

The complaint

Mr M complains that a car that was supplied to him under a hire purchase agreement with MotoNovo Finance Limited wasn't of satisfactory quality.

What happened

I issued a provisional decision on this complaint in April 2022 in which I described what had happened as follows:

"A used car was supplied to Mr M under a hire purchase agreement with MotoNovo Finance that he electronically signed in February 2020. Mr M complained to MotoNovo Finance in December 2020 that the car's engine had seized. It said that it had no evidence that the fault was present or developing at the point of sale and the car had done 7,866 miles since purchase which indicated that it was fit for purpose at the point of sale.

Mr M arranged for the car to be inspected by an independent expert in January 2021 and by another independent expert in April 2021. He complained to this service in May 2021 and paid a garage £8,646.40 to repair the car in June 2021.

Our investigator recommended that Mr M's complaint should be upheld. He thought that there was enough information to persuade him, on the balance of probabilities, that the car wasn't reasonably durable and wasn't of satisfactory quality when it was supplied to Mr M. He recommended that MotoNovo Finance should: pay Mr M £8,646.40 for the repairs; refund Mr M's monthly payments from when the car broke down to when it was repaired; refund £240 to him for the first independent expert's inspection; pay interest on all of those amounts; and pay him £200 for the trouble and upset that he's been caused.

MotoNovo Finance has asked for this complaint to be considered by an ombudsman. It says that: Mr M had had the car for 12 months at the time of failure and had completed in excess of 8,000 miles in it; two independent inspections have provided evidence that the fault wouldn't have been present or developing at the point of sale; there's no evidence that he was told that the car had a full service history; there's no obligation for the dealer to service a car prior to sale unless agreed; and Mr M failed to service the car while he had possession of it".

I set out in my provisional decision the reasons that I didn't intend to uphold Mr M's complaint which were as follows:

- MotoNovo Finance, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr M - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;
- the car that was supplied to Mr M was nearly five years old, had been driven for 56,134 miles and had a price of £33,000;

- satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;
- Mr M says that the car's engine seized in December 2020 – which was nearly ten months after the car was supplied to him;
- he arranged for the car to be inspected by an independent expert in January 2021 – for which he paid £240 – and the inspection report records the car's mileage as 64,289 miles;
- the inspection report identified faults with the car, which it said required further investigation, and concluded: *"Taking into consideration the time and mileage elapsed since finance inception, time and the type of the fault the evidence will not support a developing at hire conclusion"*;
- Mr M arranged a second independent inspection of the car in April 2021 and the inspection report concluded: *"This vehicle has covered 8,173 miles since purchase, this allows us to confidently determine that it was fit for purpose and road legal at the point of sale, this opinion is re-affirmed by fact that the vehicle passed an MOT around the point of purchase"*;
- it also said: *"The oil pump had no evidence of mechanical failure and the lack of lubrication, in our opinion, would not result in an oil pump failure. ... In our opinion, cavitation of the oil is the most likely cause as this is normally associated with the vehicle being run with low oil levels at some point in the past and causes accelerated bearing wear"*;
- Mr M then paid £8,646.40 for the car to be repaired in June 2021;
- Mr M has provided a copy of the advert for the car which says that it had a full service history and he's provided a copy of the online service history for the car – which is headed *"Customer Copy"* and was printed in March 2020, about two weeks after the car was supplied to him (he says that he believes that he obtained it from another dealer when he obtained new registration plates for the car);
- it shows that the car was serviced in March 2016, March 2017, January 2018 and January 2019 – the recommended service interval for the car is the sooner of 12 months and 12,000 miles – so when the car was supplied to him it was due a service;
- Mr M says that the dealer was going to service the car before he collected it but he's provided no evidence to show that the dealer had agreed to service the car or that the car was serviced at that time – and the online service history for the car (and another copy of it that Mr M obtained in August 2020) don't show a service in February 2000 and I've seen no evidence to show that the car was serviced between January 2019 and December 2020 when the engine seized;
- I consider that it was reasonable in these circumstances for Mr M to expect that the car had been serviced before it was supplied to him but I also consider that he ought reasonably to have identified when he received the online service histories in March and August 2020 that the car hadn't been serviced since January 2019 and was due a service;
- I consider that it would be reasonable to expect him to have then raised the issue about the car's service history with the dealer (and to have complained to MotoNovo Finance if he wasn't satisfied with its response) – but he didn't do so and continued to use the car;

