

The complaint

Mr O complains that a car acquired with finance from MotoNovo Finance Limited wasn't of satisfactory quality.

What happened

In September 2022 Mr O was supplied with a car and entered into a hire purchase agreement with MotoNovo. At the point of supply the car was around 5 years old and had covered around 55,000 miles.

When the car was delivered to Mr O, he noticed that an error message was displayed on the dashboard which said "check AdBlue – see owner's manual". Mr O filled the AdBlue tank but the error message didn't clear.

Mr O contacted the dealership, who advised him to keep driving the car and that the error message would clear on its own.

After a week the error message changed to "engine start not possible in 476 miles". Mr O contacted the dealership, who referred him to a Mercedes specialist garage.

Mr O took the car to the specialist garage in October 2022. The AdBlue error message was cleared. Mr O says the garage noticed a rattling noise coming from the engine and alerted him to a possible timing chain issue. Mr O contacted the supplying dealer who advised him that the noise was normal for a diesel engine.

In February 2023, Mr O noticed two alerts on the dashboard. One was to check the brakes and the other was a collision assist warning. Mr O also noticed that the engine oil was low. He took the car to the specialist who had looked at it previously. Mr O says that the specialist noticed the rattling noise from the engine again and advised him not to drive the car because it could be a timing chain fault. The specialist filled the engine oil, booked the car in for a further inspection and advised Mr O to contact MotoNovo.

Mr O complained to MotoNovo. MotoNovo arranged an independent inspection of the car. the inspection report concluded that the car had faults but that these wouldn't have been present or developing at the point of supply.

Based on the findings of the inspection report, MotoNovo didn't uphold Mr O's complaint.

Mr O remained unhappy and brought his complaint to this service.

Our investigator upheld the complaint. He said he was persuaded that the noisy timing chain had been evident since the car was supplied and that this meant the car wasn't of satisfactory quality when it was supplied. The investigator said that because the business had already had one opportunity to repair the car, MotoNovo should allow Mr O to reject the car.

MotoNovo didn't agree. It said it had spoken to the dealership, who told them that Mr O hadn't complained about the timing chain before. MotoNovo said that if there had been a

fault with the timing chain at the point of supply Mr O wouldn't have been able to cover 8,000 miles in the car.

MotoNovo said that the dealership hadn't agreed to accept a rejection of the car but that it had offered to replace the AdBlue sensor and the timing chain at no cost to Mr O.

Mr O said he wasn't happy to accept repairs because of his concerns that there could be further faults with the car. He said he wanted to reject the car.

MotoNovo still didn't agree. It said there was no evidence that the timing chain was faulty in October 2022 and that the independent inspection report had concluded that the fault wasn't present or developing at the point of supply.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the car includes things like its general condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr O was around 5 years old and had covered around 55,000 miles. So it's reasonable to expect that it would require repairs and maintenance sooner than, say, a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs with a car within the first 6 months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, then the consumer can ask to reject the car.

Where a fault occurs outside of the first 6 months of supply, the burden of proof is reversed and it's up to the consumer to show that the fault was present or developing at the point of supply.

I've reviewed the available evidence about the issues which Mr O experienced with the car. Based on what I've seen, I'm satisfied that the car had faults. I say this because the independent inspection report dated 20 April 2023 states that the engine management light was illuminated, the brake pad warning light was illuminated and the collision prevention warning light was illuminated. A diagnostic test showed that the AdBlue system was inoperable, and a loud rattling noise could be heard from the engine, which the engineer said was timing chain related. The report also identified an oil leak from the rear of the engine at the cam cover.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

MotoNovo rely on the independent inspection report, which concluded that the faults weren't present at the point of supply. MotoNovo said that if the timing chain was faulty at the point of supply, it wouldn't have been possible for Mr O to have driven the car for 8,000 miles.

I've read and considered the inspection report. However, I'm persuaded that the fault with

the timing chain was present or developing at the point of supply. I say this because the Mercedes specialist has provided a diagnostic dated 23 March 2023 which specifically references the timing chain rattling when the car was inspected in October 2022, which was only around 1 month after the point of supply.

Based on the evidence from the Mercedes specialist, I'm persuaded that the timing chain was rattling when the car was inspected on 4 October 2022. Because this is within the first 6 months of the point of supply, the legislation says that it can be assumed that the fault was present or developing at the point of supply. I don't think the independent inspection report is sufficient to rebut this assumption because the engineer doesn't specifically address why the timing chain was rattling in October 2022.

On balance, I'm satisfied that the fault with the timing chain was present or developing at the point of supply. It follows that the car wasn't of satisfactory quality at the point of supply.

I've gone on to consider what's a fair and reasonable resolution to Mr O's complaint. Mr O has told this service that he reported the rattling timing chain to the supplying dealer in October 2022 but that he was advised that this was a normal noise for a diesel engine.

MotoNovo has said that the dealership has told it that Mr O didn't complain about the timing chain in October 2022.

On the balance of probability, I think Mr O's version of events is more likely. The Mercedes specialist (to whom Mr O was referred by the supplying dealer) identified the timing chain rattling in October 2022. Given the potentially serious nature of this fault, I think it's more likely that Mr O contacted the supplying dealership at this time.

Because I'm satisfied that Mr O raised concerns about the timing chain in October 2022, and because Mr O had already been referred to the Mercedes garage for a fault with the AdBlue and it was this same garage that identified the timing chain issue, I think the business has already had a reasonable opportunity to repair the fault as per the relevant legislation. I don't think it's fair to allow the business any further opportunities to repair the fault. In the circumstances, Mr O should be allowed to reject the car.

Putting things right

To put things right, MotoNovo Finance Limited must;

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mr O

Refund the deposit of £6000

Refund all monthly payments made by Mr O save for 9 x monthly repayments to reflect a deduction for fair use

Pay 8% simple interest per year on all amounts refunded calculated from the date of payment to the date of settlement

Pay £100 compensation to Mr O for distress and inconvenience

Remove any adverse information from Mr O's credit file in relation to the agreement

My final decision

My final decision is that I uphold the complaint. Motonovo Finance Limited must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 November 2023.

Emma Davy
Ombudsman