

## **The complaint**

Miss G complains that a used car she acquired with finance provided by MotoNovo Finance Limited was of unsatisfactory quality.

## **What happened**

Miss G got this car in March 2021 under a hire purchase agreement (HPA) she took out with MotoNovo. In early July 2021 the engine began to overheat and she took the car to a third party garage (TPG). They found a crack in the coolant tank and replaced it but the car began to overheat again the next day. Miss G was told the head gasket had failed and she contacted the supplying dealer and MotoNovo.

An independent expert was instructed to inspect the car near the end of July 2021. He agreed the head gasket had probably failed but considered this was wear and tear related and would not have been present at point of sale. MotoNovo told Miss G the fault could have resulted from driving style or maintenance issues and it wasn't responsible in this situation. Unhappy with that response, Miss G brought her complaint to our service.

One of our investigators considered the evidence. She was satisfied that the car has a fault that occurred within six months and about 2,800 miles of supply - when the head gasket failed at around 62,000 miles. She thought this was below the expected life of this particular part – which should last at least 100,000 miles. And a reasonable person wouldn't expect to have this sort of issue within a few months of acquiring a car of this age, price and mileage. She noted the expert thought further investigation was needed to establish what caused the part to fail exactly. And she considered it is unlikely, on balance, that Miss G caused the failure – given the time she had the car and distance covered.

The investigator was satisfied it's more likely than not the car wasn't of satisfactory quality when it was supplied and repairs at this stage would probably result in unreasonable delay and significant inconvenience to Miss G. She recommended MotoNovo should end the HPA and collect the car, at no additional cost to Miss G and refund the deposit paid and monthly repayments made from 7 July 2021 plus interest. She found MotoNovo should also pay Miss G £200 compensation for distress and inconvenience and remove any adverse information from her credit file - and reimburse other reasonable expenses if Miss G provided proof of additional financial losses - such as the cost of alternative transport and/or work carried out to the car.

MotoNovo didn't agree and asked for an ombudsman to review the matter. In summary, it said the expert didn't think the car had a fault that was present at the point of supply and, whilst he confirmed the oil level was correct, he found no coolant in the system. MotoNovo considers lack of coolant would contribute to head gasket failure and cars like this often provide warnings when fluid levels are low. It thinks Miss G was probably alerted to the problem and the head gasket failed due to a failure to maintain the car - which was her responsibility.

Having considered the evidence available, I was minded to uphold this complaint. My reasons were not quite the same as the investigator's however and I issued a provisional

decision on 2 March 2022 to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. I've set out what I decided provisionally - and why - below, and this forms part of my final decision.

### **My provisional decision**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

MotoNovo supplied this car to Miss G under a HPA so it was required - under the Consumer Rights Act 2015 (CRA) - to ensure (amongst other things) that the car was of satisfactory quality at the point of supply. What amounts to "satisfactory" quality will vary depending on individual circumstances. In the case of a used car like this one, I think it's reasonable to take the age, cost and mileage into account.

Miss G's car was four years old with nearly 60,000 miles on the clock when she got it and the cash price was around £8,600 (according to the finance agreement). As such, I think a reasonable person would accept that some parts would be worn and likely need to be repaired or replaced sooner or later – which is reflected in the lower price paid for a used car compared to the price of a brand new vehicle. But, that's not to say Miss G didn't have a reasonable expectation that this car and its parts would be reasonably durable.

There seems to be no dispute that the car broke down in July 2021 – about four months after Miss G got it – due to the failure of the head gasket. The TPG told Miss G that the cylinder head had cracked and, on visual inspection, the expert found signs that the car had *"suffered from a head gasket failure resulting in coolant being poured inside the vehicle bores due to head gasket failure"*.

I think a head gasket would usually be expected to last for more than the 62,000 miles or so this car had covered when it broke down. The expert seems to acknowledge this in his report because he says *"the fault was unexpected in a car of this age and mileage"*. I'm satisfied, on balance, that it's likely the head gasket in this car failed prematurely. And I consider the crux of the matter here is what was the most likely cause of that.

I can see that expert concluded that this was probably wear and tear related and wouldn't have been present when the car was supplied. But, I think that seems somewhat inconsistent with his finding that the failure of the part was premature. And I note he considered the engine would need to be stripped in order to establish the *exact* cause of the failure. Where evidence is inconclusive, inconsistent or contradictory like this, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I don't think a reasonable person would expect this part to fail in a car of this age and mileage in the usual course of events. I understand MotoNovo considers the head gasket probably failed due to a loss of coolant - which is something Miss G was responsible for as part of routine vehicle maintenance – and she's likely to have had some warning because the car would have been running poorly.

I accept the expert found no coolant in the car when he inspected but I note he says there was a head gasket failure *"resulting in"* coolant loss - not the other way round. I don't think the absence of coolant is surprising - given the nature of the breakdown. And, on the current evidence, I'm not persuaded this means that Miss G failed to maintain the car.

If the expert saw signs that this car wasn't maintained properly I'd expect him to have said so expressly in his report - but he doesn't. The TPG told our investigator the car was well

looked after. And I'm satisfied that Miss G took the car to the TPG to be checked soon after she noticed something was wrong – when the engine started to overheat. I think she's unlikely to have ignored other signs that the car wasn't performing as it should - if they'd been present before that. I also note that the expert was asked specifically if attending to the condition sooner would have made any material difference and he says it would not.

