

The complaint

Mr P complains MotoNovo Finance Limited (Motonovo) provided him with a car that he believes wasn't of satisfactory quality.

What happened

On 28 November 2019, Mr P entered into a 61 month hire purchase agreement for a used car. The car's cash price was £10,499 and he paid a cash deposit of £1,000. The car was over seven years old and it had travelled over 90,500 miles.

Mr P had an existing car finance agreement with another finance provider with a settlement balance of £14,650 and he part exchanged his previous car for £9,632. As part of this agreement, he also took out a loan for £2,027 to cover part of the negative equity. Based on the total amount payable, he was required to pay £324 per month.

On 4 December 2019, Mr P reported a number of issues with the car to the dealership. This included:

1. Loud knocking sound when the car is driven at speed;
2. Missing cover over some electronics under the bonnet;
3. Faulty driver's window;
4. Faulty handbrake;
5. Faulty brakes;
6. Front brakes vibrate;
7. Faulty rear window washer.

The car was returned to the dealership on 31 December 2019. They checked the knocking noise, the driver's window and the missing cover. According to the dealership, the bumper was damaged and not attached correctly however they believed this was caused by Mr P as there was no indication of this during the test drive. However as a gesture of goodwill, they refitted and secured the bumper. It's unclear whether any other repairs were carried out.

On 6 February 2020, Mr P said the above issues remained and he also reported new ones:

8. Faulty windscreen washer;
9. Cracks on the rear of the car;
10. Suspected oil leak.

On 11 February 2020, the car was returned again and on that occasion the dealership re-sealed one of the tyres. They also noted a valve was leaking and it needed to be replaced but they declined to fix it.

On 26 February 2020 Mr P complained to MotoNovo and requested to reject the car. In addition to the above issues, he also said there were:

- Issues with the bluetooth;
- Issues with the tyre sensor;
- Water leaking through the driver's door;
- Engine management lights on the dashboard;
- Cracked windscreen;
- DAB radio not working;
- Electric seats not working;
- Missing cover in glove compartment.

The dealership agreed to carry out further repairs and the car was returned in March 2020. However due to the national lockdown due to the Covid-19 pandemic and a delay to source a required part, the repairs were delayed. The car was at the dealership between March and June 2020. A repair was carried out to the driver's window (motor replaced) and as a gesture of goodwill, the dealership cleaned the subframe and removed stones to stop the front brakes from vibrating. In relation to the cracked windscreen, although they said this wasn't present at supply and was most likely leading to issues with the electrics, they agreed to cover the insurance excess to get the windscreen fixed but Mr P's policy had expired.

The car was ready to be collected in June 2020 but according to the dealership Mr P was unwilling to take it back. He eventually collected the car in July 2020 however he complained faults remained. In August 2020, he provided a report from a third party garage who said many of the above faults remained. It confirmed the windscreen was cracked and there were signs of repairs to the bonnet and the A pillar, they believed this explained the stress crack in the windscreen.

In September 2020, Motonovo arranged for an independent inspection. The car had travelled 93,485 miles at that point. The report said it was clear repairs had been carried out but it concluded:

"There are multiple faults in regards to the vehicle's windscreen, the washer pump not working, the handbrake unit needing adjustment, the TPMS light illuminated and the rear bumper insecure, all of which require further investigation under workshop conditions".

However it said the faults wouldn't have been present at supply nor was it a result of unsuccessful repairs. Instead it concluded it was down to wear and tear. A discrepancy was identified about the mileage because the agreement given to the inspector showed the car had travelled 61,700 miles at supply when in fact it had covered over 90,500. The inspector reconsidered his findings in light of the same but felt it didn't impact the overall conclusions of the report.

Mr P requested to reject the car as he didn't believe it was of satisfactory quality. He also made Motonovo aware that due to the pandemic, he was experiencing financial difficulty.

Motonovo said the dealership had repaired the outstanding mechanical faults at no cost to Mr P and based on the findings of the inspection report, they were not responsible for the current faults.

In January 2021, Mr P arranged for his own independent inspection. The car had travelled 93,490 miles at that point. It said there were a number of faults present which hadn't been repaired by the dealership and where repairs had been completed not all of them were to a

satisfactory standard meaning the car wasn't safe to drive. This included a faulty handbrake, spongy brake pedal, faulty screen washers, oil leak, insecure bumper and faulty tyre pressure monitor system. This second inspection report concluded the faults would've been present when the car was supplied meaning it was of unsatisfactory quality.