- I don't consider it to be fair or reasonable for Mr M to have continued to use the car – and to drive more than 8,000 miles in it when he knew, or ought reasonably to have known, that the car hadn't been properly serviced;
- Mr M says that there was no warning light about a low oil level but I consider it to be more likely than not that the engine seized as a result of it being used with low oil levels which is consistent with the conclusions from the second independent inspection and which it's likely would have been avoided if the car had been serviced soon after Mr M had obtained either of the online service histories;
- I'm not persuaded that there's enough evidence to show that the car wasn't of satisfactory quality when it was supplied to Mr M;
- nor am I persuaded that any misrepresentation about the car's service history is enough in these circumstances for MotoNovo Finance to be liable for the repair costs that Mr M has incurred; and
- I sympathise with Mr M for the issues that he's had with the car and the repair costs that he's incurred but I find that it wouldn't be fair or reasonable in these circumstances for me to require MotoNovo Finance to reimburse him for those repair costs, or any of the other costs that he's incurred, to pay him any compensation or to take any other action in response to his complaint.

Mr M has responded to my provisional decision in detail and says, in summary and amongst other things, that:

- the car may have been fit to drive when he collected it but the information provided shows that the issue has happened due to something in the past such as the car being run without oil or with the wrong oil;
- he's not had to service the car as it was sold with a full service history, it had been serviced and the last service was stamped in the service book but the book has since been lost – and the dealer will confirm this;
- the car wasn't reasonably durable and of satisfactory quality and a car that's fully serviced should last more than ten months and 8,173 miles before it needs a new engine;
- the first independent inspection was a waste of time and money as the car wasn't taken apart and the second inspection confirmed that the issue was caused by something that happened before he had the car;
- the garage that repaired the car will confirm that the car has been run with no oil or the wrong oil; and
- the car was sold with a 12 month comprehensive customer protect warranty but it only covers £1,000 so was no use for a £33,000 car.

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.

Our investigator has contacted the dealer and the garage that replaced the engine following Mr M's comments in response to my provisional decision. The dealer says that Mr M contacted it several times about the car's service book because he'd lost it but the dealer no longer has records about that. It also said that it didn't service the car before it was supplied to Mr M because the car was already serviced.

The garage says that a bearing had split which caused the engine to stop working. It said that the oil level was correct when the car was recovered to it but the oil was very dirty. It said that it couldn't confirm the cause of the engine failure.

The car was supplied to Mr M in February 2020 and he was able to use it to drive more than 8,000 miles in ten months. The engine seized in December 2020 and it was replaced in June 2021. Mr M paid for the car to be inspected twice – the result of the first inspection was that the evidence didn't support that the fault was developing at the point of supply and the second inspection report said that the car "*was fit for purpose and road legal*" when it was supplied to Mr M.

The dealer says that it didn't service the car before it was supplied and I'm not persuaded that the car's service history was misrepresented to Mr M. I can understand why Mr M might expect the car to have been serviced before it was supplied to him but the evidence shows that the car hadn't been serviced since January 2019.

Mr M has referred to the dealer's warranty for the car. That warranty isn't referred to on the sales invoice for the car or in the hire purchase agreement. I'm not persuaded that there's enough evidence to show that the warranty was misrepresented to Mr M or that there's been a breach of the warranty – and I don't consider that there's enough evidence to show that MotoNovo Finance has any liability to Mr M in these circumstances in connection with the warranty.

This is a finely balanced complaint and it's clear that Mr M feels very strongly that the car wasn't of satisfactory quality when it was supplied to him and that MotoNovo Finance should reimburse him for the cost of the replacement engine. But having carefully considered all of the evidence, I'm not persuaded that I should change the outcome that I set out in my provisional decision. I find that it wouldn't be fair or reasonable in these circumstances for me to require MotoNovo Finance to reimburse Mr M for the repair costs, or any of the other costs, that he's incurred, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 August 2022.

Jarrold Hastings
Ombudsman