

The complaint

Mr K complains that a car that was supplied to him under a hire purchase agreement with MotoNovo Finance Limited wasn't of satisfactory quality. He also complains that the car wasn't correctly described in the dealer's advert. Mr K's complaint is being dealt with by his father.

What happened

A used car was supplied to Mr K under a hire purchase agreement with MotoNovo Finance that he electronically signed in February 2020. Mr K paid £72 for the car to be inspected in March 2020 and some issues were identified. Mr K paid £482.54 for some brake parts and then paid £336 for the brakes to be repaired in May 2020. He paid for further work on the car between then and another inspection of the car in May 2021 and he then sold the car and settled the finance.

Mr K complained to MotoNovo Finance about the issues with the car in March 2021 and he said that the car wasn't fit for purpose so he claimed damages of £7,946.57 and other compensation of £3,000. It arranged for the documents to be reviewed by an independent expert in July 2021. It then said that it would refund to Mr K £72 for the March 2020 inspection, £125 for the May 2021 inspection and the repair costs from May 2020 of £482.54 and £336.00, and it offered to pay £250 to him for the distress and inconvenience that he'd been caused.

Mr K didn't accept its offer and complained to this service. He says that MotoNovo Finance should reimburse him for £4,103.09 of his repair costs and pay him compensation for the distress and anxiety he's been caused. Our investigator didn't recommend that his complaint should be upheld. He felt that MotoNovo Finance's offer was a very fair offer in this case and he didn't consider that the advert for the car was misleading or illegal.

Mr K's father, on Mr K's behalf, has asked for this complaint to be considered by an ombudsman. He has responded to our investigator's recommendations in detail and says, in summary and amongst other things, that:

- the failures with the car should have at least warranted advisory comments when the car had an MOT test before it was supplied to Mr K, and the MOT station is an affiliate of the dealer - and he believes that the dealer knew of the issues with the car, including that it had been modified;
- the advert for the car says that: it had been sourced directly from a performance car specialist (but he's found out that it didn't come from a performance car specialist); it had a service history and had been serviced and fully mechanically prepared (but that can't be true as the car had no airbox and had modified engine parts); and the car had been valeted and had a nationwide warranty (but the handover was rushed, the documents weren't explained properly and no warranty was given) and the upgrades referred to are standard items on this model; and
- the car wasn't road-worthy when sold, the dealer must have known that, and he feels so strongly about this that he'd welcome going to court.

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 outcome recommended by our investigator for these reasons:

- MotoNovo Finance, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr K - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;
- the car that was supplied to Mr K was more than eleven years old, had been driven for 111,678 miles and had a price of £13,085;
- satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;
- Mr K paid £75 for the car to be inspected in March 2020 and the following issues were identified as customer advisories: boot release switch pack broken, driver's side window faulty, wind noise and rattling when door closes, horn tone odd, air bag light on, wheel bolts rusty, AC has no gas, NSF tyre is new but not branded or N rated, front bump stops rotten, front damper shafts corroded, pin hole in OSF lower ARB link dust cover, front discs worn and corroded and cooling holes blocked, OSR outer CV joint leaking grease, front dampers corroded at the top mount and need replacing, pin hole in OSR lower ARB link gaiter, front brake discs worn and corroded, cooling holes are blocked with corrosion and are aftermarket, rear brake discs are after market, OSR out CV leaking grease, car has been painted OS and front, and air con requires gassing and diagnosing the leak;
- I've seen no evidence to show that Mr K contacted the dealer about those issues or tried to make a claim under the warranty that had been referred to in the dealer's advert for the car;
- Mr K paid £482.54 for some brake parts and paid £336 for the brakes to be repaired in May 2020, he had the car inspected again in June 2020 and he paid for numerous repairs to the car between then and March 2021 when he complained to MotoNovo Finance;
- he paid £125 for the car to be inspected again in May 2021 and a number of issues with the car were identified and the inspection report says:

".... most of the above listed faults would not meet the required criteria set by the 'Ministry of Transport' and would result in a fail notice being issued after a MOT test, although at the time of purchase the vehicle had 'passed' the MOT test with the only advisory listed as 'undertray fitted'. However the claimant has had majority of the rectification work carried out at his own expense. Taking into account the purchase date and mileage it appears that the listed faults were on-going at the purchase inception. This suggests that the vehicle 'was not fit for purpose' at the time of purchase";

- MotoNovo Finance then arranged for the documents to be reviewed by an independent expert in July 2021 – the expert's report says:

"The [May 2021] report ... does not indicate that any of the above issues were present. It merely states that the vehicle would not meet the current Ministry Of Transport tests and appears to just correspond with the issues identified [in the March 2020 report]. As such the report offers no supporting evidence

that these faults were all in fact present. Whilst there are images to support several of the issues on[e] has to consider that the vehicle has covered a significant distance, this being in excess of 3,483 miles. Based on the information made available we would have to consider that in our opinion these conditions were not present or developing at commencement of hire and have occurred as a result of general use over the passage of time. We therefore do not consider that the selling agents have any liability”.

