

## The complaint

Mr H complains about the quality of a car that was supplied to him under a hire purchase agreement with MotoNovo Finance Limited.

## What happened

In March 2021 Mr H entered into a hire purchase agreement with MotoNovo for a car. The car was three and a half years old and had a cash price of £15,995.

Mr H says that, a few weeks after he got the car, it began going into limp mode and the engine management light (EML) came on. He complained to the dealer, who arranged a repair through the warranty service.

In May 2021 Mr H took the car to the nearest of the garages approved by the warranty service for diagnosis of the problem. The garage carried out a repair to the crankcase breather system and intake line. Some of this work was covered by the warranty, but Mr H had to pay £190 plus VAT for the intake line.

Mr H says the EML came on again very soon after he'd got the car back from the garage - and the car's hybrid system stopped working altogether. He raised a complaint with MotoNovo, who obtained an independent engineer's report on the faults.

MotoNovo sent Mr H a copy of the report, which stated the following conclusions:

*"We would conclude that the vehicle does display numerous fault codes requiring further investigation."*

*"We do not consider the fault to have been present at sale after 57 days of further use based on the types of defect seen, sufficient time and mileage has elapsed for the defect to develop in hire and is considered a maintenance repair."*

Mr H raised concerns to MotoNovo that this report hadn't got things quite right – including the car's mileage. In July 2021 Mr H took the car to a manufacturer's garage, M, for diagnostic reports. He says M fixed the problem within an hour and returned the car to him fault-free. He sent copies of the diagnostic reports to MotoNovo.

MotoNovo issued their final response to Mr H, saying his complaint hadn't been upheld because they'd seen no evidence that the faults would have been present or developing when they supplied the car. But they offered Mr H £200 compensation for the length of time they'd taken to reach an outcome. Mr H wasn't happy with this response, so he brought his complaint to us.

Our investigator contacted both the garages that had carried out repairs to the car. After reviewing the evidence, the investigator said he didn't think the car was of satisfactory quality when it was supplied. He felt Mr H was able to use the car between March and July 2021, although it wasn't performing as it should. So, he thought MotoNovo should refund 20% of the payments made during that period to reflect the impaired use of the car.

The investigator was satisfied Mr H had incurred additional costs of £296.40 for diagnostic reports and £190 for an intake line because MotoNovo had supplied a car that wasn't of satisfactory quality. So, he thought they should reimburse these amounts.

The investigator said Mr H had also experienced distress and inconvenience due to the problems with the car. He thought MotoNovo should pay Mr H an additional £100 in compensation for this.

MotoNovo didn't agree with our investigator's view, so the case has come to me for a decision. I'll summarise the points MotoNovo made:

- The evidence from the manufacturer's garage confirmed there was a fault, but didn't confirm the issues would have been present or at least developing at the time the car was supplied to Mr H.
- As experienced and knowledgeable as many garages can be, this doesn't mean they're suitably qualified to determine whether faults were present or developing at the time a vehicle was supplied.
- No garage that charges for carrying out repairs can be confirmed to be independent and unbiased, because it's in their interest to find fault.
- The independent report they'd provided concluded that the fault wasn't considered to have been present or developing when the car was supplied to Mr H. MotoNovo felt this report should carry more weight, because it was from a suitably qualified engineer who was able to comment on these issues.

### **My provisional decision**

I issued a provisional decision, saying:

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

*Mr H's complaint is about a car supplied under a hire purchase agreement. Entering into consumer credit contracts like this as a lender is a regulated activity. So, I'm satisfied I can look into Mr H's concerns about MotoNovo.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. 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.*

*The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances. It seems likely that in a case involving a car, the relevant circumstances a court would take into account might include things like its age, mileage, and history.*

*So in this case, I consider it relevant for me to take into account that the car was around three and a half years old when it was supplied to Mr H. And it cost £15,995, which represents a significant reduction on what it would've cost new.*

*The hire purchase agreement Mr H signed on 19 March 2021 records the car's mileage to have been 58,878. But I find it most likely that the mileage was recorded incorrectly here, because I've noted discrepancies when comparing this to the mileage recorded by the engineers who later inspected and repaired the car. I've seen MOT records showing the mileage to have been 53,878 when the car was tested on 28 January 2021. I consider it*

*unlikely the mileage was much higher than this when the car was supplied to Mr H, around six weeks later.*

*Having thought about its age, price, and mileage, I don't think a reasonable person would have the same standards for this car as they would a newer one with less mileage. I think a buyer would probably expect some parts to have suffered a bit of wear and tear. But, given the price, I think they'd still expect it to be free from anything other than minor faults when it was supplied - and to be able to drive the car for a reasonable period of time without major issues.*

