

The complaint

Miss H complains that a car she obtained through a hire purchase agreement with MotoNovo Finance Limited was not of satisfactory quality. She wants it to reimburse her for the repairs she's had to pay for.

What happened

Miss H obtained a second-hand car in February 2022 financed through a hire purchase agreement with MotoNovo. The car was around seven years old and cost £7,700.

Miss H has provided us with a job card from the supplying garage which seems to pre-date when it was supplied to her. This lists the following:

- “J emblem
- Arm rest centre console – broken
- Stereo button
- Check disc and pads (brake)
- Check battery health”

Shortly after she'd obtained the car, Miss H complained to MotoNovo that the arm rest hadn't been repaired and that there was an issue with the brakes. The supplying garage replaced the brake pads and discs and MotoNovo said the garage would repair the armrest. Miss H says the armrest hasn't been fixed.

In May 2022 Miss H says the car wouldn't start. On checking the battery, she noticed the positive terminal was broken and had been held together with a cable tie. She contacted MotoNovo and she also told it that the clutch seemed to be slipping.

MotoNovo arranged an independent inspection. This confirmed the positive terminal on the battery was held on with a cable tie and was still loose; the clutch pedal was excessively heavy and tight; and that there was an excessive bearing type noise from the gearbox. The independent engineer didn't think these issues were present or developing when the car was supplied.

MotoNovo didn't uphold Miss H's complaint, based on the conclusion of the independent report.

Our investigator recommended that the complaint should be upheld. She concluded that the fault with the clutch occurred when Miss H had driven the car less than 2,000 miles and that the independent report – which was completed later – said that, if this fault was present at the point of supply, it would likely manifest itself within the first 1,500 to 2,000 miles. She thought MotoNovo should reimburse Miss H for the cost of the repairs, £1,680.00, plus interest, and pay her £100 for the distress and inconvenience caused.

MotoNovo didn't agree, so the complaint was passed to me.

My provisional decision

I agreed with our investigator that the complaint should be upheld. But I thought there was additional action MotoNovo needed to take to put things right. I said:

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The relevant law says that under a contract to supply goods, there is an implied term that "the quality of goods is satisfactory". As such, in order to uphold this complaint, I would have to be persuaded that the car wasn't of satisfactory quality and so a breach of contract has taken place.

In deciding whether a car is of satisfactory quality, some of the factors to consider are its age when it was supplied, how much mileage the car covered since it was supplied and how long after supply the fault materialised.

The car was around six years old when it was supplied in February 2022 and its mileage was around 83,000 miles. I would expect a car of this age and mileage to have more wear and tear issues than a newer vehicle.

Miss H has reported various faults and I've considered each of these in turn to decide whether a fault exists; whether that fault means the car wasn't of satisfactory quality when the car was supplied; and what, if anything, MotoNovo needs to do to put things right:

Brakes

On 7 March 2022, just over two weeks after she obtained the car, Miss H asked a third-party garage to check the brakes. It said that the brake pads were "*worn metal to metal*" and that the car needed new brake discs and pads. The supplying garage had agreed to check the brakes and pads before the car was supplied to Miss H. But it can't have done this if, only a couple of weeks later, the pads were worn so severely. I don't find the car was of satisfactory quality because of the brakes. But, after Miss H complained to MotoNovo, the supplying garage fitted new discs and pads at no cost to Miss H. I've not seen evidence, such as a job card, to show this work was completed, but Miss H is satisfied this was done. I'm satisfied this fairly resolves the problem.

Battery

In or around the beginning of May 2022, and within three months of obtaining the car, Miss H couldn't start it. She looked under the bonnet and found that the positive terminal on the battery was held on with a cable tie. This was confirmed by the independent inspector. The inspection report concludes that all faults weren't present when the car was supplied and are wear and tear issues. This suggests that the terminal wasn't faulty when the car was supplied. Which suggests something went wrong after Miss H obtained the car and she attempted to fix this herself – or asked someone else to. I find this unlikely. I say this because I don't think a battery terminal would have deteriorated in such a short space of time. And Miss H had already reported problems with the car – I think it's unlikely she noticed a problem with the battery terminal and tried to fix it herself without reporting it to either the supplying garage or MotoNovo. I've also watched the video of the ACE inspection and it seems quite clear that she was shocked by what she'd found.

For these reasons I think it's more likely than not that the battery terminal was deteriorated and cable-tied when the car was supplied to Miss H. And this caused the car not to start. It follows that I find the car wasn't of satisfactory quality when it was supplied because of the battery terminal.

I've taken into account that, before the car was supplied, the supplying garage had agreed to "*check battery health*". And MotoNovo provided a photo from the supplying garage showing that the battery was fully charged. But this doesn't make a difference to my conclusion. Whilst the supplying garage checked the battery's charge, it failed to identify – or didn't bring to Miss H's attention – that there was a problem with one of the terminals.

Whilst the cost of fixing the battery terminal was minimal, I think MotoNovo needs to reimburse Miss H for the cost. She spent £6.09 on a new terminal. She didn't have to pay the labour to put this right as the garage who fixed the clutch completed it as part of that job.

Clutch

Miss H first reported a problem with the clutch in May 2022, within three months of obtaining the car. She said the clutch was slipping and there was a bearing noise from the gearbox. The independent inspection said that there was no clutch slip evident, but that, "*the clutch pedal itself was excessively heavy and tight in operation*". It also found that, "*there was an excessive bearing type noise from the gearbox*". The inspector concluded that: "*We do suspect wear and deterioration of the clutch and gearbox bearings*". In other words, he didn't conclude this was something that would have been present or developing when the car was supplied.

