

## **The complaint**

Mr K complains that MotoNovo Finance Limited supplied him with a car which was not of satisfactory quality. He wishes to reject it.

## **What happened**

In June 2021 Mr K entered into a five-year hire purchase agreement with MotoNovo for a used car. The car was around five years old and had covered just over 30,000 miles. It had a cash price of just under £20,000.

Quite soon after Mr K took delivery of the car, he says he had to replace the clutch cable, at a cost of more than £500.

In October 2021 Mr K says that the engine failed and the cabin filled with smoke. He arranged for a local garage to check the car. It reported that one of the engine cylinders was damaged. Mr K contacted MotoNovo to complain about the car.

MotoNovo arranged for an independent inspection of the car, and a report of that inspection was produced. It confirmed that there was damage to one of the engine's cylinders. The car could not be driven. The inspection recommended further investigation of the cylinder head under workshop conditions. The report concluded that the car was not fault-free but that the faults were likely to be wear and tear related and to have developed since purchase.

No further inspection was carried out and, based to a large extent on the independent inspector's findings, MotoNovo declined Mr K's claim. He referred the matter to this service, where one of our investigators considered what had happened.

Our investigator noted that MotoNovo was obliged under the hire purchase agreement to supply a car which was of satisfactory quality. That included matters such as durability. He did not consider that MotoNovo had done that and recommended that it accept the rejection of the car, refund some monthly payments and additional costs, and pay Mr K £200 in recognition of the distress and inconvenience caused. MotoNovo did not accept the investigator's view and asked that an ombudsman review the case. In doing so, it said that, since the independent report had concluded that further investigation was needed, it was for Mr K to arrange a further inspection to identify the cause of the fault.

I reviewed the case and issued a provisional decision which differed in some respects from the investigator's assessment, but which also concluded that MotoNovo had not treated Mr K fairly. In my provisional decision, I said:

*As the investigator noted, under the Consumer Rights Act 2015, the hire purchase contract was to be read as including a term that the car was of satisfactory quality. That means the quality a reasonable person would expect in all the circumstances, including the car's age, price and mileage. It includes matters such as freedom from minor defects and durability.*

*A further effect of the Act is that, where an item is not of satisfactory quality within six months of supply, in court it would be for the supplier to show that it was of satisfactory*

*quality at delivery. I am not bound by the same rules of evidence as a court would be, but I must take the law into account when deciding what's fair and reasonable.*

*The damage to the engine cylinder meant that the car could not be driven. It does not necessarily follow however that the car was not of satisfactory quality. In considering that issue, I must have regard, amongst other things, to the car's age, mileage and price. At delivery, the car had covered around 30,000 miles and, by the time of the engine failure, about 4,000 more. Whilst a car of that age and mileage might begin to need maintenance beyond normal servicing, I do not believe a reasonable person would expect it suffer a failure of the type seen here.*

*I note that the inspecting engineer concluded that the fault was not present or developing at the point of delivery. There is however little explanation for that conclusion beyond the increased mileage. I do not believe however that the fact that Mr K was able to drive the car for around 4,000 miles shows that it was of satisfactory quality. He would have expected rather more use than that before such a serious failure, and it would have been reasonable for him to expect that. In my view, MotoNovo has not shown that the car was of satisfactory quality at delivery. It says that, once the inspection report concluded that further investigation was needed, the onus fell on Mr K to arrange and pay for that. I am afraid I do not agree. MotoNovo commissioned the independent inspection. If, as was the case, that inspection recommended further investigation, MotoNovo could have arranged that – so that clear conclusions were reached.*

*The investigator also recommended that MotoNovo reimburse the cost of replacing the car's clutch cable. That is however an item which might well need replacing on a car of this age and mileage. The need for replacement can reasonably be put down to wear and tear, so I do not believe that MotoNovo should pay for this.*

*Mr K has not had any use of the car since October 2021, so I agree too that any payments he has made since then should be refunded, with interest at the contractual rate. That will put him in the position he would have been in if he had not made those payments.*

*As far as the deposit is concerned, the investigator recommended a full refund. Where an agreement has been running for a significant length of time, it is arguable that a full refund is not appropriate, because the deposit is an up-front payment for the full term. Given the short length of time that Mr K had the car in this case, however, I think a full refund is appropriate.*

*I recommend that MotoNovo end the hire purchase agreement, refund payments made from October 2021, refund the deposit, refund the cost of the initial inspection, and pay Mr K a further £200.*

*Mr K indicated that he would accept my recommendation. MotoNovo did not respond within the time limit I set. I have therefore carried out a final review.*

### **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.*

*It is disappointing that MotoNovo did not respond to my provisional decision. Had it accepted that decision promptly, Mr K's complaint could have been resolved earlier. If it did not accept the decision, I might have expected it to provide further observations or evidence for me to consider.*

*However, since neither party has provided anything more in response to my provisional*

decision, I see no reason to reach any different conclusion about Mr K's complaint.

### **My final decision**

For these reasons, my provisional decision is that, to resolve Mr K's complaint in full, MotoNovo Finance Limited should (if and to the extent it has not already done so):

- end the hire purchase agreement with nothing further to pay;
- collect the car at no cost to Mr K;
- refund Mr K's deposit of £1,500;
- reimburse any monthly payments made from 12 October 2021, together with interest at the contractual rate, from the date of payment to the date of the refund;
- refund the cost of the initial inspection, £121.20, together with interest at 8% a year simple from 12 October 2021 to the date of the refund; and
- pay Mr K £200 in recognition of the inconvenience to which he has been put and the distress caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 June 2022.

Mike Ingram  
**Ombudsman**