

## **The complaint**

Miss M complains about the quality of a car she has been financing through an agreement with MotoNovo Finance Limited ("MotoNovo").

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

## **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 know it will disappoint Miss M, but I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Miss M acquired her car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

## **The recorded mileage**

If Miss M was told something that was wrong and if that false statement led her to enter into an agreement she wouldn't otherwise have entered into, I would think the agreement had been misrepresented to her and I'd ask MotoNovo to take some action.

Miss M says the mileage was wrong on her finance agreement and that the car had actually completed 57,000 and not 56,600 miles. But I'm not persuaded that made much difference. I don't think it's likely the sales price would have changed as a result and I therefore don't think it would have been likely that Miss M wouldn't have proceeded with the deal had the true mileage been declared. I'm not therefore persuaded that a misrepresentation has taken place.

## **The quality of the car**

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then MotoNovo, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Miss M. The car here was about five years old and had already completed about 57,000. So, I think a reasonable person would expect some wear and tear.

The relevant legislation explains that if the fault occurs after the first six months it is for the consumer to demonstrate it was present or developing when the goods were supplied, when MotoNovo were responsible for the quality of the car.

Miss M has explained that there was a coolant leak on the car identified during the MOT completed in March 2021, five months after she took receipt of the car. She's also explained that it had been necessary to top up the coolant in December 2020.

That would suggest there was probably a coolant leak on the car when it was supplied to Miss M. I don't think it's unusual for a car of that age and mileage to have a coolant leak. I think that would be considered fair wear and tear and wouldn't be a reason to suggest the car wasn't of satisfactory quality when supplied.

The terms of the hire purchase agreement required Miss M to "*keep the vehicle in good order and repair*". So, if a leak was identified, as it was in the March MOT, I think Miss M should have ensured it was repaired.

When the car overheated in July 2021 the dealership identified a coolant leak and a faulty pressure cap. I think they were likely to be the issues causing the coolant leak, that Miss M has explained she identified earlier in the agreement. I therefore seems likely that the failure to rectify that leak has led to the engine overheating and needing replacement.

As I think Miss M was responsible for rectifying the coolant leak I don't think it would be fair to hold MotoNovo responsible for the engine failure that seems to have reasonably occurred as a result of that leak not being rectified by Miss M.

Miss M says she was denied an opportunity to have the car independently inspected so she could demonstrate the problem had been developing from the start. Our inspector has explained that, on a call at the end of July 2021, MotoNovo wrongly advised Miss M about the process and suggested it was their responsibility to demonstrate the fault was present from the beginning. But, on 17 August 2021, MotoNovo correctly advised her she would need an independent inspection.

I think Miss M's opportunity to compile evidence to support her claim has been diminished by MotoNovo's failure to explain the burden of proof properly. But I'm not persuaded it's likely the outcome would have been any different if they had. I say that because the engine wasn't replaced until 2 September 2021 and Miss M still had time to instruct an expert but didn't. And I think if an expert was instructed he would have been likely to have come to the same conclusions as I've seen no alternative explanation about how the engine overheated.

So, overall, I'm not persuaded that there is sufficient evidence this car was supplied in an unsatisfactory condition.

But I am persuaded that there have been mistakes made by MotoNovo that have caused Miss M distress and inconvenience. They didn't explain the burden of proof properly to Miss M and they didn't, initially at least, tell her not to repair the car until investigations were completed. Miss M couldn't have been expected to understand those matters and would

have been understandably reliant on MotoNovo to explain the process for her. She's explained she found the whole process stressful and I can understand that. In the circumstances, I think MotoNovo should provide some compensation for the distress and inconvenience they caused.

### **Putting things right**

MotoNovo should pay Miss M £300 to compensate her for the distress and inconvenience caused by their mistakes.

### **My final decision**

For the reasons I've given above I uphold this complaint in part and tell MotoNovo Finance Limited to pay Miss M £300 to compensate her for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 5 April 2022.

Phillip McMahon  
**Ombudsman**