

## **The complaint**

Mr P complains about the quality of a used vehicle supplied by MotoNovo Finance Limited under a hire purchase agreement (HPA).

## **What happened**

Mr P got this van near the end of October 2020 for social and commuting use. In early February 2021 it broke down and he contacted the supplying dealer. The dealer wasn't much help - as the van was just outside a three month/3,000 mile warranty - and Mr P complained to MotoNovo. MotoNovo arranged for an independent engineer (that I'll call A) to inspect the van. He thought the problem lay with the EGR valve or head gasket failure and, while further investigation was needed to confirm this, the issue was probably wear and tear related.

MotoNovo told Mr P it wasn't responsible in the circumstances and he felt that was unfair, as he'd only had the van for three months and driven it just over 4,000 miles. Mr P engaged two different independent engineers (that I'll call L and J) to inspect the van. They agreed the problem was related to the EGR valve and/or the head gasket and recommended further investigations so Mr P took the van to a main dealer (for this brand) for checks. The EGR valve was replaced but this didn't solve the problem - the van broke down again almost straightaway.

The valve (that the main dealer removed) was dismantled and examined by L and J. They found evidence of a leak in the cooling system which was likely repaired with sealant and the use of tap water to top up which probably took place over a prolonged period, before Mr P got the van, causing engine failure. MotoNovo asked A to comment on the findings and another engineer carried out a desktop review. He said there was no firm evidence that sealant was used and a fault like this would have been evident within 1,000 miles of use so it probably developed while Mr P had the van and Mr P may have contributed to the problem by topping up with tap water. L and J didn't agree that this issue would appear within 1,000 miles of use and Mr P says he never topped up the coolant system but MotoNovo remained of the view it's not responsible and Mr P referred the matter to our service.

One of our investigators considered the evidence and recommended the complaint should be upheld. On balance, he thought the van was probably of unsatisfactory quality when Mr P got it. He was satisfied that faults appeared within three months of supply and he wasn't persuaded that MotoNovo had done enough to show these weren't there at the outset. He said there's no evidence of a coolant leak while Mr P had the van (so he had no reason to top this up) and he preferred the evidence provided by L and J overall. The investigator recommended Mr P should be allowed to reject the van and MotoNovo should refund the deposit plus expenses - such as the cost of investigations, repairs and expert evidence. He said MotoNovo should also refund monthly finance payments and road tax and insurance from February 2021 (as Mr P reasonably stopped using the van at this point) and pay £150 compensation for associated distress and inconvenience and rectify Mr P's credit file.

MotoNovo asked for the matter to be referred to an ombudsman. In summary, MotoNovo accepts all three engineers found faults in the cooling system but, relying on A's opinion,

considers these would not have been present or developing at the point of supply. MotoNovo said coolant was below the normal level when the van was first inspected, Mr P says he didn't top up the coolant system and running the engine without coolant can contribute to the faults identified,

Mr P was unhappy about the prospect of further delay and decided to have the van repaired in the meantime so he wants to keep it now. He says MotoNovo should refund the repair costs plus his out of pocket expenses and pay compensation. MotoNovo thinks it was uneconomical to repair the van, paperwork Mr P submitted doesn't include all the expenses he claimed for and included some wear and tear items which MotoNovo shouldn't be held responsible for.

Having considered the available evidence, I was minded to uphold the complaint but my reasons were a bit different to those of the investigator. I thought it was fair to give the parties the chance to see my provisional findings, and make further submissions (if they wanted to) before, I made my final decision. I issued a provisional decision on 28 October 2022. I've set out below (in italics) what I decided provisionally - and why. This forms part of my final decision.

### **My provisional decision**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Both parties have provided a good deal of evidence so I've had to summarise things in this decision. The rules of our service allow me to do this but I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However, I'm going to concentrate here on what I consider is key to reaching a fair and reasonable outcome overall.*

*MotoNovo supplied this van to Mr P under a HPA and it was obliged, under the Consumer Rights Act 2015 (CRA), to ensure that the van was of satisfactory quality at the point of supply (among other things). What amounts to "satisfactory" quality will vary depending on individual circumstances. The quality of goods includes their general state and condition as well as fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. And goods need to meet the standard that a reasonable person would consider "satisfactory". In the case of a used vehicle, it's generally considered reasonable to take the age, cost and mileage at the point of supply into account. This van was around five years of with about 59,000 miles on the clock at the point of supply. It cost nearly £13,000 and Mr P paid a deposit of £1,950 and funded the balance with finance provided by MotoNovo - which he agreed to pay back over four years at about £300 a month.*

