

The complaint

Mr M complains that a car supplied to him on hire purchase by FirstRand Bank Limited was not of satisfactory quality. I'll refer to the bank as MotoNovo.

What happened

In December 2020 Mr M entered into a five-year hire purchase agreement with MotoNovo. The car which was the subject of the agreement was over four years old with a recorded mileage of around 82,000 miles. Its cash price was £15,150. Mr M paid a £1,500 cash deposit and £1,317 by way of loan deposit; the balance of the price was paid by way of the hire purchase agreement.

Mr M says he experienced problems with the car almost immediately. He returned it to the dealership which diagnosed a faulty brake switch which meant the car would not start. Repairs were completed. The car broke down again and further repairs were carried out in January 2021.

In March 2021 Mr M says the car broke down for a third time. It was showing a critical oil warning light. It was towed to the dealership and the exhaust gas recirculation valve was replaced. By this point, however, Mr M says he had lost faith with the car and contacted MotoNovo to complain about it.

MotoNovo arranged for an independent inspection of the car. That inspection noted that the car's recorded mileage at that point was 90,000 miles. The oil and coolant levels were satisfactory, but the engineer was unable to start the car. He concluded that a further inspection would be needed to ascertain the reason for that and for the problems that Mr M had reported. His report said that the car would not have been in the condition he reported at the time of supply to Mr M.

MotoNovo said that, since the report concluded that the issues were not present at the point of sale, it was not liable to Mr M. He referred the matter to this service, where one of our investigators considered what had happened. The investigator thought that the evidence showed that the car had not been of satisfactory quality at the point of supply. He recommended that MotoNovo collect the car at no cost to Mr M, end the hire purchase agreement, refund the cash deposit and costs to Mr M of having the car recovered, and pay Mr M a further £150.

MotoNovo did not accept the investigator's recommendation and asked that an ombudsman review the case.

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.

As the investigator noted, the hire purchase agreement was to be read as including a term that the car would be of satisfactory quality at the point of delivery to Mr M. Satisfactory

quality means the quality a reasonable person would expect in the circumstances. Those circumstances here include the car's age, price and mileage.

The car had a high mileage for its age – nearly three times the average. And, despite the problems he has described, Mr M covered a further 8,000 miles in just a few months. I must take that into account in deciding whether or not the car was of satisfactory quality.

The investigator noted as well that one effect of the Consumer Rights Act 2015 is that, if the car was not of satisfactory quality within six months of supply, it was for MotoNovo to show that it was of satisfactory quality when delivered to Mr M.

The inspection report was largely inconclusive, mainly because the engineer was unable to start the car and needed to dismantle it to determine the cause of the engine failure. That didn't happen. The engineer noted that the car would not have been in that condition at the point of delivery. That is, in my view, not at all surprising – at that point, Mr M was at least able to drive it, albeit briefly. That does not mean however that it was of satisfactory quality, especially given what happened in the following few months.

The car was clearly not of satisfactory quality at the time of inspection in May 2021. And I don't believe that MotoNovo has shown that the faults with it were not present or developing when it was supplied to Mr M. Showing that the car started in December 2020 but would not start in May 2021 is not really enough. Despite the car's high mileage, I think Mr M could reasonably have expected it not to break down on three occasions – the last resulting in a complete failure – within three months.

Putting things right

I broadly agree with the investigator's proposed remedy in this case. There are however two further issues to consider.

Mr M was provided with a courtesy car which suffered what appears to be significant damage in snow. He acknowledged that he would be responsible for that damage. I have not however considered that issue any further in the context of this complaint. I regard it as a separate matter and my award does not give any allowance for any claim that MotoNovo might have as a result.

Mr M has also explained that he has not made any monthly payments to the hire purchase agreement since April 2021. He has not been in possession of it since that point either. Because I believe that MotoNovo should have ended the agreement at or around that point in any event, it should not treat any missing payments from April 2021 as arrears and should make any necessary adjustments to Mr M's credit file to reflect that.

My final decision

For these reasons, I uphold Mr M's complaint. To resolve it in full, FirstRand Bank Limited should:

- end the hire purchase agreement with effect from April 2021 and ensure that any negative information in relation to it is removed from Mr M's credit file;
- collect the car at no cost to Mr M;
- refund the cost to Mr M of having the car towed, together with interest at 8% a year simple from the date of payment to the date of the refund;
- refund the cash deposit of £1,500, together with interest at 8% a year simple from the date of payment to the date of the refund; and
- pay Mr M a further £150 in recognition of the inconvenience to which he has been put.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 March 2022.

Mike Ingram

Ombudsman