

The complaint

Mr C is complaining that the car he acquired through MotoNovo Finance Limited (“Motonovo”) was of unsatisfactory quality.

What happened

Mr C acquired a car through a hire purchase agreement with Motonovo in April 2023. The car was around six years old and had covered a little over 138,000 miles at point of sale.

Mr C raised a complaint with Motonovo shortly after acquiring the car, saying that the engine management light was on. Mr C asked for the car to be seen locally to him, rather than him have to travel to the dealership which was a little further away. There has been some evidence provided which suggests that there was a fault with a sensor identified first, but when other issues began to appear in May and June 2023, and things were not moving towards a satisfactory resolution, Motonovo instructed an independent engineer to assess the vehicle and report on what was wrong.

That inspection was carried out in late June 2023, and shortly afterwards, their report was provided. It stated that there was a fault code present for “transfer box oil wear” and alongside that, they said that Mr C had been having to put around a litre of oil a week into the vehicle, which he’d proven by keeping the receipts for all the oil being purchased in May and June 2023.

They road tested the vehicle and said there was a noticeable judder felt in the car when in first or second gear. They also highlighted a fault code in relation to the oxygen sensor was present. They said that the vehicle had covered around 3,000 miles since supply, and in their opinion, the faults they identified would have been present or developing at point of sale. They recommended the car to undergo further investigation to diagnose the problems with the juddering, and the excessive oil use.

Later in July 2023 Motonovo provided their final response letter (FRL) to Mr C. They upheld the complaint and said that the dealership was happy to complete any repairs needed, but Mr C hadn’t attended the last two appointments made for him to return the car to them, so he would need to contact them again to arrange this. Motonovo also offered £150 compensation for the distress, inconvenience and delays caused.

They confirmed that prior to the engineer’s report, they had also seen that there had been an issue raised by Mr C about needing a replacement of a sensor, which had to be done twice as his third party garage had apparently diagnosed and ordered the wrong sensor which the dealer had supplied. This had eventually been replaced at the dealership.

The FRL also confirmed that Mr C had raised concerns about an oil leak from the gear box, which had been investigated and which they felt was minimal and a wear and tear issue based on the age and mileage of the car. They had however carried out a full gearbox service and oil service for Mr C to resolve this.

It also said that Mr C had raised issues with the tyres of the vehicle and the tracking, but that

these were considered maintenance/wear and tear issues, and the car had passed its MOT shortly before supply with legal tyres, so they wouldn't be doing anything more about that.

Mr C had asked to reject the car at this time, and they said they wouldn't be able to support this but were happy to support the car being repaired. Finally, they apologised for the delays in resolving the complaint.

Shortly after this Mr C brought his complaint to our service. Mr C told us that because he had been unable to travel long distances in the car, he had lost his job and was stuck with an expensive car that needed thousands spending to be rectified. He said he wanted to reject the car still and be compensated for being sold an unroadworthy car.

He raised issues with the tyres, brakes, and other issues which he said shouldn't need replacing in a car this soon after supply. He also said it wasn't true that he had missed appointments at the dealership to carry out repairs, and that they couldn't fit him in for several weeks which wasn't fair.

An investigator here investigated the case and did not uphold the complaint. They said that Mr C confirmed while waiting for the case to be investigated by us that in August 2023 he had taken the car for repairs and some upgrades to a garage of his own choosing, and now the engine had failed completely, and the car was not driveable.

The investigator felt that Motonovo's offer in the FRL to repair the car was fair, but Mr C hadn't taken the car to be repaired. They said that whilst they could see that the dealership had said they were on holiday for a week, they hadn't seen evidence of it being longer than that, nor had they seen evidence of Mr C attempting to contact Motonovo about this issue to resolve it.

As Mr C had then taken the car to be repaired elsewhere, and it now seemed to have more problems and was undrivable, they didn't feel Motonovo were responsible for this. The investigator felt that the work carried out at a third party garage for Mr C included additional work that hadn't been diagnosed as being needed, and included the car being tuned which may have had an effect on the further problems.

Mr C didn't agree with this and asked for an Ombudsman to make a final decision. He said that the business had attempted repairs prior to the independent engineer's report and these repairs had failed. He said that three different people had taken holidays when he needed to get the car repaired which had stretched to five weeks, and this was why he took the car to the third party garage. He said the work the report had recommended had been carried out and it wasn't relevant that he had also had other work done at the same time.

The case has come to me for a final decision, therefore.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any

regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr C was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Motonovo are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied, unless Motonovo can show otherwise. But, where a fault is identified after the first six months, it's for Mr C to show that it was present when the car was supplied. So, if I thought the car was faulty when Mr C took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Motonovo to put this right.

In this instance, it's clear that issues were raised by Mr C to Motonovo and the dealership soon after the agreement began. But for a car that had travelled 138,000 miles before supply, many of the issues would class as normal "wear and tear" issues, and not "satisfactory quality" issues. For a car of this kind of mileage, I would for example class replacing sensors, as well as issues with tyres and brakes, as being wear and tear work or replacements. These parts have most likely just reached the end of their natural life, rather than failed because of being of unsatisfactory quality.

Just because a car has been supplied recently, it doesn't mean all the parts should last longer or not wear out. I wouldn't expect a business to have to replace all the wear and tear parts before supplying a car. A consumer has to expect that when purchasing a higher mileage car such as this, some of the parts may wear out and need replacing fairly quickly.