#### *Was the van of satisfactory quality at the point of supply?*

*I think a reasonable person would accept that a vehicle like this was likely to have some parts that were worn and would need replacing or repairing sooner or later – which is reflected in the lower price paid compared to the price of a brand new vehicle. I can't fairly hold MotoNovo responsible for normal wear and tear. But, I consider Mr P had a reasonable expectation that this van would be relatively durable - taking its age, price and mileage at the outset into account.*

*There's no dispute that the van broke down just over three months after supply, by which*

time Mr P had driven it about 4,000 miles. The parties engaged three different independent expert engineers to inspect and report on what went wrong and Mr P also took the van to a main dealer for some investigations and repairs.

I have read all of the relevant paperwork and expert evidence. I can see A found coolant was above the maximum level at the first inspection and, after about five minutes of the engine running, there was noticeable excessive pressure within the coolant system. The engineer concluded that this could be due to a faulty EGR valve/cooler or possibly the cylinder head gasket having failed and further investigation was required. He recommended checking the EGR valve unit and cooler to eliminate this before replacing the head gasket. And, given how long Mr P had the van and how far he'd driven it, the engineer considered the problem would not have been present or developing when the van was supplied.

J and L both inspected in early May 2021. They also found excessive pressure in the coolant system which was likely due to the presence of combustion gases and usually only happens after the failure of the EGR cooler or the cylinder head gasket.

I'm satisfied that all three experts thought further investigation was needed so I don't think it was unreasonable for Mr P to take the van to the main dealer for checks at this stage. As I understand it, the main dealer replaced the EGR valve initially (as A suggested) because this would have been the most cost effective repair - if it had resolved things. Unfortunately it didn't and the van broke down again very soon after because the engine damage was extensive.

Both J and L then checked the part that the main dealer removed. J found "significant amounts of oxidation to the alloy cooler housing which can only have occurred as a result of continued use over a long period of time with plain water in the cooling system" as well as "a build up of grit and lime scale deposits which suggests that some type of leak stopper has been added to the cooling system".

J thought leak stopper had probably stopped the leaks but also impacted on the efficiency of the cooling system – "blocking water jackets and allowing the sediment to solidify and prevent circulation" causing the cylinder head gasket to fail. And L confirmed a build-up of limescale and rust staining suggested the vehicle was operated with a coolant leak and topped up with tap water at some time in the past. L thought the extent of the limescale present meant the van probably had tap water in its cooling system for a prolonged period and operating with insufficient coolant had caused localised thermal overload ultimately resulting in cylinder head gasket failure.

I think it's fair to say all three experts agree that the breakdown was caused by an issue with the coolant system. Where they disagree is what's likely to have caused that exactly and when this happened. J and L both consider there's evidence of a long-standing coolant leak, the use of tap water to top up the system and an attempt to repair by the use of a sealant. And, looking at the deposits present, they think this probably happened some time before the van was supplied to Mr P.

A, on the other hand, remains of the view this fault would have developed solely during the time Mr P had the van as this sort of issue would usually be apparent within 1,000 miles of use - and Mr P was able to drive the van four times as far before it broke down. A goes on to suggest that Mr P may have been topping up the coolant with tap water which added to the problem but I'm not clear about where the suggestion that Mr P topped up the coolant system came from. I've seen no evidence to support that. There's nothing to show the van had a coolant leak in the three months or so Mr P used it - the main dealer ran diagnostic checks and found no evidence of any relevant fault stored – so Mr P had no reason to top up the coolant system with tap water (or anything else). And I'm satisfied he has consistently

said he checked the coolant level visually, when he looked over the engine every week or so, but he never topped this up.

In any event, if coolant levels were dropping during the first few months after Mr P got the van, it's difficult to see why he'd choose to top this up repeatedly. The van came with the benefit of a three month warranty and I think it's more likely than not Mr P would have contacted the supplying dealer. Mr P told us he checked the engine regularly because he wanted to be sure he spotted any issues so these could be resolved under the warranty and I think that sounds plausible.

