

The complaint

Mr M complains about the quality of a car he acquired under a hire purchase agreement with MotoNovo Finance Limited (MotoNovo).

What happened

In November 2021, Mr M entered into a hire purchase agreement with MotoNovo to acquire a used car first registered in February 2016, that had travelled around 46,135 miles. The total cash price of the car was approximately £15,398. The total amount payable was approximately £18,097. Mr M paid a deposit of around £4,000 plus part-exchanged his old car for around £1,000, so the monthly repayments on the agreement were around £218 over a 59-month period followed by one final monthly payment of around £219.

In May 2023, Mr M wrote to MotoNovo and said there are faults with the car. In this correspondence he told MotoNovo that he sent a letter to the supplying dealership which explained that there was water ingress into the boot of the car causing dampness and mould growth. Mr M also said that there were issues with either the clutch, the gearbox, and the start/stop mechanism on the car because, at the time of the correspondence, he said that he has experienced two incidences of the car violently shaking when pressing the stop/start button, and one incidence of the clutch failing to return to the correct position. The letter also explained that he could hear knocking from the rear of the car when ascending from first to second gear.

Mr M said that he raised the issue in February 2022 with the supplying dealership and the car was booked in for repairs at the supplying dealership in April 2022, but he said that only a minor repair to the windscreen wiper had been done. Mr M said the dealership told him that the leak to the boot had been confirmed, but that it would not be repaired by the dealership. They did however offer to repair it at a reduced rate of £70.00 per hour as a 'goodwill gesture'. Mr M said they were unable to approximate how many hours this repair would take, and he said he was informed that it could be an hour or seven. And he said the dealership told him that they couldn't find a fault with the clutch or gear system. In his correspondence to the dealership he said he'd given them an opportunity to investigate and correct the faults with the car but, as there wasn't a satisfactory conclusion, he said he would like to reject it. At the time the dealership inspected the car in April 2022 the car had travelled around 50,422 miles.

In June 2022, MotoNovo wrote to Mr M saying they weren't upholding his complaint based on the car inspection they had arranged. They quoted parts of the report that said that under normal driving conditions there was no undue knocking noise from the car. When Mr M then drove the car, and did so enthusiastically, there was a noticeable knocking noise coming from the rear of the car, maybe from the rear differential or drive line mounting. The report said that when they inspected the car boot for water ingress there was no evidence of this. However, there was evidence of corrosion staining on the boot seal into the polystyrene around the spare wheel; And there were some signs of dry rust corrosion staining. The report concluded that there was visible evidence of previous water ingress into the boot, however, the report said that this does appear to have been rectified. The quote from the report also said that there was rust staining but that there was no evidence of any mould

growth. As such, the report concluded that the car didn't display any noticeable faults relating to water ingress, the clutch system, or the stop/start system. There was a noticeable knock from the rear of the car when driven as if it was on a racetrack. But when driven normally, the assessor thought the car was commensurate to its age and recorded mileage. And the quote from the report concluded that the car could return to service and the selling agent would not have responsibility. As such, on the basis of this report, MotoNovo said that the dealership was not liable, and thus they were not upholding Mr M's complaint.

Mr M was unhappy with this, so he brought his complaint to this service.

Our investigator thought that, due to the fault with the water ingress, the car wasn't of satisfactory quality when supplied – and that MotoNovo needed to cover the cost of repairing this fault. The investigator also thought that MotoNovo needed to pay Mr M £100 for any distress or inconvenience that's been caused, but he didn't think that they needed to pay for any other repairs.

MotoNovo disagreed with the investigator as they didn't think that any of the car's faults were present or developing at the point of sale.

Mr M also disagreed with the investigator and provided his own report. Based on this report, Mr M said that the clutch issue and the stop/start system issues could not be identified at the time of inspection so, he said, his continued focus is on the other items his report did identify to be 'safety critical'. Those two things being the leak to the boot, and the other being the knocking sound coming from the back of the car. He also said there was a third issue with the paintwork which he said he did bring to MotoNovo's attention previously, but their report didn't take it into consideration.

As the parties didn't agree with the investigator, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 26 January 2023. In the provisional decision I said:

“What I've provisionally decided – and why

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

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.

Mr M acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. MotoNovo is the supplier of the goods under this type of agreement, and is responsible for dealing with complaints about their quality.

Mr M believes that he should be able to reject the car.

MotoNovo say that the faults weren't present or developing at the point of sale, so they don't think they are responsible for putting things right.

