DRN-4439052

The complaint

Mr A complains about a car he acquired with credit provided by MotoNovo Finance Limited.

What happened

In July 2022, Mr A entered into a regulated hire purchase agreement with MotoNovo in relation to a five year old used car. In April 2023, the car passed its MOT with some advisories. These were:

- Offside front service brake fluctuating, but not excessively;
- Nearside front tyre slightly damaged/cracking or perishing;
- Front and rear brake discs worn, but not excessively;
- Front and rear brake pads wearing thin.

In June 2023, Mr A complained about these matters, and also about a weld he had discovered inside one of the alloy wheel rims, which he said was evidence that the car had been in an accident. He argued that the car had been mis-sold to him because he had not been told that it had been in an accident. He wanted MotoNovo to cancel the agreement and refund all of the payments he had made. In support of his complaint, he instructed an expert to inspect the car and write a report. That expert found that one of the suspension arms had worn and required replacing, and the propshaft had cracked.

MotoNovo said the advisories were no more than normal wear and tear, and the weld was not a fault. It had carried out a Higher Purchase Investigation check to see if the car had been written off following an accident, and it had not been. The car had passed its MOT, so it was safe to drive. MotoNovo therefore did not accept that the car had been mis-sold. Being dissatisfied with that answer, Mr A brought this complaint to our service.

Our investigator did not uphold this complaint. She pointed out that Mr A had driven the car over 16,000 miles while he'd had it, and it had been driven for 66,000 miles altogether. She said that brake pads, brake discs, and tyres were serviceable parts which would have to be replaced from time to time, and MotoNovo had been under no obligation to ensure that they were new at the point of sale. She noted that the car had passed its MOT in April 2022 with no advisories, only three months before Mr A had acquired it. So she concluded that the issues with the car were wear and tear which had occurred during the nine months that Mr A had had the car before its 2023 MOT, and that the car had been in satisfactory condition at the point of sale.

Mr A did not accept that decision. He insisted that if he had known that the car had been in an accident, he would not have bought it; he said this was misrepresentation. He argued that the weld should have been disclosed; it was obviously not the result of wear and tear.

The investigator did not change his mind. He said that al MotoNovo had been required to do was give Mr A a car which was of satisfactory quality, which it had been, having regard to the age and mileage of the car.

Mr A then instructed a solicitors' firm to represent him. They made the following points:

- Section 9(8) of the Consumer Rights Act 2017 *(sic)* required the supplier to provide

Mr A with information about the quality of the vehicle at the point of sale;
- Failure to provide that information was a misrepresentation;
- Mr A therefore has the right to redress under regulation 27A of the Consumer Protection from Unfair Trading Regulations 2008;
- The car was not fit for purpose;
- This car was of a make and model which would be expected to be of high quality, notwithstanding its age and mileage, so that even after 81,688 miles (the mileage when the inspection was carried out), the relevant faults should not have developed yet;
- Although the solicitor accepted that tyres and brake pads could become worn due to wear and tear, the worn suspension arm was a serious defect;
- Mr A should be allowed to reject the car and unwind the agreement.

This case was referred for an ombudsman's 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.

Having done so, I do not uphold it. I will explain why.

The Consumer Rights Act 2015 requires hired goods to be of satisfactory quality and fit for purpose at the point of delivery, having regard to all relevant circumstances. In the case of a hired car, the relevant circumstances clearly include whether the car is new or used, and what its mileage was. At the point of delivery, this car was five years old, its mileage was 65,650 miles, and it had passed its MOT with no advisories three months earlier.

A used car cannot reasonably be expected to be of identical quality as a brand new car; a certain amount of wear and tear is inevitable. And the supplier does not have to replace every worn part with a new one before selling or hiring the vehicle.

Given that there were no advisories at the 2022 MOT, I think it is clear that the tyres and brake pads were worn as a result of normal wear and tear. At the 2023 MOT, they were only advisories; the car was still legal and roadworthy. The expert agreed; he wrote:

> "It is highly unlikely that from purchase to the first service *[in May 2023]* the tyres and brakes would have worn to below the legal limit."

The worn suspension arm and the cracked propshaft were not mentioned in either of the MOTs, so I am satisfied that these were not defects present at the point of sale. I have noted that the expert's report in June 2023 says that these defects must have been present at the point of sale, and that they must have just been missed on the MOTs in 2022 and 2023, but I'm afraid I don't think that is plausible. They would be hard to miss. I have seen a video recorded by another garage, which clearly shows the cracked propshaft, and it is so conspicuous that it does not seem remotely likely to me that it was missed during two MOTs. To that extent, I do not accept the expert's conclusions.

A suspension arm should normally last for around 90,000 to 100,000 miles. This issue was discovered at 81,688 miles, which is not quite 90,000 miles but is not very far off, so on the balance of probabilities, I am satisfied that this was not a defect present at the point of sale.

Turning to the weld, there is clear evidence that one of the alloy wheel rims was welded, and that seems to me to be clear proof that it must have been damaged in some earlier accident.

However, that does not mean that the car was not of satisfactory quality or that it was not fit for purpose. If the repair was satisfactory and the car was roadworthy, which appears to have been the case, then that is not evidence of a mis-sale.

I can find no basis for saying that the supplier had a duty to pro-actively disclose to Mr A that the car had been involved in an accident and then repaired. Section 9(8) of the Consumer Rights Act, on which the solicitor relies, only says:

> "(8) In a contract to supply goods a term about the quality of the goods may be treated as included as a matter of custom."

That isn't relevant here, since there is not a custom that a used car for hire will not have been involved in an accident before.

The solicitor also referred me to the Consumer Protection from Unfair Trading Regulations 2008. Regulation 27A provides a consumer with a right of redress if a trader engages in a practice prohibited by the regulations, and the prohibited practice is a significant factor in the consumer's decision to enter into the contract. Regulation 27B says that a "prohibited practice" means something which is prohibited by regulations 5 or 7.

Regulation 5 is about misleading actions. It defines that as a statement which contains false information. I think that requires a positive act (and I am reinforced in that interpretation of regulation 5 by the fact that regulation 6 is about misleading omissions). It is not alleged that somebody lied and told Mr A that the car had never been in an accident; rather, he says that the supplier failed to tell him that it had, and was under a duty to volunteer that information. I can find no such duty in regulation 5.

Regulation 7 is about aggressive commercial practices, involving harassment, coercion or undue influence. I don't think that creates a duty to proactively tell Mr A that a car he wishes to hire has been in a accident before; if that was important to him then he should have asked.

Even if I took a different view about all that, I still don't think that selling Mr A a car which had been damaged and properly repaired was disadvantageous to him. As I've said, it was legal and roadworthy.

For all of these reasons, I am satisfied that the car was of satisfactory quality at the point of sale, and that MotoNovo has not done anything wrong.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 May 2024. But apart from that, this final decision brings our service's involvement in this matter to an end.

Richard Wood
Ombudsman