

The complaint

Miss K complains about the quality of a used car that was supplied through a hire purchase agreement with MotoNovo Finance Limited (MotoNovo).

What happened

In September 2020 Miss K acquired a used car through a hire purchase agreement with MotoNovo. The car was registered in March 2014, which means it was about six and a half years old and had travelled around 89,000 miles at the time of supply. The purchase price of the car was £5,149. Miss K part exchanged a vehicle to the value of £400 which meant that the total amount financed on this agreement was £4,749 payable over 48 monthly repayments of £140.08.

In a letter dated 20 September 2021 Miss K explained that after acquiring her car she experienced various issues with it, including a window that wasn't working which she said took the dealer six months to be repaired, and the electrics which had failed twice. Miss K says she was given an extended warranty in April 2021 as compensation for the inconvenience. However, Miss K explained that knocking and banging coming from the car became an issue, as well as the car pulling to the left when she was driving it. Miss K said she brought it to a local garage and was told the car had 4 different sized tyres which she paid to have replaced.

Miss K said she's brought the car in to the dealer for repairs on more than one occasion, but on each occasion has been returned to her with the same issues.

Miss K said she's experienced anxiety and stress as a result of the situation and would like to reject the car and receive a refund.

In August 2021 Miss K complained to MotoNovo. MotoNovo said that based on the history of the faults reported, they'd arrange for an independent engineer to inspect the faults with the car to determine whether the issues reported were present or developing at the point of sale. The inspection was carried out on 28 September 2021 and concluded that the car displayed knocking and banging that was consistent with gearbox differential bearing wear. The report also advised the car shouldn't be driven in its condition. However, it didn't consider the damage would have been present or developing at the point of supply.

Miss K also arranged for another inspection to be completed which contradicted the conclusions of the first report.

The second inspection carried out on 9 October 2021 concluded that no knocking had been detected during a road test but identified the steering as being in a dangerous condition. The report advised the car shouldn't be driven, and all steering and front suspension angles should be checked and reset. The report also concluded that as Miss K had driven it 2,185 miles since supply it was the opinion of the engineer that the situation was present at the point of supply.

In October 2021 MotoNovo provided their final response to Miss K's complaint. They didn't uphold the complaint as they believed the issues were not present or developing at the point of supply.

Unhappy with their decision Miss K brought her complaint to this service for investigation. Our investigator gave their view that MotoNovo hadn't acted fairly in the circumstances. They recommended MotoNovo allow Miss K to reject the car and refund the monthly payments from when the car wasn't being used. Our investigator was persuaded that due to the problems with the car soon after supply, it wasn't of satisfactory quality. They also recommended that MotoNovo pay £300 in compensation for the distress and inconvenience caused.

Unhappy with our investigator's view, MotoNovo challenged that the issues were present at the point of supply. However, as our investigator's view remained unchanged MotoNovo asked that the complaint be referred to an ombudsman for a final decision.

In January 2022 Miss K told our investigator that the dealer had accepted liability to fix her car and had provided her with a courtesy car. However, she also confirmed that she still wished to reject the car. In February 2022 Miss K confirmed that the car was returned to her but that she still felt unsafe and she's not received any confirmation of what had been fixed or repaired. She also advised that the electrics had failed again.

Following my review of all the information provided, I shared my initial thoughts with both parties because my outcome differed in part from our investigator's outcome. I invited each party to share any further comments or evidence they may want me to be aware of. MotoNovo didn't provide a response. However, Miss K responded to say that she accepted my initial thoughts.

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've thought about all the evidence and information provided afresh and 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 hire purchase agreement. As such, this service is able to consider complaints relating to it. MotoNovo is also the supplier of the goods under this agreement and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that MotoNovo supplied Miss K with a used car that was around six and a half years old and had travelled 89,000 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be visual signs of wear and tear due to its usage.

From the information provided I'm satisfied that there was a fault with the car's gearbox and steering. This is apparent from the two inspection reports provided which both concluded that the car shouldn't be driven due to its faults, and that further investigation was required. Having considered the car was faulty, I've considered whether it was of satisfactory quality at the time of supply.

In an email to our investigator in November 2021, Miss K said the issues started within three weeks of her being supplied the car. In their final response, when recounting a conversation with Miss K, MotoNovo advised that they were told the intermittent banging noises presented itself within weeks of supply. However, I acknowledge they also said the faults presented themselves in May 2021 as that was the first time they'd seen a mechanical report on them.

