert, I don't think it is unreasonable to give some weight to the TPG technician's findings in these particular circumstances. I'm satisfied he's employed by a specialist dealership. I think it seems likely he'd have appropriate qualifications and experience – with this make of vehicle especially - and I'm satisfied he carried out relevant investigations and repairs to the car.

Having said that, I also didn't think it was unreasonable that MotoNovo wanted to obtain further evidence in the form of a report from an independent expert, in this situation. I gave MotoNovo a few weeks to arrange this and explained, at the same time, that I thought it would be reasonable to let any expert see the report provided by the TPG and comment – in light of the TPG's detailed examination of the car.

MotoNovo has now supplied an expert's report. It's disappointing to find no reference to the TPG's investigations and repairs. I think the independent expert's conclusions are somewhat limited as a result. I appreciate the expert says further work is needed to identify what caused the problem exactly but I don't think his report takes matters any further forward. Essentially, the expert confirms the damaged wiring is present - but he doesn't comment on the likely cause or impact of this. He simply concludes that the car could not have been in the condition it's in now at the start of the HPA.

No one, so far as I know, has suggested that the car was in the exact position it's in now, at the outset. Mrs O doesn't deny, for example, that she was able to drive the car for over 2,000 miles before it broke down. I appreciate the expert says this was over more than six

months after supply and suggests this means she has to prove the problem was there at the outset. But, for the reasons I've set out below, I think Mrs O has provided evidence that indicates this car was faulty when it was supplied - in the TPG report. And I can't fairly exclude that fact that this issue might well have arisen much sooner but for the national lockdown in the early part of 2020 - which meant Mrs O drove the car much less over the first six months than the national average and probably less than she otherwise would.

was the car of satisfactory quality when it was supplied ?

I think the crux of the matter here is whether the faulty wiring - that both the TPG and the independent expert confirm is present – is likely to have caused the breakdown *and* whether this was present when the car was supplied. Where evidence is incomplete, inconclusive or contradictory – as some of it is here, I reach my decision on the balance of probabilities. This means I consider what's most likely to have happened in light of the available evidence and the wider circumstances.

The TPG is clear that it considers the wiring was probably damaged before Mrs O got the car. They told us the appearance and nature of the damage they saw seemed historic. They don't think it's surprising that Mrs O was able to drive as far as she did – as this damage wouldn't necessarily have an immediate impact (over the sort of mileage she covered). They also felt it's unlikely to have been caused by the work Mrs O paid for in August – as that would not have involved working around or near the wiring in question.

I'm not a mechanic but I think the evidence the TPG provided is fairly detailed and seems to make sense. The independent expert hasn't given me any reason to think the TPG might be wrong about any of this. And, on balance, I think the weight of the current evidence suggests it's more likely than not this wiring was damaged before Mrs O got the car and this damage caused the car to break down in August 2020 and subsequent problems. I am minded to conclude that the car was of unsatisfactory quality when Mrs O got it so I've gone on to consider what, if anything, MotoNovo should do to put things right.

putting things right

According to emails I've seen between the TPG and Mrs O, the TPG tried replacing the ECU and some of the damaged wiring but this didn't resolve things - the car broke down again the day Mrs O collected it following those repairs. The TPG told us the next step would be to replace the wiring loom itself but that involves a considerable cost.

I'm satisfied a specialist dealer has investigated and been unable to repair this car economically. I think it's unlikely the supplying dealer would have had a different experience even if it had agreed to investigate and repair the car when Mrs O first raised the issue. Taking everything I've seen into account, I don't think it's fair that Mrs O should have to wait any longer to have this matter sorted out. And I'm minded to find she should be allowed to reject the car and receive a refund.

It looks as if Mrs O paid a deposit of £1,000 (according to the HPA) at the start of the agreement so I think it's fair she should have that back. As far as I can see, she was (to all intents and purposes) unable to drive the car after 23 August 2020 (that's the date of the breakdown recovery report) because of the faulty wiring. And I'm inclined to find it fair for MotoNovo to refund any finance payments made after that date. It looks as if Mrs O also paid £72 to have the car towed to the TPG and over £1,000 for ECU related repairs. I don't think she would not have incurred this cost if she hadn't been supplied with a faulty car - so I find it's reasonable for MotoNovo to refund these payments as well.

