

The complaint

Mr T has complained about the quality of a used car he acquired under a hire purchase agreement with MotoNovo Finance Limited.

What happened

In April 2022 Mr T acquired a used car under a hire purchase agreement with MotoNovo. The car was first registered in June 2016. It had covered around 69,000 miles and had a cash price of around £27,000. Mr T paid a £2,000 deposit and the agreement was to be paid back over five years with monthly payments of around £500.

A couple of weeks after acquiring the car Mr T contacted MotoNovo about issues, and he says the car was returned to the supplying dealer for a gearbox repair that took around nine weeks. Mr T says he's unable to provide more information on the repair in terms of what the issue was. He says he asked for a receipt or description of the works carried out but wasn't given one. He says it took weeks of diagnostics before anything was done. He says the car wasn't picked up until the start of June 2022 and was returned around the third week of July 2022. Mr T says he requested a courtesy car as he needed it for work but one wasn't available until the car was taken to be repaired. He says he was asked to travel around 400 miles to pick it up which wasn't viable. Instead, Mr T says he hired a vehicle for nine weeks and that MotoNovo compensated him £200 but this didn't cover the full cost.

Mr T says he had to pay a further £250 to the supplying dealer to have the car returned after the gearbox repair and that he received £150 towards this from MotoNovo.

Mr T says he thinks the gearbox issue was fully resolved. But he says he noticed the car wasn't returned in a good condition and there was a warning light for another fault. Mr T says he took the car to a manufacturer approved garage, and it replaced a filter. Mr T says this cost around £400 but he received £300 towards this from the supplying dealer. Mr T says he had to pay for a few other things to be fixed or replaced as well, such as the air conditioning and tyres.

Mr T says after the repair from the manufacturer approved garage the car went into limp mode and a further engine management light came on. Mr T says he took it back to the manufacturer approved garage because he thought it may have been linked to the filter repair, but he says the garage told him it was a new fault relating to the turbo underboost. The garage quoted around £1,500 to repair it. He says the supplying dealer asked for other quotes, but he says other garages weren't able to help. Mr T says he felt unsafe driving the car so hired a replacement for a couple of months. And he eventually decided to purchase another car.

In summary, Mr T said he drives around 2,000 miles per month and that since acquiring the car (under the agreement with MotoNovo), it's driven around 5,000 miles with 1,000 being covered by the supplying dealer.

Mr T complained to MotoNovo and it arranged for an independent report to be carried out in November 2022. At this point the mileage was around 76,000. The inspector said the fault

code present on the car (relating to turbo underboost) was more consistent with a partial blockage of the diesel particulate filter (DPF) and/or restriction in movement of the EGR valve. The inspector thought most likely it was likely a combination of both. The inspector said this sort of repair should be regarded as routine maintenance on a vehicle that's covered 76,000 miles. He concluded the repair was not the responsibility of the supplier, and that the goods were of satisfactory quality at the point of supply.

Mr T wanted to reject the car. Unhappy with the response from MotoNovo, he brought his complaint to our service. Our investigator looked into things but didn't make any recommendations. He said the recent fault wasn't related to previous repairs and that it is as a result of normal wear and tear.

Mr T didn't agree. He said even though all the faults weren't related the car shouldn't have had so many faults within such a short time. He says MotoNovo indicated it would look into him being able to reject the car. He said it's not fair he purchased a car for almost £30,000 and it had issues straight away.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr T and MotoNovo that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr T acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements. While I appreciate it looks like MotoNovo thought the initial complaint about the gearbox fault was resolved, I've had to take this fault into account when deciding matters. It's relevant to the wider circumstances of the complaint.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr T entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. MotoNovo is the "trader" for the purposes of the CRA and is therefore responsible for dealing with a complaint about the 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 point of delivery.

In Mr T's case, the car supplied was used and had covered around 69,000 miles. There'd be different expectations than if it was a brand-new car. But it's worth pointing out the car's cash price was around £27,000. So I can understand why Mr T would have been disappointed having any issues with it shortly after acquiring it.

I've thought about the main faults as they happened in sequence.

Gearbox

There's a lack of evidence in relation to what happened with regards to the gearbox. I've not been supplied a copy of a job card for example. What I've been told is that there was a fault

with the gearbox that Mr T noticed within a couple of weeks of acquiring the car. And Mr T says it took around nine weeks to diagnose and repair the fault, but that it was repaired.