As such, taking tyres as an obvious example, the MOT which the car passed in March 2023 confirms that the tyres were legal at that point. If Mr C felt they were unusually worn when acquiring the car, it was down to him to inspect them and query them and if necessary negotiate about them with the supplier before agreeing to acquire the car. Similarly, small oil leaks can be expected in this age and mileage car, or brakes may need work fairly soon.

From the evidence provided, the repairs carried out by the dealership prior to Motonovo answering Mr C's complaint were not issues that needed repairing to make the vehicle of satisfactory quality. The vehicle was supplied with a three month warranty, and the work largely seems to have been carried out under that warranty. I would not class any of the repairs that I have seen were carried out before the independent engineer's report as work that meant the car wasn't of satisfactory quality.

The independent engineer's report identified issues however which would be about the satisfactory quality of the vehicle. The car juddering, and the amount of oil being needed could have been indicators of significant problems, and I'm glad to see Motonovo recognised that, upheld Mr C's complaint, and offered to investigate and repair these things for Mr C.

Mr C said he wanted to reject the vehicle. However, in these circumstances, the CRA allows Motonovo an opportunity to repair the issues. I've seen no evidence that these specific problems identified in the independent engineer's report were raised by Mr C with Motonovo or diagnosed within the first month of the agreement, or that Mr C asked to reject the car in

that time frame. As Motonovo hadn't had an opportunity to repair these issues to that point, the CRA gives them an opportunity to repair the car before they need to consider rejection.

Mr C seems to have wanted to reject the car from July 2023, around the time he's received the engineer's report. I was sorry to read that he said he had also lost his job around this time, because the car was no longer able to take long journeys, although at the time of the engineer's report, the car had travelled just over 3,000 miles in just under three months since being supplied, so had clearly been drivable.

I'm satisfied therefore that Motonovo's offer in their FRL to repair the vehicle was a fair resolution to the complaint, alongside the offer of £150 compensation. The car had been drivable, having covered around 3,000 miles in three months, and the issues had now been identified, and they had offered to compensate him for the distress and inconvenience he had suffered. This was fair.

The FRL was issued on 28 July 2023. I believe that Mr C, having seen the engineer's report and already spoken about it to Motonovo, was already discussing Motonovo repairing the car. Motonovo have said that Mr C had missed two appointments with the garage at this time, but there is no evidence to confirm if this is true or not. Similarly, Mr C has said he couldn't get an appointment with the garage for over five weeks due to various people having holidays, but the evidence supplied neither confirms nor counteracts this.

Fundamentally, I'd expect Motonovo, or in this case their broker the dealership, to be given the opportunity to repair the car. So, I've gone on to consider whether they've been given a fair chance to do this. The FRL was issued on 28 July 2023, and the invoice for the bulk of the repairs and additional work Mr C had carried out is dated 25 August 2023.

I haven't seen any evidence to show Mr C was trying to contact Motonovo to chase up the repairs, and whilst I would hope in cases like this that repairs could be carried out quickly, I don't think the timescales involved here, around four to five weeks, meant Mr C should be able to go ahead and arrange his own repairs and expect Motonovo to pay for them. Not unless Motonovo had agreed to that, which they hadn't.

Because the work Mr C has had carried out at a third party garage has involved both trying to fix the existing problems, and also adding other work to this, I can't be sure what's now happened to the car. Mr C has told us it is now completely undrivable, and I can see from the mileage details stored on the MOT checking site online that the car doesn't appear to have been used since July/August 2023.

Mr C has told us what he thinks has happened, and what he thinks the problems were, which seems to be largely based on what the third party garage he's taken the car to have told him after it has become undrivable. But I can't rely on this evidence, as it's unfortunately a theory, not a diagnostic of what's happened.

If the car had become undrivable after it had the repairs at the dealership Motonovo asked to carry them out, then it would absolutely be right for Mr C to be able to reject the car. This is because the agreed Motonovo repairs would have failed, and rejection then becomes a fair step under the CRA.

But as Mr C has taken the car elsewhere, it wouldn't be fair to expect Motonovo to be liable for problems potentially caused by those third party repairs, or upgrades. There is no way to tell whether the ensuing problems with the car after visiting that third party garage are just because of the problems the car already had in July 2023, or whether the third party garage repairs from August 2023 have failed or triggered more problems, or whether the additional work carried out in August 2023 has in fact made things worse. Apart from anything else, the

problems identified by the independent engineer were symptoms, not causes. It was not known at that time what was wrong with the car.

I give weight to the independent engineer's report, which said there were clear problems, but more investigation would need to be done to identify what these problems were, and then to repair them. Mr C didn't give the dealership the opportunity to do that investigation or carry out those repairs, so I'm afraid I can't assume that the problems that happened later on were the same as the problems happening in June 2023. Alongside this, the repairs Mr C paid for at the third party garage were not proportionate to the repairs Motonovo had agreed to fund; they included additional work, authentic new manufacturer parts and engine tuning, none of which Motonovo should be required to pay for.

I empathise with Mr C and the situation he's been left in, but my role is to assess whether he's been treated fairly by Motonovo in dealing with this complaint. I'm satisfied that the resolution they provided in their FRL of 28 July 2023 was a fair response to his complaint. But I can't find Motonovo liable for what has followed, when Mr C hasn't taken up their offer to investigate the issues and repair the car. It's an unfortunate set of circumstances, but based on the evidence provided, I can't say Motonovo have done anything wrong, and I won't be asking them to do anymore.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 April 2024.

Paul Cronin
Ombudsman