Our investigator recommended the case was upheld. They outlined the different faults and said they believed there were a few which were likely to have been present at supply, namely the handbrake, screen washers and the window. Because of this they concluded the car wasn't of satisfactory quality and because there had been at least one opportunity to fix the car, Mr P should now be allowed to reject it. The investigator made a number of recommendations for Motonovo to put things right.

Motonovo disagreed. In summary, they said:

- Although there were current faults, there was insufficient evidence they were present at supply;
- The dealership had completed repairs and the first inspection report said the faults were due to wear and tear;
- Mr B hasn't used the car for extended periods of time and this is likely to have contributed to the condition of the car;
- Mr P has raised issues after the initial inspection in September 2020 so they couldn't have been present at supply;
- For the second inspection, it's unclear what information was provided to the engineer and if they were aware of the findings of the first inspection.

In March 2022, I issued my provisional decision upholding the complaint, I said:

"Mr P acquired a car under a regulated hire purchase agreement. Motonovo was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to 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 involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of supply and the car's history.

In this case, Mr P was supplied with a used car that was over seven years old and had travelled over 90,500 miles. For used cars, it's reasonable to expect parts may already have suffered wear and tear when compared to a new car or one that is less travelled.

Since acquiring the car, Mr P has raised a number of faults as summarised above. The investigator outlined their thoughts on each fault and explained whether they believed it was present at the time of supply and if it meant the car was of satisfactory quality. In this decision, I won't repeat them all again instead I will focus on what I consider to be significant faults.

Faulty window

Based on the evidence of both parties, I believe there was a fault with the driver's window because it wouldn't open and close correctly. Mr P reported this within days of acquiring the car and given how quickly it was identified, I'm satisfied this fault was most likely to be present or developing at the point of supply. Even though I found this to be a fault, I must consider whether I believe this made the car of unsatisfactory quality given the age and

mileage of the car, I've already set out the test above. Having done so I believe this made the car of unsatisfactory quality, I don't believe a reasonable person would expect a car that cost £10,499 would have such a fault within a matter of days following supply even given its age and mileage.

In line with what I would expect, a repair was carried out around June 2020 at no cost to Mr P. By the time of the inspection in September 2020, no fault was found which suggests the repair was successful.

Screen washers

Mr P complained about faulty washers within days of acquiring the car. Based on the findings of both inspection reports, it's clear they weren't functioning as they should so I'm satisfied this is a fault. I wouldn't consider a car to experience such an issue so soon after supply therefore I'm satisfied it's most likely this fault was present or developing at supply.

I've checked the MOT standards, I can see this would be considered a major defect as it's a safety issue so the car wouldn't be deemed road-worthy. I note the car passed its MOT without any advisories approximately a week before it was supplied to Mr P so it's unclear why this wasn't identified, perhaps it was an intermittent issue. In any event, if MOT standards would consider such a fault to make the car unroadworthy, I think it's fair to say the car wasn't of satisfactory quality when supplied. There is no evidence to suggest a repair was attempted by the dealership.

Hand brake

Similar to the above Mr P complained about issues with the handbrake within days of acquiring the car.

The first inspection report commented the handbrake did engage but the unit needed adjusting. However I note, the car wasn't taken for a road test which is unfortunate because it wasn't tested in different conditions. This is likely to explain why the second inspection in January 2021, where a five mile road test was carried out, was able to provide more detail. It said "handbrake doesn't hold on a slope and has no reverse travel, this requires adjustment/repair and would fail a MOT test".

Again having checked the MOT standards, such a fault would be considered a major defect. For the same reasons as above, I'm satisfied Mr P raised this issue within days of acquiring the car so I'm persuaded it's more likely than not it was present or developing at supply.

