

## The complaint

Mr P complains about the quality of a car he acquired under a hire purchase agreement (“agreement”) with MotoNovo Finance Limited trading as MotoNovo Finance (“MotoNovo”).

## What happened

In August 2022 Mr P entered into an agreement with MotoNovo for a used car costing £13,467. Under the terms of the agreement, everything else being equal, Mr P undertook to make a deposit payment of £250 followed by 47 monthly payments of £349.32 and 1 monthly payment of £350.32, making a total sum repayable of £17,018.36 at an APR of 12.9%.

In February 2023 Mr P, at the original supplying dealership’s request, took the car to a manufacturer’s garage, a garage that I will call “A”, for inspection. An inspection was undertaken by A who concluded:

- the left front brake pad spring clamp was fractured
- a floor under tray insert was missing
- the chain tensioner had failed
- there was excess carbon in the exhaust gas recirculation pipe, an excess that was likely to have been present in August 2022
- one of the heat shields required replacement due to damage that was likely to have been present in August 2022

In April 2023 Mr P’s car was inspected by an independent motor vehicle engineer (appointed by MotoNovo) that I will call “S”. S concluded that “...*we are able to confirm that [the car] would have been considered fit for purpose at the time of its purchase and of a satisfactory quality*”. This report confirmed the mileage to be approximately 81,000 miles.

Mr P complained to MotoNovo that the car he had acquired in August 2022 under an agreement with it was of unsatisfactory quality. As well as explaining the issues with the car identified by A, Mr P said there were issues with the wiper blades, locks and spare wheel/tyre.

In June 2023 MotoNovo issued Mr P with a final response letter (“FRL”). Under cover of this FRL MotoNovo said it wasn’t upholding Mr P’s complaint made to it about the quality of the car he had acquired in August 2022 under an agreement with it.

In June 2023 and unhappy with MotoNovo’s FRL Mr P complained to our service.

Mr P’s complaint was considered by one of our investigators who came to the view that Mr P had acquired a car that was of unsatisfactory quality, but in respect of damage to a heat shield only and not in respect of anything else. And to fairly and reasonably compensate Mr P MotoNovo should arrange for the heat shield to be repaired or replaced at no cost to Mr P.

MotoNovo agreed with the investigator's view, but Mr P didn't. And because Mr P didn't agree with the investigator's view his complaint has been passed to me for review and 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.

It's clear that Mr P has very strong feelings about this complaint. He has provided detailed submissions (both at the outset and after the investigator's view) in support of his view which I can confirm I've read and considered in their entirety. However, I trust that Mr P will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

I would also point out that where the information I've got is incomplete, unclear, or contradictory, I've to base my decision on the balance of probabilities.

Mr P acquired the car under a regulated agreement, a type of agreement our service is able to consider complaints about.

The Consumer Rights Act 2015 ("CRA") covers agreements like the one Mr P entered into. The CRA implies a term into the agreement that the quality of goods (supplied under it) are of satisfactory quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the time of acquisition.

In Mr P's case, the car supplied was approximately 10 years old and had covered around 76,000 miles, so there should have been different expectations of it compared to a brand-new car.

I've thought about all the faults Mr P says there is with the car:

#### *wiper blades, locks and spare wheel/tyre*

Mr P has provided no documentary evidence in support of these issues, so I can't reasonably conclude that these issues made the car of unsatisfactory quality at the time of acquisition. But for the avoidance of doubt, I would add that in my view wiper blades and spare wheels/tyres are simply items that are subject to failure after time, especially after a consumer has added 5,000 miles to a car's original odometer reading of 76,000 miles and after they have been in possession of a 10 year old car for several months.

#### left front brake pad spring clamp fracture

I don't dispute the existence of this issue. But in my view a brake pad spring clamp is an item that is subject to failure after time, especially after a consumer has added 5,000 miles to a car's original odometer reading of 76,000 miles and after they have been in possession of a 10 year old car for several months. Therefore, I'm not persuaded that this issue made the car of unsatisfactory quality at the time of acquisition.

#### coolant and/or oil leak

I don't dispute the existence of these issues. But as noted by S this is likely due to one or more seals becoming "work hardened" due to general wear and tear and these seals are subject to failure after time. So given that Mr P had added 5,000 miles to the car's original odometer reading of 76,000 miles and had been in possession of a 10 year old car for several months before these issues were formally identified, I'm satisfied I can't reasonably conclude that these issues made the car of unsatisfactory quality at the time of acquisition.

#### floor under tray insert missing

This is a non-essential non-structural component of a car designed for engine noise reduction, aerodynamics, air flow and protection from dirt water and road wear. So, in my view this issue doesn't mean the car was of unsatisfactory quality at the time of acquisition.

#### chain tensioner failure

I don't dispute the existence of this issue. But as noted by the investigator timing chains for the type of car acquired by Mr P have a life expectancy of 80,000 to 100,000 miles. So given that Mr P had added 5,000 miles to the car's original odometer reading of 76,000 miles and had been in possession of a 10 year old car for several months before this issue was formally identified, I'm satisfied I can't reasonably conclude that this issue made the car of unsatisfactory quality at the time of acquisition.

#### excess carbon in the exhaust gas recirculation pipe

I don't dispute the existence of this issue and that A says the build up of carbon may have been occurring before Mr P acquired the car. But carbon build up in the exhaust gas recirculation pipe is common with diesel engines and is more of an issue as a car gets older and more miles are added to the odometer. And again, I can't ignore the fact this issue wasn't formally identified until after Mr P had added 5,000 miles to the car's original odometer reading of 76,000 miles and after he had been in possession of a 10 year old car for several months. So, I'm satisfied I can't reasonably conclude that this issue made the car of unsatisfactory quality at the time of acquisition.

#### damaged heat shield

I agree that this issue means the car might have been of unsatisfactory quality at the time Mr P acquired it. But under the CRA MotoNovo has one opportunity to repair a fault – that makes a car of unsatisfactory quality at the time of acquisition – and MotoNovo has confirmed it's prepared to do so. So, I'm satisfied that it need do nothing further in respect of this issue.

other matters

I've considered whether as a result of finding that MotoNovo should have to arrange a heat shield repair or replacement that it would be fair and reasonable for me to direct it to compensate Mr P further, for example for the time his car has been off the road.

But in my view the reasons for Mr P's car being off the road aren't as a result of a damaged heat shield but for one or more of the other identified issues with the car. Therefore, I'm not persuaded that it would be fair or reasonable for me to direct MotoNovo to compensate Mr P any further.

**My final decision**

My final decision is that MotoNovo Finance Limited trading as MotoNovo Finance must arrange for the damaged heat shield to be repaired or replaced, but it need do nothing further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 October 2023.

Peter Cook  
**Ombudsman**