

The complaint

Mr A complains a car he acquired with a hire purchase agreement from MotoNovo Finance Limited (Motonovo) is not of satisfactory quality.

What happened

I set out the background to this complaint in an earlier provisional decision, for clarity I repeat it here.

On 3 August 2021, Mr A signed a hire purchase agreement to acquire a Mercedes-Benz. The car was just under 3 years old and had travelled 22,950 at the point of sale. The total cost of the car was £33,657 and Mr A was to make monthly repayments of £473.44.

Mr A has explained the nature of his occupation is that the car would be used daily and would cover a significant distance.

Mr A says the EML warning light came on during the test drive of the car. It was explained to him that this can happen when the fuel level is low. But he says even after purchase, and with a full fuel level, the warning light persisted.

As Mr A lives some distance from the dealership from which he purchased the car, he took it to a Mercedes-Benz dealership close to where he lives.

It found a significant fault with the water ingress system. In an email to Mr A, the Mercedes garage said:

"We have ascertained that there is water ingress to the Nox sensor wiring loom which requires replacement, along with a replacement Nox sensor. ... We cannot proceed under manufacturer's warranty, due to the water ingress being caused by previous repairs and retrofitted components and not a manufacturing defect. ... There is usually a bung which stops water entering the wiring harness, which has instead been removed and an additional harness has been put through, which was then duct-taped over. The duct tape has failed in preventing water ingress."

The cost of the repair was £1399.46, and Mr A had also noticed a device affixed to the car which he thought was a mileage stopper and so he raised a complaint with the dealership. The dealership said as it hadn't inspected the car it couldn't offer to refund the full cost, but as a gesture of goodwill it offered £500. Mr A was unhappy with this offer as this would mean he had suffered a loss of around £900 and so he complained to Motonovo.

In its final response dated 13 January 2022, Motonovo didn't uphold his complaint. It said because the repairs were unauthorised it couldn't establish the fault was present at the point of sale. It had also carried out an ACE inspection and the device fitted to the car was found to be a tracker and of no detriment to Mr A.

Dissatisfied, Mr A brought his complaint to this service.

An investigator looked into things for Mr A. In his first view, he upheld Mr A's complaint. He found it more likely the fault was present at the point of sale and found it reasonable that Mr A would take the car to a Mercedes-Benz garage to be inspected and as it found the need for a repair to then carry it out.

Motonovo then provided this service with some further evidence – an MOT, a job card, and a technician report. On reflection, the investigator then issued a second view, he felt it was now more difficult to say if the fault was present at the point of supply. He felt in having the car repaired Mr A hadn't given Motonovo the opportunity of an independent inspection – he changed his view and didn't uphold the complaint.

Mr A was obviously very disappointed and so he asked for an ombudsman review.

In my provisional decision, I considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I looked at what is fair and reasonable in considering this complaint. I took into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

I said where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also explained that I've summarised the events of the complaint. But I assured both parties that I'd reviewed everything on file. And said, if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I explained as Motonovo supplied the car under a hire purchase agreement, if there was a problem with the car, which was there from the beginning, I'd expect it to put things right.

Mr A and Motonovo have provided information that at times is contradictory. So, where they don't agree about what happened here, I've got to decide which version of events I find the most likely and why that is so.

what makes me think the car was faulty from day one

I said I think it's more likely the fault with the car was present when it was supplied. Mr A said the warning light came on during the test drive and this was explained away as something that can happen when the fuel level is low. But this persisted. Mr A has been consistent about this point. He supplied information to shore up what he says here. His version of events is also supported by a Mercedes-Benz garage where he took the car for inspection. It may not be an independent ACE report, but it is a specialist and so I carefully considered the report it gave.

In this case, we are talking about a high value car that was under 3 years old having "duct tape" fastened over where a missing part should have been, this has obviously failed to prevent water ingress.

The report also indicates this was as a result of a previous failed repair and as such would not be covered by the manufacturer's warranty.

I appreciate the car passed its MOT before he got it. However, that is not enough by itself to say the car was fine. I say that because the duct tape was clearly present when Mercedes Benz inspected the car on 17 September 2021, just over a month after Mr A acquired it.

So, either the duct tape was present at the point of sale covering a failed repair or Mr A has had a previous repair to the one completed following the EML light presenting. As Mr A, has brought this issue immediately to the attention of both the dealership and Motonovo, I find it highly unlikely that he is responsible for placing the duct tape in place, and I find it more likely it was present at the point of sale.

I also said given that Mr A lives over 125 miles from the dealership and needs the car for his occupation, I find it entirely reasonable that he would take the car to a reputable specialist to inspect it, close to where he lives. And it was this independent garage that found the fault.