I find Mr P's actions here to be credible and consistent. I'm satisfied he contacted both the supplying dealer and MotoNovo very soon after the breakdown in February 2021. And he then went to some trouble and expense to have the problem investigated by a main dealer and two expert engineers. I think Mr P is unlikely to have taken the steps he did if he knew they'd find evidence of mis-use of the coolant system. And, weighing up all the evidence, I consider the expert evidence from J and L to be more persuasive than that provided by A. I think their findings and views about the likely cause of the fault make sense. I consider it's more likely than not this van had a leak before it was supplied to Mr P and actions taken by a third party - such as the application of sealant and the use of tap water - damaged the engine over time causing the head gasket to fail in February 2021.

There seems to be no dispute that this engine was damaged beyond repair. I don't think a reasonable person would expect to have to replace the engine in a van of this age and mileage after just three months and 4,000 miles or so of use. I'm minded to conclude that the van was probably of unsatisfactory quality when it was supplied to Mr P. And I've gone on to consider what MotoNovo should do to put things right.

#### The cost of work carried out by the main dealer and expert evidence

For the reasons I've given above I don't think it was unreasonable for Mr P to take the van to the main dealer for checks and repairs in May 2021. I'm minded to find MotoNovo should reimburse this cost along with the cost of expert evidence because Mr P wouldn't have incurred these expenses if the vehicle was of satisfactory quality at the outset.

#### Monthly finance payments, road tax and insurance

I find it fair that Mr P should also have his monthly payments refunded for the time he was unable to use the van from February 2021 until May 2022 - when it was repaired. Likewise I'm minded to agree with the investigator that Mr P should have the cost of insurance and road tax reimbursed (for this period). I'm satisfied that Mr P was obliged to keep the van insured even though he wasn't using it. And he was unable to make a statutory off road notification (SORN) - as he couldn't store it off the public road. Paperwork supplied by Mr P indicates he paid insurance of £88.51 a month until 20 Aug 21 then £75.01 for one month and £74.85 a month after that until May 2022. And, in terms of road tax, he seems to have paid £23.18 a month until October 2021 when he paid £24.09 for one month and £24.06 after until May 2022.

#### Repairs (and other costs) in May 2022

I think Mr P was left in a somewhat difficult position by this stage. He had a van he couldn't use that he was paying over £400 a month for (including tax and insurance) which was due an MOT. He wasn't sure how long it would take to get a final ombudsman's decision and whether that would be in his favour. And I don't think it was unreasonable for Mr P to decide to have the van repaired, in these particular circumstances.

I understand MotoNovo considers the repairs were uneconomical and says, given the choice, it would have preferred to take the van back and provide a refund. But, I think it's unlikely that these repairs cost significantly more than rejection overall. As far as I can see,

*rejection would have required MotoNovo to pay for collection and then either have the van repaired or sold at a discount (in view of damage present). In addition, MotoNovo would have had to refund the deposit £1,950, the cost of investigations and repairs already incurred and expert evidence (£2,000 at least) plus monthly finance payments, tax and insurance from February 2021 until settlement - along with interest. As a result of Mr P having the van repaired, MotoNovo won't now need to pay for collection and repair/sell at a discount or refund the deposit or any finance or tax/insurance payments made after May 2022 (which would probably have been ongoing otherwise until the ombudsman's decision).*

*Turning to the repair costs Mr P has claimed, I've seen two relevant invoices. I think £1,500 for the supply of a reconditioned engine seems fair. I'm minded to find it reasonable for MotoNovo to refund this amount along with the cost of any labour associated with removing the damaged engine and fitting the reconditioned one. I think it likely oil and filters would form an essential element of replacing the engine so I consider it fair that MotoNovo should refund this cost as well.*

*I've seen no evidence however to show that it was necessary (as a result of faults present when the van was supplied) to replace the other parts listed in the invoice – namely two turbos, the clutch and flywheel, the water pump, front brake discs and pads and the bottom crankshaft pulley. I realise it may have been more cost effective to undertake this work at the same time as replacing the engine. But I think any wear to the parts in question was probably due to normal use - in a vehicle of this age and mileage. And I can't therefore fairly hold MotoNovo liable for the associated cost - on the current evidence.*

*The invoice (dated 27 May 2022) doesn't set out the cost of the individual parts and or the associated labour so I've asked Mr P to obtain a detailed breakdown if possible. I understand Mr P also incurred some transport costs at this time but I haven't seen any evidence of that. If Mr P still wants to claim for transport it is open to him to supply relevant evidence. If he no longer has receipts, this could consist of information about the cost of any relevant train fare, for example, along with confirmation (in a bank statement or similar) that he paid this amount on the relevant date.*