The Consumer Rights Act 2015 (CRA) covers hire purchase agreements such as the one Mr M entered into. Under a hire purchase agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of

satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr M's case the car he acquired was used, with a cash price of around £15,398. It had covered around 46,135 miles and was more than five years old when he acquired it. So, I would have different expectations of it compared to a brand-new car. And as with any car, there is an expectation that there will be ongoing maintenance and upkeep costs, and that there are parts that will naturally wear over time. In second-hand cars, it's more likely parts will need to be replaced sooner, or be worn faster, than in a brand-new car. So MotoNovo would not be responsible for anything that was due to normal wear and tear whilst in Mr M's possession. But given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after the car was acquired.

The CRA sets out that Mr M has a short term right to reject the car within the first 30 days if the car is of unsatisfactory quality, however, he would need to ask for rejection within that time. Mr M would not be able to retrospectively exercise his short term right of rejection at a later date. Mr M could only reject the car within the first 30 days, and only if he expressed his wish to do so. Mr M raised the car issues with the supplying dealership in February 2022. This is more than 30 days after Mr M acquired the car. But even if the initial faults did occur within the first 30 days, Mr M would not be able to reject the car now.

The CRA says that, if the car acquired wasn't of satisfactory quality, or not as described, then Mr M would be entitled to still return it after 30 days, but Mr M doesn't have the right to reject the car until he has exercised his right to repair. So, Mr M doesn't have an automatic right to return the car. For me to conclude that Mr M can exercise his right to reject the car, I would need to see that the car wasn't of satisfactory quality, because the faults he complains about were likely to have been present or developing at the point of sale, and that MotoNovo had one attempt at a repair.

Mr M has emailed us pictures and videos of the faults with the water ingress at the back of the car. Also, I've seen copies of the report commissioned by MotoNovo, and copies of the report arranged by Mr M. In addition, I've seen an invoice from the dealership from April 2022 when the dealership did their own checks. And from the pictures, the videos, the invoice, and both of the reports, I think, most likely, this fault is still present and has not been fixed as suggested by MotoNovo's report. I'll explain.

An invoice from the dealership who performed their own checks in April 2022, states: 'Confirmed boot water ingress'. I know MotoNovo's report, which was completed in June 2022, indicates that, in their opinion, the car does display evidence of previous water ingress to the boot, but that this does appear to have been rectified. But I've not been presented with any evidence which shows that any repairs were completed. And I've considered their report, but this report also states that the inspector was unable to carry out a smoke test due to the parking situation and where the car was located. Therefore, I've taken into consideration that, had this smoke test been completed, the report may have been more conclusive. As such, I've also taken into consideration other evidence available to me.

Other evidence includes pictures and videos provided by Mr M. These show that the water issue is still present. Plus, the report provided by Mr M, completed in November 2022, also states that at the time of inspection the area was soaking wet, and that the covering and acoustic matting were found to be saturated with water. The report states that the water may

be entering the interior at the height of the rear lamps, close to the tailgate, but it also explained that the tailgate was sitting approximately 2mm low in its aperture. It said it is possible that this was allowing the water to ingress. It also states that: 'A pungent damp odour was noted, and mould spores had started to develop suggesting a long-standing problem.' So, I think had the previous water ingress to the boot been rectified, as suggested by MotoNovo's report, I think it's most likely that this amount of water saturation and evidence of mould spores wouldn't have been present at the time of this inspection.

I've also taken into consideration that both reports speak of rust and corrosion, which judging by the pictures available, and the descriptions of the affected areas in the reports, for these to form to such an extent, they, most likely, have been present or developing due to the water ingress being an issue for a significant amount of time.

Taking all of that above into consideration, I think most likely there is something wrong with the car and I think, most likely, the water ingress issue was already present at the point of supply. From all the evidence available I've also seen how significant this issue is and taking everything into account – including the price paid, the age and usage of the car, and the fault in question – I'm not persuaded the car was of satisfactory quality when Mr M took delivery. Given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect such water ingress and the amount of rust to be present inside the affected area of the car.

For me to conclude that Mr M can exercise his right to reject the car, as mentioned above, I would need to see that the car wasn't of satisfactory quality because the faults he complains about were likely to have been present or developing at the point of sale, and that MotoNovo's one attempt at a repair has failed. Or that Mr M has asked for a repair or replacement, but the dealership hasn't done so in a reasonable time and without significant inconvenience to him.

Mr M said that in February 2022, approximately three months after acquiring the car, he made the supplying dealership aware of the issues he was experiencing. And he said the car was booked for repairs at the supplying dealership in April 2022. But that during this visit the supplying dealership told him that even though the leak to the boot had been confirmed, it would not be repaired by them, and they only offered to repair it at a reduced rate of £70 per hour as a 'goodwill gesture'. So, I've considered that Mr M made the dealership aware of the faults with the car within six months of acquiring it, and I've considered that he did give the dealership one attempt at a repair, but they refused to do the repair without Mr M contributing financially. As the supplying dealership had the one chance of repair, I think in this case, it is fair and reasonable that Mr M is allowed to exercise his right to reject the car, and the hire purchase agreement should be cancelled with nothing further to pay.

