

## **The complaint**

Mr C has complained that he is unhappy with the quality of a car he acquired in June 2022, using a hire purchase agreement with MotoNovo Finance Limited ("MotoNovo").

## **What happened**

Mr C acquired a used Suzuki in June 2022, using a hire-purchase agreement with MotoNovo. The car was nearly eight years old, with a mileage of 44,550 shown on the hire-purchase agreement. The cost of the car was £8,265, and Mr C borrowed £7,765 over a term of 61 months, with a monthly repayment of £171.38.

Mr C had problems with the car shortly after he acquired it. He told us that six days after taking delivery, the car broke down in the street due to an issue with the gearbox. The tyre pressure light on the dashboard was also illuminated on delivery, something Mr C said the dealership was aware of.

He contacted the dealership straight away, and the car was collected two days later. Mr C said that when the car was loaded on to the tow truck it was dropped, and something fell off the car. The car was returned a week later. Mr C told us he considered rejecting the car at that stage, but didn't as he felt he should give the dealership an opportunity to fix the problem. A further issue arose, in that there was a noise coming from the underside of the vehicle. Mr C obtained a diagnostic report, which identified a loose trim on the car, and also an issue with the suspension – the front anti roll bar link gaiters required replacement.

Mr C contacted MotoNovo, and it agreed with the dealership that the repair costs would be covered. MotoNovo also refunded the cost of the diagnostic report to Mr C.

It seems that Mr C was then able to use the car without incident until the end of January 2023, when the car broke down again and had to be towed to a local garage. Mr C said that MotoNovo treated this as a continuation of the first complaint. He said that at the end of February 2023 the problem was identified as an issue with the clutch, and that the clutch and gearbox needed to be stripped down to determine the underlying cause.

MotoNovo commissioned an independent inspection report in mid-March 2023. There were two visits – at the first, in April 2023, the clutch and gearbox hadn't been stripped down,, so a second visit was required, and this took place in July 2023. The inspector concluded that the faults had not been present at the point of supply. Mr C disagreed with the report, so MotoNovo put his points to the engineer. He responded to say the primary cause of the problem was wear. So MotoNovo did not uphold Mr C's complaint.

Mr C is very unhappy about all this, and would like to reject the car and cancel the agreement. He considers that the second breakdown is connected to the first. He also told us that he has health and financial problems (I have not detailed these in this decision, but I have taken account of all the information provided). So I can understand this situation is very difficult for him.

Mr C then brought his complaint to this service. Our investigator looked into it, and he thought the complaint should be upheld to the extent that MotoNovo should refund some of the monthly payments to Mr C for the period he was unable to use the car. Mr C disagreed with this and asked that the complaint be reviewed by an ombudsman

### **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've decided to uphold Mr C's complaint to the extent that I think MotoNovo should refund some of the monthly payments that Mr C has made under the agreement.. I'll explain why.

Because MotoNovo supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case the car nearly eight years old, with a mileage of 44,550 when Mr C acquired it. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

Mr C sent in a detailed account of the sequence of events, together with copies of the independent report and email exchanges with MotoNovo about both breakdowns. MotoNovo sent in copies of the hire purchase agreement, its computer records of Mr C's account, the independent reports, and various emails. I've carefully considered all of the evidence provided.

The circumstances of the first breakdown, and the repairs that took place, are not in dispute. Mr C complained to the dealership – and then MotoNovo - about a gearbox problem, and the tyre pressure light on the dashboard. When the car was returned, Mr C notified MotoNovo about a noise from the underside of the car. Mr C arranged a diagnostic report from a third-party garage, which showed two issues. The noise was caused by a loose trim knocking in the wind, which was screwed on, and the second issue was a fault with the suspension, which was also repaired. On the second point the invoice provided by Mr C showed that the front anti roll bar link gaiters were replaced. I also note that it showed a mileage of 45,428.

It seems Mr C had initially said he wanted to reject the car, but later changed his mind and said he'd be happy for the faults to be repaired. The repairs were completed at no cost to Mr C. MotoNovo covered the cost of the diagnostic report, and made a small additional payment of £25 in recognition of the inconvenience caused to Mr C.

Mr C then seems to have driven the car without incident until 31 January 2023, when the second breakdown occurred. It looks as though a diagnostic check was carried out at a local garage, and I can see an email from the garage to Mr C dated 28 February 2023 saying that

the clutch may need replacing but this and the gearbox would need to be stripped down to see what had happened.