*The CRA says the quality of the goods includes their state and condition. It says things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods. So, my starting point is to consider whether there were defects with this car.*

*It isn't disputed that faults were found with the car. I'm satisfied these were significant faults, because I've seen evidence showing the EML came on and the engine went into limp mode due to an issue with the crankcase breather system. And Mr H has told us that the car's hybrid system stopped working – and that the manufacturer's garage advised him not to start the car.*

*But MotoNovo dispute whether the faults were present, or developing, at the time they supplied the car to Mr H. I've considered this point in detail. The evidence I've seen shows there were two main faults, which I'll discuss in turn.*

#### *(i) Crankcase breather system*

*Mr H has told us that this problem first came to light on 17 May 2021, and that he took the car to the closest of the garages approved by the warranty company for diagnosis and repair.*

*I've reviewed what the garage told our investigator about this. They confirmed that Mr H first brought the car to them on 24 May 2021. They said they diagnosed a problem with the crankcase breather system, after finding a broken bolt which had gradually allowed a leak to develop. They said they replaced the intake line and a couple of O-ring seals, which had taken at least two days to complete. They confirmed Mr H paid for the intake line, for which he was charged £190 plus VAT.*

*The garage expressed no doubt that this problem had arisen due to a fault, rather than a wear and tear issue that would be expected of a car of that age and mileage. I also note that there were very confident this problem couldn't have developed during the relatively small amount of mileage Mr H had travelled in the car. For that reason, they believed the fault would have been present when the car was supplied to him.*

*I appreciate that this garage can't be said to be truly independent in this matter. But I've seen nothing to suggest bias in their view – or that they charged for work that wasn't necessary.*

*Having carefully considered what the garage told us about the broken bolt, together with the relatively small amount of use Mr H had from the car before the problem came to light, I'm not persuaded that this problem arose due to normal wear and tear. I'm satisfied that it was due to a fault that was most likely to have been present, or developing, when the car was supplied.*

#### *(ii) Hybrid battery cooling system*

*I've seen evidence showing Mr H had more problems with the car at the beginning of June 2021. He's told us these issues were successfully resolved by M the following month. I've seen a copy of M's diagnostic reports showing the car's odometer recorded 89,536 kilometres at that time, which is approximately equivalent to 55,635 miles. I've also seen a copy of M's invoice dated 16 July 2021, showing Mr H paid £296.40 for the work they carried out.*

*The first labour charge listed on M's invoice relates to:*

*"EML on dash – malfunction – a number of fault codes reported  
Carried out star test found multiple faults stored and current (see printout supplied)  
Fault: P052E71 crankcase ventilation malfunction..."*

*So, I can see the car was showing a fault relating to the crankcase ventilation system, which I note to have been the part of the car that had recently been repaired. M have told us that some stored fault codes simply needed clearing. And they've explained that stored faults that haven't been cleared off the car's system can cause the EML to come on.*

*The second labour charge listed on M's invoice was for diagnostic work relating to "battery management system faults". I've seen a second invoice from M, showing the following work was then carried out free of charge:*

*"carried out manual pressure test of low pressure battery cooling system. Bled battery cooling system..."*

*M has provided further clarification about this. They've explained that, in their opinion, some work had been done to the battery cooling system in the past – and that it hadn't been bled correctly.*

*M haven't provided any evidence as to how recently the problem with the cooling system was likely to have occurred. MotoNovo say there's no evidence showing the issues were present at the time the car was supplied to Mr H. I've thought about this.*

*But I've seen that the issue with the battery cooling system came to light almost immediately after the first repair. Mr H says he hasn't had any work done to the cooling system - and I'm satisfied that he'd only travelled around 1,600 miles in the car by the time this problem came to light. So, I find it most likely that this problem was also already present when the car was supplied to Mr H.*

*I accept M can't be said to have the same degree of independence as the engineer MotoNovo instructed to assess the car. MotoNovo also say M's mechanic may be less qualified to comment on whether faults were likely to have been present or developing at the time the car was supplied to Mr H. For these reasons, MotoNovo feel more weight should be given to the independent report they obtained. I've considered the points they've raised here.*

*I've seen a copy of the independent engineer's report, relating to his visit dated 8 July 2021. I've also seen additional comments provided in response to concerns raised by Mr H. I've reviewed this evidence in detail.*

*The report says: "based on the types of defect seen, sufficient time and mileage has elapsed for the defect to develop in hire and is considered a maintenance repair." But I've seen no information in the independent engineer's report as to what he considered the defect to have been. It says: "Further investigation will be required to confirm the exact cause of fault and parts required."*