I have no doubt that what happened here caused Mrs O a good deal of frustration, distress

and inconvenience. And I'm minded to find it fair that MotoNovo pay her £200 compensation to reflect that. It's not clear from the information I've got if Mrs O has been able to maintain her monthly payments towards the agreement. But, if MotoNovo has recorded any adverse information about the HPA on Mrs O's credit file I'd be inclined to find it fair that should be removed as well.

The responses received from the parties

I invited the parties to consider my provisional findings and let me have further submissions, if they wanted to, before I made my final decision. Both have now responded. Ms O agrees with my provisional decision but MotoNovo doesn't. MotoNovo says (in summary):-

- under the CRA, where faults are reported more than six months after supply, the customer needs to evidence the fault was present/developing at the point of supply;
- Mrs O complained more than six months after this car was supplied and she provided evidence from the TPG which refers to an electrical issue/wiring loom fault;
- the TPG thinks this fault was there when Mrs O got the car but this is not accepted because the independent engineer confirmed the fault could not have been present at the point of supply;
- it's wrong to discount the expert's evidence - in view of his qualifications and signed statement of truth, his report should be definitive;
- there are no grounds to find this car should be rejected, the dealer hasn't had the chance to repair and allowing rejection in these circumstances sets a dangerous precedent in terms of interpretation of the CRA.

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.

I want to thank the parties for their responses. I accept the CRA says (for our purposes here) if goods are of unsatisfactory quality within six months of supply then they're presumed to have been so at the point of supply. But, I don't think that means any issue which arises after six months must *not* have been present at the point of supply. And, for the reasons I've explained, I think Mrs O has provided enough evidence here to show that it's likely this car has faults which were probably present when it was supplied to her.

I reach this conclusion having weighed *all* the available evidence – including the report provided by the independent expert. MotoNovo hasn't provided any new evidence in response to my provisional decision - or said anything that's persuaded me to change my mind. I've already explained why I think it is reasonable to take the findings of the TPG into account. And I can't reasonably conclude that the independent expert's opinion should be considered definitive - simply on the grounds of his qualifications and the statement of truth.

I encouraged MotoNovo to let the independent expert see the TPG's report and comment but he hasn't done so. I find the independent expert's conclusions are limited, as a result. And I think it's reasonable to give more weight to the TPG's conclusions, in these particular circumstances. For the reasons I've set out, I remain of the view it is more likely than not this car was of unsatisfactory quality when it was supplied.

I accept the CRA says suppliers may be entitled to one opportunity to repair in this sort of

situation. But, that's provided (broadly speaking) this doesn't take too long or prove too inconvenient. I'm satisfied it was open to MotoNovo (or the dealer) to have this car checked and undertake repairs when Mrs O first complained. I think it unlikely the car could have been repaired satisfactorily - even at that stage – given the specialist TPG was unable to fix things very shortly after. And, even if repairs were possible, I can't rule out the possibility that these particular faults would have a detrimental effect on the durability of the car going forward.

Taking everything into account, including the time that's passed since Mrs O first reported the problem and the inconvenience she's experienced, I don't think it's fair to expect her to wait any longer for this matter to be resolved. I remain of the view it's fair she should be allowed to reject this car and I see no reasonable grounds to depart from my provisional conclusions.

My final decision

My decision is I uphold this complaint and I require MotoNovo Finance Limited to:-

1. end the HPA and arrange to take the car back at no cost to Mrs O;
2. refund the deposit of £1,000;
3. refund any finance payments made from 23 August 2020 in full;
4. refund the costs of repairs related to the ECU/wiring in the sum of £1,198.69;
5. refund £72, the cost of transporting the car to the TPG for investigations and repairs;
6. pay interest at 8% simple a year on the above refunds from the date of payment to the date of settlement;
7. pay Mrs O £200 compensation for distress and inconvenience; and
8. remove any adverse information recorded about the HPA from her credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 16 August 2021.

Claire Jackson
Ombudsman