I'm satisfied that a head gasket is not a service item that's expected to wear out and be replaced routinely. From the evidence I've got, I can't reasonably conclude that it's likely this particular part failed because of something Miss G did - or didn't – do, during the relatively short time she had the car. Taking everything into account, I find it is more likely than not this part was insufficiently durable and the car was of unsatisfactory quality when Miss G got it.

### **Putting things right**

The CRA says (broadly speaking) a supplier should usually be allowed one chance to fix things, in this situation. But that's only if repairs won't cause undue delay or significant inconvenience. I'm satisfied that Miss G has experienced a good deal of inconvenience and upset already as a result of being supplied with this faulty car. She had to take it to the TPG more than once and she's been without her own transport for a time. I don't think it's fair to expect Miss G to wait any longer for repairs in these particular circumstances.

I find it is reasonable for MotoNovo to arrange to take the car back and refund the deposit Miss G paid (which was £1,000, according to the finance agreement). It looks as if the car hasn't been in a driveable condition since 7 July 2021 because the head gasket failed and I consider it is fair for MotoNovo to compensate Miss G for this loss of use.

Working out what's reasonable in this situation is not a scientific exercise. Miss G says she had to pay for alternative transport while this car was off the road. I understand she'd like the cost of that refunded but she hasn't provided any documentary evidence of the cost incurred. Like the investigator, I'm inclined to find it is fair that Miss G should have any monthly payments she made towards the finance refunded from 7 July 2021 – for the time she was unable to use the car. But, I think it's right that Miss G should pay something for transport. And I'm not persuaded it would be fair to require MotoNovo to reimburse the cost of alternative transport in addition to a refund of monthly payments – because this would mean that Miss G paid nothing for transport during the relevant time.

Miss G also told us she incurred some additional financial losses due to the breakdown and the car being off the road. If Miss G paid to have the car recovered after the breakdown and/or she paid for relevant diagnostic checks and/or repairs, then I think it's fair she should have the reasonable cost of this refunded. The investigator has explained that we'd need to see evidence of this cost and asked Miss G to supply that but she hasn't sent in any additional paperwork.

I can't reasonably require MotoNovo to reimburse losses in the absence of such evidence. But, I think it's reasonable to allow Miss G a further opportunity to supply the evidence in question. And I'm minded to find it fair that MotoNovo should reimburse reasonable costs of recovery, repairs and or checks provided Miss G is able to provide proof of payment.

I am satisfied that Miss G has likely been put to some trouble and experienced frustration and upset as a result of what happened here. I think it is fair and reasonable for MotoNovo to pay her £200 compensation to reflect that. And, if MotoNovo has recorded any adverse information on Miss G's credit file as a result of what happened, I find it is fair that should be removed.

I invited the parties to consider my provisional conclusions and let me have any further

comments or evidence by 16 March 2022 and I'd consider all the evidence available after that and make my final decision.

### **The responses received from the parties**

MotoNovo disagrees with my provisional findings. It says (in summary):-

- the repair to the coolant tank was carried out before the dealer had the chance to inspect;
- the car had covered 2,800 miles before the failure and wouldn't have been able to travel so far if the head gasket was faulty at the point of supply;
- on the balance of probability, if Miss G had her vehicle looked at when she first became aware of this issue, it's likely the fault could have been repaired before the head gasket failed; and
- Miss G is responsible because she continued to drive the car with faults present causing the head gasket failure.

Miss G hasn't provided any further evidence in respect of recovery costs and diagnostic or similar checks. She sent us receipts for some different expenses – including car hire and a replacement car. She told us she also had to pay for public transport such as taxis but she didn't keep the receipts. And she says this matter has caused her a great deal of trouble and upset – so much so that she had to take time off work with stress and anxiety.

### **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've thought about what MotoNovo has said. I don't think this raises any new points and it hasn't persuaded me to change my mind. For the reasons set out in my provisional decision, I remain of the view it's more likely than not this car was of unsatisfactory quality when it was supplied. I'm not persuaded the head gasket failed as a result of something Miss G did or didn't do. And I think it's fair she should be allowed to reject the car and receive a refund and compensation, in all of the circumstances.

I have also considered Miss G's comments and the additional evidence provided. I accept she probably had to pay for alternative transport when this car was off the road. But, for the reasons I've given already, I can't reasonably require MotoNovo to cover *both* the cost of that *and* refund monthly payments. And I remain of the view it's fair and reasonable overall for Miss G to have the monthly payments she made from 7 July 2021 refunded in order to compensate her for loss of use.

I am sorry to hear about the difficult time Miss G had. I can see she was put to a good deal of trouble and upset and I have sympathy for the situation she found herself in. Taking everything into account, I remain of the view however that it's fair for MotoNovo to pay her £200 compensation to reflect the distress and inconvenience she experienced as a result of being supplied with this faulty car.

### **My final decision**

For the reasons I've given, my decision is I uphold this complaint and I require MotoNovo Finance Limited to:-

1. end the HPA and collect the car at no additional cost to Miss G;
2. refund the deposit paid along with any monthly payments made from 7 July 2021;

3. pay interest at 8% simple a year on any refunds, from the date of payment to the date of settlement;
4. pay Miss G £200 compensation for associated distress and inconvenience; and
5. remove any adverse information from her credit file.

If MotoNovo considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss G how much it has taken off. It should also give her 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 G to accept or reject my decision before 22 April 2022.

Claire Jackson

**Ombudsman**