For me to say there'd been a breach of contract in relation to the gearbox, I'd like to have more detail. But, in the absence of anything to show otherwise, given Mr T had just acquired the car for £27,000, even though it was used and had covered around 69,000 miles, I don't think he'd have expected it to be off the road for a gearbox repair for nine weeks. Mr T wasn't asked to pay for the repairs. And there's no suggestion MotoNovo wasn't liable to resolve the issue. So I'm minded to say there likely was a breach of contract in relation to the gearbox, but that the repair has remedied that. However, if I'm to accept there's been a breach of contract in relation to the gearbox, I don't think Mr T should lose out as a result. I think therefore that MotoNovo needs to do something to put things right.

On balance, I don't think Mr T should be out of pocket as a result of the issues with the gearbox. We asked for evidence of the costs Mr T says he's incurred. But he's not supplied that yet. I think to resolve this part of the complaint MotoNovo should reimburse Mr T for the costs he had to pay to transport the car to and from the supplying dealer for repair. And it should also cover the cost of the hire car. It can deduct from this amount any payments it's already made in relation to those costs. It should also pay annual interest on these amounts. Mr T will need to supply evidence to MotoNovo of the costs he's incurred, and the payments he's made.

I also think MotoNovo should compensate Mr T in recognition of the inconvenience caused as a result of problems with the gearbox. It must have been really disappointing to have acquired a car for £27,000 and have it off road for such a long time not long after taking possession of it. It looks like Mr T had the trouble of arranging its transport as well as having to hire a car himself. So I think MotoNovo should compensate Mr T £150.

Later faults

Mr T paid around £400 in September 2022 in relation to a filter change. He's received £300 back for this from the supplying dealer. I've thought about whether MotoNovo should reimburse him for the rest of the repair. But the problem is that I simply don't have any evidence for what was wrong and what the cause of the fault was. Unlike with the gearbox issue, which seemed like a significant fault that happened shortly after taking possession of the car, by the time the filter needed changing Mr T had the car for a few months. Filters often need to be replaced as part of regular maintenance. I've not seen enough to show the problem with the filter was as a result of the car not being of satisfactory quality when it was supplied to Mr T. So I don't consider I've seen enough evidence to say MotoNovo needs to reimburse Mr T the rest of the cost for this repair.

Similarly, I can see Mr T has mentioned problems with other things like the air conditioning and the tyres. But I've not been shown any evidence the faults were as a result of the car being of unsatisfactory quality, or that MotoNovo should be held responsible. So I don't have the grounds to direct MotoNovo to take any action in relation to those problems either.

I've finally thought about the most recent fault in relation to the turbo underboost. While I appreciate Mr T doesn't agree with the independent report, that's the only independent evidence we have of the most recent problems with the car. I acknowledge the mileage of the car may be higher as a result of having to be sent for previous repairs. But I have to be mindful that Mr T had the car for a few months by this point, and it had covered over 76,000 miles. MotoNovo arranged for the independent report which I think was fair of it. But there's no grounds to direct MotoNovo to pay to have further repairs carried out given what the report says. And there's no grounds to say he should be able to reject the car at this point because I can't find MotoNovo, as the supplier of the goods, is responsible for the problems relating to the turbo underboost.

Conclusion

For the reasons given above, based on the limited evidence I've been supplied, I don't think Mr T should lose out as a result of the issues with the gearbox. But I've not seen enough evidence MotoNovo is responsible for the problems relating to other faults. I appreciate Mr T doesn't think a car that cost around £27,000 should have so many problems within the first few months. But I'm reliant on the evidence supplied. I'd need to see evidence the faults were as a result of something that made the car of unsatisfactory quality when it was supplied to Mr T. Without that, I'm not able to direct MotoNovo to allow Mr T to reject the car or cover the cost of repair of the more recent faults.

I said I was intending to direct MotoNovo to reimburse Mr T the cost of transporting the car for the gearbox repair, and for any hire car costs incurred during this period. I said MotoNovo can offset payments it's already made. Interest should be added to these amounts at a rate of 8% per year simple, from the date of payments to the date of settlement. And that MotoNovo should also pay Mr T £150 compensation.