Even if MotoNovo was to argue that they should still have a chance of repair, as the visit to the dealership in question was only to inspect and not to repair the car, I still think it would be reasonable for Mr M to be allowed to reject the car now because the dealership hasn't done the repairs in a reasonable time and without a significant inconvenience to Mr M. A long time has passed since February 2022, when Mr M made the dealership aware of the issues, and nothing has been fixed on the car. After the visit to the service department of the supplying dealership he also had further communication with them, and they still refused to fix the water ingress fault, as they felt it wasn't covered under his warranty. Mr M was inconvenienced by having to attend the dealership, as well as make time for MotoNovo's report and, in the end, also had to get his own report to prove that the fault with the water ingress was still an issue. So, overall I think it is fair and reasonable that Mr M be able to reject the car because the repairs have not been done in a reasonable time and without significant inconvenience to him.

Mr M has also mentioned other faults with the car, besides the water ingress, as reasons why he thinks the car was not of satisfactory quality at the point of sale. But considering that I think he should be able to reject the car I don't need to consider these in this decision.

MotoNovo should refund Mr M's deposit of around £4,000 plus the £1,000 he got for his part-exchanged car.

Any adverse information should be removed from his credit file. The credit agreement should be marked as settled in full on his credit file, or something to that effect, and should not show as voluntary termination.

Mr M has still been able to use the car with the fault in question and during this time the car has travelled around 8,700 miles. So, I think it is fair that MotoNovo can keep the monthly payments he has made towards the finance agreement.

Mr M has told us that he bought two new tyres at a cost of £434 due to him acquiring a sidewall puncture and being advised to change both tyres at the same time as the tread was low or near the limit. And he told us that he paid to have the vehicle serviced as part of his warranty agreement and this cost around £150. I don't think it would be fair or reasonable to ask MotoNovo to refund these costs to him, as he incurred these while getting use of the car.

I also think that this matter has caused Mr M a lot of distress and inconvenience when trying to resolve it. He had to take the car back to the dealership and he had to correspond extensively with the dealership and MotoNovo, as well as to make time for the two inspections that were carried out on the car. Which I think he would not have had to do had MotoNovo supplied him with a car that was of a satisfactory quality. So, I think MotoNovo should pay him £200 in compensation to reflect the distress and inconvenience caused.

MotoNovo should also refund him the cost of the inspection report he had carried out in November 2022 on production of a valid receipt or invoice. If Mr M has already paid for this work to be carried out, interest should be added at 8% simple per year, calculated from the date of payment to the date of settlement.

My provisional decision

For the reasons given above, I intend to uphold this complaint and direct MotoNovo Finance Limited to:

- 1. Cancel the hire purchase agreement with nothing further to pay;*
- 2. Collect the car at no cost to Mr M;*
- 3. Refund the deposit of around £4,000 plus the £1,000 Mr M got for his part-exchanged car;*
- 4. Refund the cost of the inspection report Mr M had carried out in November 2022 on production of a valid receipt or invoice. If Mr M has already paid for this work to be carried out, interest should be added at 8% simple per year, calculated from the date of payment to the date of settlement;*
- 5. Pay Mr M £200 for the distress and inconvenience caused;*
- 6. Remove any adverse information from Mr M's credit file. The credit agreement should be marked as settled in full on his credit file, or something to that effect, and should not show as voluntary termination.*

If MotoNovo Finance Limited considers tax should be deducted from the interest element of my award, it should provide Mr M with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so."

I asked both parties to provide me with any additional comments or information they would like me to consider by 9 February 2023.

Mr M responded and said he had nothing further to add.

And MotoNovo responded and said they had nothing further to add.

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.

Mr M nor MotoNovo had any further comments or evidence to provide, so I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

My final decision

For the reasons given above, and in my provisional decision, I require MotoNovo Finance Limited to:

1. Cancel the hire purchase agreement with nothing further to pay;
2. Collect the car at no cost to Mr M;
3. Refund the deposit of around £4,000 plus the £1,000 Mr M got for his part-exchanged car;
4. Refund the cost of the inspection report Mr M had carried out in November 2022 on production of a valid receipt or invoice. If Mr M has already paid for this work to be carried out, interest should be added at 8% simple per year, calculated from the date of payment to the date of settlement;
5. Pay Mr M £200 for the distress and inconvenience caused;
6. Remove any adverse information from Mr M's credit file. The credit agreement should be marked as settled in full on his credit file, or something to that effect, and should not show as voluntary termination.

If MotoNovo Finance Limited considers tax should be deducted from the interest element of my award, they should provide Mr M with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 March 2023.

Mike Kozbial
Ombudsman