*The engineer's additional comments confirm:*

*"... with regards to... investigation work, there are occasions when specialist intrusive equipment is required that is only available to a [manufacturer's garage]."*

*As the independent engineer was unable to identify what was causing the problems with the car, I don't consider his evidence to be more reliable than that of M, the manufacturer's garage who successfully diagnosed and resolved the problem.*

*I also note that the engineer concluded: "sufficient time and mileage has elapsed for the defect to develop in hire". But his evidence shows he'd been told the car had travelled 58,858 miles when it was supplied to Mr H - whereas he noted the mileage was 55,651 at the time of his inspection. So, I can't see that the engineer was able to properly consider the mileage the car had covered since it was supplied to Mr H.*

*To summarise, I'm satisfied that the problems with the car were due to faults that were most likely to have already been present or developing when the car was supplied to Mr H. And even if the fault wasn't already developing when he got the car, I'm satisfied that Mr H was entitled to expect more than 1,600 miles' use from it without the need for significant repairs. I think he could reasonably expect it to be more durable than this. So, I don't consider the car to have been of satisfactory quality when it was supplied to him.*

#### *Putting things right*

*I've heard evidence from the garage confirming the cost of the first repair was partly covered by the warranty company, but Mr H had to pay £190 plus VAT for the intake line. And although M bled the battery cooling system free of charge, I've seen that he paid £296.40 for the diagnostic investigations listed in their invoice dated 16 July 2021.*

*I'm satisfied that Mr H incurred these costs because he'd been supplied with a car that wasn't of satisfactory quality. So, I think it's fair that MotoNovo should reimburse these amounts.*

*Mr H told us that the problems first came to light on 17 May 2021, at which point he stopped using the car for anything other than short journeys to avoid making things worse. I'm satisfied that the car had to be taken to the garage for diagnosis - and that it was there for at least two more days for the repair to the crankcase breather system. Mr H told us he had to take the car back to the garage on 4 June 2021, because the problems had got worse. He says he was advised not to start the car until the issue with the electrics was resolved because it may be unsafe.*

*Having thought about this, I think Mr H effectively had very little use of the car after 17 May 2021 - and stopped using it altogether at the beginning of June 2021. I've seen that the problems were resolved on 16 July 2021. So, I think it would be fair for MotoNovo to refund the rentals Mr H paid for these two months in which he's had very little or no use of the car.*

*I think Mr H has also been caused some distress and inconvenience because of the problems with the car. He's told us his wife was pregnant at the time, so I think he'd be concerned at the thought of it breaking down during a journey. The car had to go into the garage for two lots of diagnostics and repairs. And Mr H has provided evidence showing he arranged a hire car for a journey he made in June 2021. So, I think it would be fair for MotoNovo to pay Mr H £100 compensation for the distress and inconvenience he's been caused here.*

*For the reasons I've explained, I intend to uphold this complaint and direct MotoNovo Finance Limited to:*

- *Pay Mr H £190 + VAT for the intake line he paid for in June 2021, on production of a valid receipt or other evidence of payment,*
- *Pay Mr H £296.40 for the diagnostic reports he paid for in July 2021,*
- *Refund the payments Mr H made under the agreement for the period between 17 May 2021 and 16 July 2021 to reflect his loss of use of the car,*
- *Pay Mr H 8% simple yearly interest on each of the above amounts, calculated from the date he made each payment until the date of settlement,*
- *Pay Mr H £100 for the distress and inconvenience he's been caused.*

*If MotoNovo considers that they're required by HM Revenue & Customs to withhold income tax from the interest, they should tell Mr H how much they've taken off. They should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.*

I invited both parties to send me any further information or comments they'd like me to consider.

### **Responses to my provisional decision**

Mr H said he felt my provisional decision was fair and he had no further information to add.

MotoNovo didn't respond.

### **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.

As no new information has been provided in response to my provisional findings, I see no reason to depart from them.

### **My final decision**

For the reasons I explained in my provisional decision, I uphold this complaint and direct MotoNovo Finance Limited to:

- Pay Mr H £190 + VAT for the intake line he paid for in June 2021, on production of a valid receipt or other evidence of payment,
- Pay Mr H £296.40 for the diagnostic reports he paid for in July 2021,
- Refund the payments Mr H made under the agreement for the period between 17 May 2021 and 16 July 2021 to reflect his loss of use of the car,
- Pay Mr H 8% simple yearly interest on each of the above amounts, calculated from the date he made each payment until the date of settlement,
- Pay Mr H £100 for the distress and inconvenience he's been caused.

If MotoNovo considers that they're required by HM Revenue & Customs to withhold income tax from the interest, they should tell Mr H how much they've taken off. They should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 11 October 2022.

Corinne Brown  
**Ombudsman**