Since writing the decision I've been in touch with both parties. MotoNovo gave some more information about what had been paid out already. And Mr T supplied details of the hire car. Mr T said that as per advice he'd stopped making payments around November 2022 while the investigation was ongoing. He said he was unsure if he could get the current fault fixed under warranty. He wanted to know more about the first fault to see if it was linked to the more recent issues. And that he wanted any missed payments removed off his credit file.

I wrote to both parties again to say it looked like Mr T had received a full refund for the cost of the transport from various parties, so I wasn't proposing MotoNovo took any more action for that. I also explained that I'd looked at the hire car invoices which totalled around £1,500 for the relevant period. But I said I was conscious the invoices were made out to a business. I'd not seen Mr T had paid for the hire car. And that it wasn't clear the hire car was comparable to the car hired under the MotoNovo agreement.

Having considered the evidence I said I was minded to amend my decision to say that instead of reimbursing Mr T for the hire costs, MotoNovo should reimburse him two monthly payments to cover the period he was without the car. This seemed broadly fair in the round. I said MotoNovo should still pay Mr T £150 compensation. I said to Mr T that I could only base my decision based on the evidence presented by the parties and reiterated what I'd set out in my provisional decision. I also highlighted to MotoNovo that Mr T had queried what would happen with the missed payments.

MotoNovo proposed the refund and compensation were put towards the arrears. It also explained it told Mr T to maintain his payments, and that it made attempts to contact him when it was asked to put things on hold. Mr T responded to say he'd tried to obtain evidence of the initial repair but wasn't able to. He also said the hire car was arranged through work and it was paid for using his car allowance. He said he needed a large vehicle and that if he'd have hired a like for like vehicle the price would have been double. He also explained again he was unhappy to have to keep a car that he'll have to repair, and that it went wrong shortly after he acquired it.

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.

I want to thank the parties for their responses. I appreciate Mr T would like more evidence relating to the gearbox fault to see if there's any link to the current issues. I'd also have liked to have seen more. But as I explained to him, I can only base my decision on the evidence that's submitted. I have to bear in mind there's an independent report that says the current fault isn't linked, and that it wouldn't have been an inherent issue from when Mr T acquired the car. So, based on that, along with the age and mileage of the car I don't have the evidence to say the current fault is in relation to something that made the car of unsatisfactory quality – when Mr T acquired it.

I can understand why Mr T is unhappy that things went wrong not long after he acquired the car. The problems aren't minor. But without sufficient evidence, I don't have the grounds to say he should be able to reject the car.

I'm satisfied that refunding Mr T two months payments is fair in the circumstances to recognise the loss of use he had of the car. And for the reasons I explained, I think this is fairer than directing MotoNovo to reimburse Mr T the hire car costs. MotoNovo has said this should be offset against the arrears. I agree this would be sensible, but I'll leave that to Mr T to decide.

For the reasons given in my provisional decision. I find a payment of £150 to be fair to compensate Mr T in relation to the gearbox fault.

Finally, I also note Mr T wants his credit file cleared of adverse information. This wasn't something that was brought as part of Mr T's initial complaint. So MotoNovo hasn't had the chance to respond to this. I think Mr T will need to speak to MotoNovo about his options. And if he's unhappy with how it treats him, it may be something our service is able to consider. I don't think it would be right to prescribe exactly what needs to happen in this decision. I can see we did pass on a request for the agreement to be put on hold while we investigated the complaint. But, for the avoidance of doubt, I can't see we ever advised Mr T to stop making payments. Putting things on hold is generally at the discretion of the business.

I'd recommend Mr T speaks to MotoNovo about a fair way forward. And I'd remind MotoNovo to treat him with forbearance and due consideration if he's unable to clear the arrears straight away. I'd also suggest it looks closely at what happened when we passed on Mr T's request for the agreement to be put on hold while we investigate, and think carefully about whether having missed payments recorded is fair in the circumstances. I don't know exactly what happened so, for completeness' sake, I'm not making any directions or commenting on that as part of this decision.

Putting things right

MotoNovo Finance Limited should refund Mr T the equivalent of two monthly payments for the loss of use (less what it's already paid in relation to the hire car costs). It should also pay him £150 compensation.

Mr T may wish to ask MotoNovo to pay the refund towards the arrears. But I'll leave that up to him to decide.

My final decision

My final decision is that I uphold this complaint and direct MotoNovo Finance Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 October 2023.

Simon Wingfield
Ombudsman