- the car had passed an MOT test in February 2020, before it was supplied to Mr K – Mr K’s father has raised concerns about that MOT test so I have considered the car’s recent MOT history:
 - it passed an MOT test with no advisories in June 2018 when it’s mileage was 106,046;
 - it passed an MOT test with an advisory about plastic covers fitted to the underside in June 2019 when its mileage was 108,966;
 - it passed an MOT test with an advisory about a tyre issue in October 2019 when it’s mileage was 109,759; and
 - it passed an MOT test with an advisory about an undertray fitted in February 2020 when its mileage was 111,678;
- between June 2018 and February 2020 the car passed an MOT test four times and was only driven for 5,632 miles;
- the car was more than 11 years old and had been driven for 111,678 miles when it was supplied to Mr K in February 2020 and I consider that it would be reasonable to expect the car to be in a condition consistent with that age and mileage – it had passed an MOT test earlier that month and, despite Mr K’s father’s concerns about that test, I consider it to be more likely than not that the car was roadworthy at that time (which is consistent with the previous three MOT tests);
- Mr K had the car tested in February 2021 and it failed an MOT test twice because of a non-conforming registration plate, a warning light and headlamp issues and it then passed the test with no advisories later that month when its mileage was 114,597 – so it was considered to be roadworthy before it was supplied to Mr K and it was considered to be roadworthy a year later when it passed an MOT test;
- the March 2020 inspection identified a number of issues with the car, including with its brakes, and I consider that it’s more likely than not that the car wasn’t of satisfactory quality at that time because of the issue with its brakes – but I consider that it would be reasonable to expect some of those issues on a car of this age and mileage so not all of the issues would have caused it not to have been of satisfactory quality at that time;
- Mr K paid £482.54 and £336 for the brakes to be repaired in May 2020 and MotoNovo Finance has offered to reimburse him for those costs – and to also reimburse him for the cost of the March 2020 and May 2021 inspections – it has also offered to pay him £250 compensation for the distress and inconvenience that he’s been caused;
- Mr K continued to pay for repairs to the car between May 2020 and when it was sold and he was able to drive about 3,500 miles in the car - I’m not persuaded that there’s enough evidence to show that those repairs were required because the car wasn’t of satisfactory quality when it was supplied to Mr K;
- Mr K has sold the car so it’s not possible for it be inspected by an independent expert and I consider that the offer that MotoNovo Finance has made to Mr K is fair and reasonable in these circumstances;

- Mr K's father says that the advert for the car was incorrect and I've carefully considered the points that he's made about it not coming from a performance car specialist, it not being fully mechanically prepared, the handover being rushed, no warranty being given and the upgrades being standard items on this model;
- Mr K would have had the opportunity to inspect the car before it was supplied to him and to discuss any concerns or issues with the dealer – and if it was important to him that the car came from a performance car specialist I consider that it would be reasonable to expect him to have asked for more information from the dealer;
- the car had passed an MOT test before it was supplied to Mr K and I don't consider it to be unreasonable that the mechanical preparation referred to didn't identify all of the possible issues with the car;
- the advert referred to a nationwide warranty but Mr K paid significantly less for the car than the advertised price and I've seen no evidence to show that the price that he paid included a warranty;
- I sympathise with Mr K for the situation that his father has described and his feelings about the process being rushed but I'm not persuaded that there's enough evidence to show that the car was misrepresented to him or that he was induced into entering into the hire purchase agreement by a misrepresentation by the dealer; and
- I also sympathise with Mr K (and his father) for the issues that he's had with the car and for the repair costs that he's incurred, but I find that it wouldn't be fair or reasonable in these circumstances for me to require MotoNovo Finance to pay to Mr K more than the amount that it's already offered him or to take any other action in response to his complaint.

My final decision

My decision is that MotoNovo Finance Limited should pay to Mr K the amounts that it's offered to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 14 March 2022.

Jarrold Hastings

Ombudsman