

## The complaint

Miss R is unhappy that a car supplied to her under a hire purchase agreement with MotoNovo Finance Limited was of an unsatisfactory quality.

Miss R is being represented in this complaint by Mr H. For ease of reference, my decision will only refer to Miss R.

## What happened

On 26 July 2021, Miss R was supplied with a used car through a hire purchase agreement with MotoNovo. She paid a deposit of £1,000 and the agreement was for £27,995 over 60 months; with 59 monthly repayments of £574.50 and a final payment of £575.50. At the time of supply the car was five years old and had done 78,140 miles.

In July 2022, Miss R complained to MotoNovo about the quality of the car. She said there was a problem with the DPF. She also provided an independent engineer's report, dated 22 July 2022, which said that the DPF *"was oversaturated and it may well be no longer serviceable ... we also have corresponding faults with regards to the [DPF] logged within the diagnostic log of the vehicle."* The independent engineer also confirmed that *"we do consider the fault to have been developing at purchase ... even allowing for the elapsed time [AND] there is no evidence to suggest the condition has solely developed in the period since the sale of the vehicle."*

At the time of the report, the car had travelled 81,596 miles – 3,456 since being supplied to Miss R.

MotoNovo didn't accept the independent engineer's report, as they felt there were some discrepancies. They also felt that, despite what the engineer had said, given the time that had passed since the car was supplied to Miss R, this was enough to show the car was of a satisfactory quality when supplied.

Miss R wasn't happy with MotoNovo's response, and she referred her complaint to the Financial Ombudsman Service for investigation.

Our investigator said the independent engineer had confirmed there was a fault with the car when it was supplied to Miss R, and he thought this meant the car wasn't of a satisfactory quality when supplied. He also said that the evidence showed that the repairs would cost more than the value of the car. As such, he didn't think it was reasonable to ask MotoNovo to carry out repairs.

So, the investigator said that Miss R should be allowed to reject the car and MotoNovo should refund the deposit she paid, as well as any payments she'd made from July 2022 (when she stopped using the car), plus statutory interest. The investigator also said that MotoNovo should pay Miss R an additional £150 for the inconvenience she'd been caused by being supplied with a faulty car, as well as removing any adverse information from her credit file.

MotoNovo accepted the investigator's findings. Miss R also agreed with the investigator, but she thought that MotoNovo should also pay her alternate transport (hire car and taxi) costs while the car wasn't able to be used. Because of this, this matter has been passed to me to make a final decision.

### **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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss R was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, MotoNovo are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it implies that the fault was present when the car was supplied, unless MotoNovo can show otherwise. But, where a fault is identified after the first six months, it implies that it's for Miss R to show that it was present when the car was supplied. So, if I thought the car was faulty when Miss R took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask MotoNovo to put this right.

I've reviewed the information supplied by the independent engineer, and this confirms there was a fault with the car that was present or developing at the point of supply. I've also seen that the engineer confirmed their duty is to the courts. And this overrides any obligation to whomever instructed and/or paid for the report. As such, I'm satisfied that this report is reasonable to rely upon.

Both Miss R and MotoNovo have accepted there was a fault with the car that was present when the car was supplied to Miss R; that this fault made the car of an unsatisfactory quality when supplied; that Miss R stopped using the car after the independent engineer's report in July 2022; and they've both also accepted the investigator's recommendations. As such, my decision will address the only unresolved point of contention – Miss R's alternate transport costs.

Miss R thinks Moneybarn should've covered her hire car and taxi costs. Had there not been an issue with the car, Miss R would've had transportation and the costs associated with this i.e. the payments to MotoNovo. And, as Miss W didn't have use of the car, MotoNovo have agreed to refund the payments from July 2022. As such, if MotoNovo were to also refund Miss R the cost of the hire car / taxis then she essentially has received double recovery – her original and alternate transport costs would've been paid by MotoNovo, and Miss R would've been able to travel for free. And I don't think this is fair. So, I won't be asking MotoNovo to refund Miss R's alternate transport costs.

However, this doesn't alter the fact that Miss R has been inconvenienced by the fault to the car, and the need to have it inspected. So, considering all of the above, I think the £150 our investigator recommended is a fair one, in line with our service's usual approach and what I would've directed, had it not already been made

### **Putting things right**

So, unless MotoNovo have already done this, they should:

- close the agreement with nothing further to pay;
- remove any negative information relating to this agreement from Miss R's credit file;
- refund the deposit Miss R paid;
- refund all payments Miss R paid from July 2022 onwards;
- apply 8% simple yearly interest on these refunds, calculated from the date Miss R made the payments to the date of the refund<sup>†</sup>; and
- pay Miss R £150 compensation for the inconvenience caused by her being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>HM Revenue & Customs requires MotoNovo to take off tax from this interest. MotoNovo must give Miss R a certificate showing how much tax they've taken off if she asks for one.

### **My final decision**

For the reasons explained, I uphold Miss R's complaint and MotoNovo Finance Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 31 March 2023.

Andrew Burford  
**Ombudsman**