Although the first mechanical report from the dealer is dated in May 2021, I don't think that it's necessarily indicative that the faults started at that point. I think it's likely the focus of repair was on the issue with the electrics, which resulted in the extended warranty being given to Miss K. I've also considered that the knocking was intermittent so was unlikely to have a constant presence.

Miss K told our investigator the issues started around three weeks after supply, which is consistent with what she told MotoNovo as detailed in their final response. When Miss K said in her complaint letter that as far back as May she advised the car wasn't safe to drive, I think it's likely the knocking became more noticeable as some of the other issues had been fixed at that point. So, from the information provided I'm persuaded that the knocking had started within a month after supply, along with the other issues that Miss K had reported.

The first inspection arranged by MotoNovo, and carried out 12 months after supply, concluded there were knocking and banging noises that were consistent with gearbox differential. It also noted the vehicle appeared to be pushing when the steering lock was applied.

The second inspection arranged by Miss K and carried out 13 months after supply, advised of no knocking noises during a road test, but advised the steering was in a dangerous condition.

The first report says the issues were likely caused due to general in-service wear and deterioration. I don't doubt this conclusion, however, considering Miss K only drove the car 2,815 miles by that point, persuades me that the issues with the gearbox differential was present and developing at the point of supply, albeit intermittently.

Miss K advised the knocking was intermittent and presented itself with other electrical issues which it appears took priority. So, I think it's reasonable that the knocking noises weren't looked into until the other issues were fixed. I also think the intermittent nature of the knocking and banging is the likely explanation of why the second inspection engineer hadn't detected it during their road test.

Putting things right

As I've found that the car was not of satisfactory quality when it was supplied to Miss K, I think it's fair that MotoNovo put things right for her. Miss K says she wants to reject the car, and considering Miss K brought her car to the dealer to fix the problem on more than one

occasion, for example in May and August 2021 as confirmed by the invoices, under the CRA Miss H has a right to reject the car. So, I'll be instructing MotoNovo to collect the vehicle from Miss K, and refund Miss K's deposit of £400 as the value of her part exchange.

However, I'll also be instructing MotoNovo to refund to Miss K, half of her monthly repayments from September 2020 to September 2021, as this was when it was confirmed via the first inspection report, that the car wasn't safe to drive.

The agreement shows Miss K had an expected annual mileage of 10,000, however the inspection report shows that the car only travelled 2,815 miles up to October 2021, which is considerably less than the expected distance shown on the agreement. I'm persuaded the lower mileage was likely as a result of the ongoing issues Miss K experienced with the car. I recognise there's no perfect science to calculating what a fair refund would be, but all things considered I think 50% is fair considering the problems Miss K experienced, along with the low mileage on the car.

Miss K said she stopped driving the car from August 2021, however a recent screenshot of the mileage, provided by Miss K shows the mileage has increased by 1,300 over about eight months. This is an average of less than 40 miles per week, and still significantly lower than the 10,000 miles that Miss K had intended, as per the agreement.

In consideration of all the evidence provided and the circumstances of this complaint, I've weighed up that Miss K has only driven the car 1,300 miles over the past eight months with the most likely reason being it's not safe to drive, so I think it's fair to say that she'd more or less stopped driving the car. And as the car was deemed unsafe to drive from that point, I'll also be instructing MotoNovo to refund all monthly repayments made by Miss K from October 2021.

Miss K also described the impact the whole situation has had on her, she said she'd been affected with anxiety, sleepless nights and has had time away from work. So, I think MotoNovo should pay her some compensation. I'm in agreement with our investigator that £300 is fair in the circumstances and fairly recognises the distress and inconvenience she's experienced.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct MotoNovo Finance Limited to:

- collect the car at no additional cost to Miss K
- end the hire purchase agreement and remove it from Miss K's credit file
- refund the deposit paid by Miss K
- refund to Miss K half of all repayments she's made towards the agreement from inception of the agreement to September 2021
- refund to Miss K all monthly payments she's made on the agreement from October 2021
- pay 8% yearly simple interest on the above refunds from the date of payment to the date of settlement
- pay Miss K £300 compensation for the distress and inconvenience caused

If MotoNovo Finance Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss K how much it's

taken off. It should also give Miss K 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 Miss K to accept or reject my decision before 2 September 2022.

Benjamin John
Ombudsman