I've considered this carefully. The car was second-hand and would likely require some wear and tear repairs. And the clutch and gearbox have a limited lifespan. But Miss H reported a problem with the clutch within three months of driving the car and I don't think a reasonable person would have expected it to fail within this timescale. In thinking about this, I've also considered my earlier findings about the brakes and the battery. The supplying garage supplied a car which had severely worn brake pads, after it had said it had checked them, and a poorly and unprofessionally fixed battery terminal.

For these reasons, I think it's more likely than not that the fault with the clutch was present or developing when the car was supplied and that MotoNovo should reimburse Miss H for the cost of the repairs.

MotoNovo says Miss H may have made the problem with the clutch worse by continuing to drive the car after she'd reported a possible fault. But I've not seen evidence to show she was advised not to drive the car. And the independent report doesn't make any reference to the continued driving of the car causing the fault to get worse.

Oil Dipstick

The independent report notes that the inspector couldn't confirm the oil level because the dipstick was broken. I can see this was also noted on the supplying garage's inspection which was carried out before it supplied the car to Miss H, although I've not seen evidence to persuade me that the supplying garage made Miss H aware the dipstick was broken. It's clear from the video of the inspection that she was surprised to find out the dipstick was broken. Without a dipstick, I consider it won't be possible

to check the oil level, which is generally recommended as a routine check to ensure the continuing health of the vehicle. For this reason I think it would be fair and reasonable for MotoNovo to reimburse Miss H for the cost of a new oil dipstick, on receipt of evidence from her.

Broken arm rest

I don't think a broken arm rest in a six-year-old car is a significant enough fault to make the car of unsatisfactory quality. And Miss H was aware it was broken before the car was supplied to her. But section 56 of the Consumer Credit Act is relevant here. Section 56 covers what the Consumer Credit Act refers to as "antecedent negotiations". This means it covers what was said or done before the credit agreement was entered into by the consumer by, in this case, the supplier.

Section 56 explains that finance providers are liable for what they say and for what is said by a supplier before the consumer takes out the credit agreement. And anything the supplier says will be deemed to have been said on behalf of the finance provider.

I'm satisfied that the supplying garage agreed to fix the arm rest before the car was supplied to Miss H. I say this because I can see the arm rest is listed on the job card. MotoNovo has already agreed this should be fixed – when it responded to Miss H's original complaint, it said that the supplying garage "*would contact you to have the vehicle booked in and have the armrest repaired*". Miss H says this hasn't been done. So I think it's fair and reasonable that MotoNovo arranges for the supplying garage to do that now, at no cost to Miss H.

"J" emblem and stereo button

The supplying garage's job card also included these items. Miss H says the "J" emblem fell off within days of the car being supplied to her, and the stereo button is missing. For the same reasons as I outlined above, I think section 56 of the Consumer Credit Act is relevant here. I think it's more likely than not that the supplying garage agreed to fix these items before the car was supplied to Miss H because they were included on its job card. For that reason, I think it's fair and reasonable that MotoNovo arranges for the supplying garage to do that now, at no cost to Miss H.

Other costs and distress and inconvenience

Miss H says she had to arrange car rental for three days whilst her car was being fixed. She's provided an invoice but unfortunately I can't ask MotoNovo to reimburse her. That's because the invoice isn't in her name.

Being supplied with a car which wasn't of satisfactory quality has caused Miss H some distress and inconvenience for which she should be compensated. I consider £100 to be fair and reasonable.

Responses to my provisional decision

Miss H thought everything had been covered and had nothing further to act.

MotoNovo said:

- It agreed to reimburse Miss H for the new battery terminal, a new oil dipstick, and to arrange for the supplying garage to fix the armrest and supply and fit a new "J" emblem.

- It hadn't seen evidence that the stereo button was missing at the point of supply.
- It hadn't seen evidence of the mileage when the clutch failed. When Miss H first told it the clutch was slipping, she said the mileage was around 86,000 and by the time of the inspection she'd travelled 3,222 miles.

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.

Whilst MotoNovo agreed with most of my provisional decision, it said it hadn't seen evidence that the stereo button was missing when the car was supplied and it asked for evidence of the mileage when the clutch failed.

The stereo button was included on the supplying garage's job card which also included the armrest and the J emblem. As MotoNovo has accepted responsibility for these two items, it's not clear to me why it continues to dispute the stereo button. I find it should arrange for this to be replaced for the reasons I set out in my provisional decision.

I haven't seen evidence to show what the mileage was when the clutch failed. But this doesn't make a difference to my conclusion. I set out in my provisional decision the reasons why I thought MotoNovo should reimburse Miss H for the cost of repairing the clutch. MotoNovo hasn't provided any new evidence or information which would cause me to depart from my earlier conclusion.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint. MotoNovo Finance Limited should:

1. Reimburse Miss H for the cost of a new battery terminal - £6.09. And, as Miss H has been without this money, it should pay interest at 8% simple per year from the date Miss H paid for the repairs to the date of settlement. *
2. Reimburse Miss H for the cost of repairing the clutch - £1,680.00. And, as Miss H has been without this money, it should pay interest at 8% simple per year from the date Miss H paid for the repairs to the date of settlement. *
3. On receipt of evidence from Miss H, reimburse her for the cost of a new oil dipstick.
4. Arrange for the supplying garage to fix the armrest, supply and fit a "J" emblem and supply and fit the missing stereo button.
5. Pay Miss H £100 for the distress and inconvenience caused.

* HM Revenue & Customs requires MotoNovo Finance Limited to take off tax from this interest. MotoNovo Finance Limited must give Miss H a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 9 March 2023.

Elizabeth Dawes

Ombudsman