In the meantime Mr C had contacted MotoNovo (on 7 February 2023), to register a complaint about the car. MotoNovo requested an independent report on 13 March, but there seem to have been some issues in arranging the visit to the garage where the car was being held. The engineer was eventually able to visit the garage on 12 April, but in his initial report he said that he couldn't confirm whether the faults were present or developing at the point of supply, and he recommended removal of the gearbox and clutch components for investigation and to confirm the exact cause of the issues found.

MotoNovo agreed to cover the cost of stripping down the clutch and gearbox, so that a further independent inspection could take place. There was a delay in this being done but the independent inspection was finally carried out on 19 July.

I have a copy of this (along with the report from 12 April). I note the mileage recorded on the report was 50,314 – so the car had travelled 5,764 miles since the point of supply, and 4,886 miles since the first repair.

The independent inspection included a recommendation that the clutch be replaced, along with a flywheel. In summary, the engineer identified faults with the clutch assembly and flywheel, but concluded that these were not developing at the point of supply, and thought driver technique was a factor.

Mr C didn't think the earlier problem with the gearbox, and subsequent repair, had been taken into account, and he asked that the engineer consider whether there could be any link to the problems with the clutch and flywheel, and whether such significant damage could be caused in the short time Mr C had had the car.

The engineer responded, saying he couldn't confirm that the previous issue could have added to the accelerated clutch wear. He said *"having considered this fresh evidence it may have had some issues and impact on the current condition, but the primary cause for the fault would have to be considered to be wear and the sticking selection may be a factor or may simply be another condition which has developed. As such driver technique would still be considered a significant factor as operating the vehicle in a failed state would lead/add to significant issues developing."*

Mr C is still unhappy with this. In summary, he has pointed out that the mileage since he owned the car is not excessive (and indeed it seems to be in line with average mileage figures available online). He has said that he is a responsible driver, so doesn't consider poor driving technique has contributed to the current problems. He has also highlighted the short time he owned the car before the problems developed, and his view is that the current faults are related to the first breakdown. I should say here that I have summarised Mr C's comments, but I have read and considered all of his submissions. I note Mr C has referred to other decisions made by this service in support of his complaint. However, each decision is considered on its own merits, and my decision here is based on the information and evidence provided by Mr C and MotoNovo.

I have to place most weight on the independent inspection here, it being independent of both MotoNovo and Mr C. The engineer could not say whether the previous fault may have accelerated the wear, but has concluded that the primary cause of the fault was wear. I've also kept in mind that Mr C was able to use the car without incident, and travel nearly 5,000 miles, in the period between the first repair in early July 2022, and the second breakdown at the end of January 2023, a period of nearly seven months. This suggests to me that the first

repair was successful. And of course the car was over eight years old by this point, and components do have to be replaced over time.

I do appreciate how difficult this has been for Mr C, but I'm not satisfied there's enough evidence for me to fairly say that the second fault was the result of a failed repair, or that the car wasn't of satisfactory quality at the point of supply, taking account of the age, mileage and price. As a result, I can't fairly hold MotoNovo responsible for the repairs or say that Mr C is entitled to reject the car.

However, I do think that MotoNovo could have done more to expedite the independent inspection report, and I can see that Mr C has had to chase progress on numerous occasions. So whilst I think it's fair to allow a reasonable period of time for the report to be done, and I accept that MotoNovo agreed that it should cover the cost of stripping down the clutch and gearbox, I do think that that MotoNovo should refund some monthly payments in recognition of the delay.

Our investigator also thought that MotoNovo should refund some monthly payments, and following the issue of our investigator's view, MotoNovo offered to refund three and a half monthly payments, plus interest. Looking at the timeline, I think this reasonably represents the time difference between when the report could have been done and when it was actually done. I think this is fair.

So in summary, I uphold Mr C's complaint to the extent that I think MotoNovo should refund three and a half monthly payments, as it has offered to do, in recognition of the delays incurred. But I cannot fairly say that the car wasn't of satisfactory quality at the point of supply, so I am not asking MotoNovo to do anything more.

### **Putting things right**

MotoNovo should:

- Refund three and a half monthly payments covering April to mid-July 2023
- Add 8% simple interest\* per year to the amounts refunded, calculated from the date each amount was paid to the date the compensation is paid.

\*if MotoNovo considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons given above, I have decided to uphold Mr C's complaint to the extent set out above. MotoNovo Finance Limited should pay Mr C the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 February 2024.

Jan Ferrari  
**Ombudsman**