Bumper

Shortly after acquiring the car, Mr P complained about a loud knocking sound when the car was driven at speed and it was suspected this was related to the bumper. Based on the information of the dealership and both inspections, they state there was an issue with the bumper, notably it wasn't attached securely. On this basis, I believe this is a fault. The dealership said they believed it was caused by Mr P as it wasn't identified during the test drive. But I'm not persuaded by this argument as it's likely the car would've only been taken on a brief test drive and likely at a low speed meaning such a fault may not be easily identified bearing in mind Mr P said it was noticeable at high speeds. But having had the car for a few days travelling at different speeds, it's most likely this would've become more apparent which is what I believe has happened here and this caused Mr P to complain. There is insufficient evidence for me to say what happened and whether or not this fault was caused by Mr P after he acquired the car. However given how quickly he reported it, on balance, I'm persuaded it was present or developing at supply.

To reiterate, I know I've only focused on the above four faults although I acknowledge Mr P reported several others. However I'm satisfied these faults were reported within a week of Mr P acquiring the car and taking everything into account, I'm satisfied they were most likely present and/or developing at supply. Given the number and nature of the faults, it's my opinion the car wasn't of satisfactory quality when it was supplied meaning there was a breach of contract. I don't believe a reasonable person would expect a car at a cost £10,499 to experience such issues at the point of supply or imminently afterwards, even if it's a used car.

Where this happens and it's outside the short term right to reject period (30 days), the CRA allows one opportunity for repair and it's worth highlighting this applies to the entire car not one repair for each component. If this repair doesn't fix the faults or others remain, the law allows Mr P to reject the car. In this case, the car was returned for repair on more than one occasion, namely twice in December 2019, February 2020 and March 2020 and based on the findings of the two inspections, it's clear faults remain. Therefore I believe Mr P has the right to reject the car now as there has been at least one opportunity to fix the car.

This means the agreement should end, the car should be collected at no cost to Mr P and adverse information about this agreement should be removed from his credit file.

The car was at the dealership for repair between March and June 2020, during that time Mr P was provided with a courtesy car so I don't think it would be reasonable to say Motonovo should refund these payments as Mr P still had access to a car albeit not the one under his agreement. He also managed to cover at least 2,900 miles in the car.

However given it was clear faults remained after the repair, I believe Motonovo should refund the monthly instalments from September 2020 which is the date of the first inspection report and when it appears Mr P stopped using the car. I can understand why he lost faith in the car and stopped using it given what had happened and I believe it was reasonable for him to do so. I note by the time of the second inspection around four months after the first inspection, it had only travelled a further five miles.

Mr P arranged and paid for a second inspection report. This report outlined why the car wasn't of satisfactory quality and I've relied on it when reaching this decision so I think it's fair Motonovo covers the cost of this report, subject to Mr P providing evidence of payment.

I must bear in mind that when entering into the agreement, Mr P settled a previous car finance agreement with a balance of £14,650. He part exchanged at £9,632 leaving a negative equity of £5,018. That was reduced by the £1,000 cash deposit and the further loan of £2,027, meaning the overall negative equity was £1,991. MotoNovo should refund the cash deposit. Any refunds should be offset against the negative equity. If upon calculating the above this leaves a balance owed by Mr P then I believe it's fair he pays this. In the event he's experiencing financial difficulty, I wish to remind Motonovo of the expectation he is treated with due consideration and forbearance.

I'm sorry to hear the car didn't perform as expected and Mr P experienced so many faults with the car. I don't think a reasonable person would expect this so soon after acquiring it. I appreciate the impact this has had on him including returning the car to the dealership on more than one occasion, arranging his own inspections, etc. In light of this, I believe Motonovo should also pay £200 compensation for the trouble and upset caused".

Response to the provisional decision

Both parties were invited to respond to the provisional decision. MotoNovo provided no further comments. Mr P accepted the findings and stated he had already handed the car back to MotoNovo.

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.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr P's complaint.

To put things right, MotoNovo Finance Limited should:

- End the agreement with nothing further for Mr P to pay;
- Treat the return of the car as a rejection;
- Refund the cash deposit*;
- Refund the monthly instalments from September 2020 onwards*;
- Refund the cost of the independent inspection (January 2021) as arranged by Mr P (subject to proof)*;
- Offset the above refunds from any negative equity brought into the agreement;
- Pay £200 compensation for the trouble and upset caused;
- Remove any adverse information from Mr P's credit file in relation to this agreement

*MotoNovo Finance Limited should also pay 8% simple interest per year on all the above refunds calculated from the date of payment up to the date of settlement.

If MotoNovo Finance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 26 April 2022.

Simona Charles
Ombudsman