I understand that MotoNovo said this repair was unauthorised, and that Mr A should've informed them or the supplying dealership about this. But, I have also looked at the hire purchase agreement that was signed, I can see no direct reference saying that Mr A should contact you or the supplying dealership in an event of a fault or have any repair authorised.

I listened to the call between Mr A and the dealership. In it the representative said:

"If Mercedes Birmingham won't do it (fix It) then we can take to Mercedes Blackpool."

So, I said, if the dealership would have been happy with a repair from Mercedes Blackpool, I didn't understand MotoNovo's point about the repair being carried out by Mercedes Birmingham.

I see no reason to doubt the findings of Mercedes Birmingham and so that brings me back to the issue of the duct tape being present, which isn't something I would expect to see is a high value car, under 3 years old.

I said I was persuaded, this fault was more likely than not, present at the point of sale and as such, Motonovo should put things right for Mr A.

In my provisional decision, I said intended to ask Motonovo Finance Limited to:

- Refund the £1399.46 for the repair and pay 8% simple interest from the date the payment was made to the date this amount is settled.
- Pay Mr A £300 for the trouble and upset this matter has caused.

I allowed both parties to make any further submissions they wish me to consider before issuing my final decision.

Mr A accepted my provisional findings.

MotoNovo responded, it said:

It didn't accept there was sufficient evidence of a fault being present at the point of sale. Amongst a number of points, it said:

Mr A purchased the car on 3 August 2021 but did not make an appointment with Mercedes until the 17 September 2021. It thought, had the issues been present at the point of sale, it would be a fair assumption to state that the vehicle would have been booked in at a much earlier date, rather than a period of almost 6 weeks.

The car had covered a distance of 2,324 miles. It felt this would suggest on a balance of probability that the vehicle did not show any indications of malfunction.

There is no evidence Mr A hasn't carried out repairs whilst the car was in his ownership and that could account for the duct tape being present.

It reiterates its point that by allowing the Mercedes dealership to complete the repairs, Mr A took away its right to have an independent inspection to establish who would be liable for the costs.

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 have considered all the information again and the additional submissions from MotoNovo, but I haven't seen anything to persuade me to change my view from that of my provisional decision.

MotoNovo provided the finance to Mr A. The finance agreement that MotoNovo used is a regulated finance agreement and this service is therefore able to look at this agreement. MotoNovo has obligations towards Mr A under relevant consumer regulation, in particular the Consumer Rights Act 2015 ("CRA").

One of the core obligations that MotoNovo has is to provide a car that is of satisfactory quality. In particular the CRA says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory considering any description of the goods, price, and all other relevant circumstances. That being so it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age of the car, at the time of supply and the vehicle's history. The car was just under 3 years old and had travelled 22,950 at the point of sale. The total cost of the car was £33,657.

In these circumstances, a reasonable person might have expected the car to run without any problems for a considerable period of time. I say this all the more so when I take on board that durability can also be an aspect of satisfactory quality, I mention this because MotoNovo seems to suggest that in these circumstances Mr A, would have encountered issues earlier than two months into the ownership of the car if the fault was present at the point of sale.

I should point out, under the Consumer Rights Act 2015, where a fault occurs in the first six months, it's presumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. After six months the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality.

So, in this case, within two months Mr A has raised significant concerns about a car he knows he needs to use regularly for work. He has then taken the car to a reputable dealership, who has identified the wrongful presence of duct tape. So, as I said previously, either the duct tape was present at the point of sale covering a failed repair or Mr A has had a previous repair to the one completed following the EML light presenting.

I don't find it likely on a balance of probability that Mr A, having raised his concerns immediately to both the dealership and MotoNovo, that he would be responsible for placing the duct tape in place, I find it more likely it was present at the point of sale.

I would not expect to see a high value car, purchased within two months at a cost of over £30,000 either have warning lights come onto the vehicle or to have duct tape in situ and so I remain of the view, there was likely a fault present at the point of sale.

I find the point MotoNovo raises about an independent inspection to be somewhat moot, on the basis it has said it would have deferred to a Mercedes dealership, albeit one closer to the original dealership, and so I don't agree Mr A has been unreasonable in taking the car to a Mercedes dealership closer to his home, rather than one 125 miles away.

As Mr A has already accepted the repair, I remain of the view it is fair and reasonable that MotoNovo pay for the repair in full rather than the £500 offered.

My final decision

For the reasons I have given, I direct Motonovo Finance Limited to:

- Refund the £1399.46 for the repair and pay 8% simple interest from the date the payment was made to the date this amount is settled.
- Pay Mr A £300 for the trouble and upset this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 September 2022.

Wendy Steele
Ombudsman