*I'm satisfied that Mr P has experienced some distress and inconvenience as a result of being supplied with this faulty van. He had to take it back and forth to several garages for checks and repairs, among other things. I think it's fair that MotoNovo should pay Mr P £150 compensation to reflect this. In addition, if any adverse information was recorded about the HPA on Mr P's credit file as a result of what happened, I am minded to find that should be removed as well.*

### **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 invited the parties to consider my provisional findings and let me have any further comments or new evidence by 11 November 2022. MotoNovo accepted my provisional findings initially and Mr P supplied a breakdown of the repair invoice and details of his insurance and road tax payments. He said a new water pump was required because the engine had to be replaced so the cost of this should be refunded. And the £1,500 charged for labour didn't include labour associated with fitting of additional parts (such as the clutch) because of the extensive work needed anyway in order to replace the engine. Mr P didn't provide any documentary evidence relating to additional transport costs.

I wrote to both parties and explained that I was minded to require MotoNovo to take the steps set out below (under the heading my final decision) to put things right as (among other

things) it looked as if Mr P no longer wished to claim for additional transport. And I allowed the parties some more time (until 23 November 2022) to make further submissions.

Mr P hasn't sent us anything else but MotoNovo supplied a very detailed response saying (in summary) having considered all the evidence again, it doesn't agree the vehicle was of unsatisfactory quality when it was supplied for the following reasons:-

- when the first expert (A) inspected the van in March 2021 he concluded that the fault could not have been present or developing since supply due to the time elapsed from the point of sale to breakdown and the mileage covered;
- the two experts (L and J) instructed by Mr P both noted water in the coolant system contributed to the engine failure;
- Mr P claims not to have topped up the system but coolant was found to be overfilled with a mixture of coolant and water when A inspected in March 2021 – MotoNovo asks how would that be possible if Mr P never topped up the coolant system after he got the van, almost four months previously;
- if the van was operated with depleted coolant that's Mr P's responsibility;
- J refers to some type of 'leak stopper' being added to the cooling system but there's no evidence of when this was added - or that it was not added by Mr P; and
- Mr P had unauthorised repairs completed without allowing MotoNovo the opportunity to further inspect the van and gather additional evidence.

MotoNovo hasn't provided any new evidence and I think I've addressed most of the points it has raised in my provisional findings already. Nothing that's been said has caused me to change my mind. I acknowledged in my provisional decision that A found coolant was above maximum when he checked in March 2021. I can see no reference to a "mixture" of coolant and water in his report. And, in any event, I'm not persuaded that the presence of fluid in the coolant system above the maximum means Mr P must have topped it up after supply – with tap water or anything else.

For the reasons I've given already, I prefer the evidence of J and L which points (in summary) to prolonged use of tap water in the coolant system for some time *before* Mr P acquired the van causing the fault. I'm satisfied MotoNovo had the opportunity to carry out further investigations (even after J and L provided their reports) if it wanted to but chose to commission a desktop report instead. And, given MotoNovo continued to reject his complaint, I don't think it was unreasonable of Mr P to decide to have the van repaired when he did (for the reasons I have set out in my provisional decision).

On balance overall, I remain of the view this vehicle was probably of unsatisfactory quality when it was supplied to Mr P. And, taking everything into account, I consider it is fair and reasonable for MotoNovo to take the steps set out below to put things right.

### **My final decision**

My decision is I uphold this complaint and I require MotoNovo Finance Limited to do the following:-

1. Refund the cost of investigations (£89) and repairs (£1,321.43) carried out but the main dealer totalling £1,410.43,
2. Refund the cost of expert evidence (£420 for L and £300 for J) totalling £720;
3. Refund monthly payments made while the van was off the road along with the cost of road tax and insurance, from 5 February 2021 until 27 May 2022 (pro rata);
4. Refund the cost of the replacement reconditioned engine (£1,500);
5. Refund the cost of oil and various filters (£110), a new water pump (£50) and labour

- (£1,500) associated with replacing the engine;
6. Pay interest on the above refunds at 8% simple a year from the date paid until the date of settlement;
  7. Pay Mr P £150 compensation for his associated distress and inconvenience and remove any adverse information recorded about the finance from his credit file.

If MotoNovo does not pay the £150 compensation for inconvenience and distress within 28 days of the date on which we tell it that Mr P accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If MotoNovo considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr P how much it's taken off and give him 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 2 January 2023.

Claire Jackson

**Ombudsman**