

The complaint

Mr Y is unhappy that a car supplied to him under a hire purchase agreement with MotoNovo Finance Limited was of an unsatisfactory quality.

What happened

In November 2022, Mr Y was supplied with a used car through a hire purchase agreement with MotoNovo. The agreement was for £14,980 over 60 months; with 59 monthly payments of £327.92 and a final payment of £328.92. At the time of supply, the car was around four years and nine months old, and had done 71,613 miles.

The car broke down in February 2023. Mr Y complained to MotoNovo about this, and on 6 March 2023 they had the car inspected by an independent engineer. At the time of inspection the car had done 77,228 miles – 5,615 miles since supply.

The independent engineer said *“the vehicle displayed symptoms which were consistent with a head gasket failure.”* Due to the age of the car, and the mileage done, the engineer said *“we do not consider the fault to be present at purchase.”* Given this, MotoNovo didn't think they needed to do anything more.

Mr Y wasn't happy with what'd happened, and he brought his complaint to the Financial Ombudsman Service for investigation.

Mr Y took the car to a manufacturer's specialist. They stripped down the engine and found that there was no issue with the head gasket, as the independent engineer had concluded. Instead, they said the exhaust manifold was cracked, which had led to a coolant loss. And the coolant leaking into the exhaust system had damaged the catalytic convertor. Due to the level of damage suffered by the catalytic convertor, the manufacturer's specialist concluded *“the vehicle has probably had the crack since [Mr Y] purchased [it].”*

The cost of the inspection and repair came to £4,298.14. This included the need to replace the turbo that was housed within the damaged manifold, as this was unable to be removed. It's my understanding the car was repaired in June 2023. For the period Mr Y was without use of the car supplied to him by MotoNovo, he hired a car for alternate transportation.

Based on the reports from the independent engineer and manufacturer's specialist, our investigator didn't think the car supplied to Mr Y was sufficiently durable. And he thought the exhaust manifold would be expected to last the lifetime of the car, certainly in excess of 100,000 miles. As such, he thought the car was of an unsatisfactory quality when it was supplied to Mr Y, and MotoNovo needed to do something to put things right.

The investigator recommended that MotoNovo refund the inspection and repair costs Mr Y had paid, as well as paying him an additional £200 compensation for the distress and inconvenience he'd suffered.

Mr Y agreed with the investigator, but he thought some consideration should be given to the hire car costs he incurred.

MotoNovo referred the manufacturer's specialist's report back to the independent engineer for comment. The independent engineer didn't agree the car wasn't sufficiently durable, and they thought the exhaust manifold had failed within the age and mileage parameters which could be expected of it. The independent engineer concluded that *"it is clear that the conditions under review were not present at the point of sale, as they would have materialised within the first 500-1,000 miles of use."*

MotoNovo considered the investigator was disregarding the view of *"an experienced, professional mechanic"* and hadn't taken into consideration the mileage Mr Y had done in the car, or that the MOT record didn't highlight any concerns or issues. They also thought that, if the fault was present when the car was supplied to Mr Y, then it would've broken down sooner.

I issued a provisional decision on 16 January 2024, where I explained my intention to uphold the complaint. In that decision I said:

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 Y 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') 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 implies 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 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, the CRA implies that it's for Mr Y to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr Y took possession of it, or that the car wasn't sufficiently durable, 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 not disputed there was a fault with the car. However, what is in dispute is whether this was present or developing at the point the car was supplied to Mr Y – the report from the independent engineer says it wasn't, while the report from the manufacturer's specialist says it was.

*I've noted MotoNovo's comments that the manufacturer's specialist isn't a registered independent assessor, and they believe the opinion of *"an experienced, professional mechanic"* should be taken into consideration. By this, I understand them to mean that the report from the manufacturer's specialist shouldn't be relied upon.*

*It's not disputed that the independent engineer is *"an experienced, professional mechanic."* I've noted they considered the fault to be a failed head gasket (which wasn't the case) and this was based on a visual inspection of the car only. When they received the report from the manufacturer's specialist confirming the fault was actually the exhaust manifold, they*

concluded this wouldn't have been present or developing at the point of supply based on a reading of the report alone, and not any further inspection of the car or the damaged parts.

While the manufacturer's specialist isn't a registered independent assessor, this doesn't mean they're not "an experienced, professional mechanic." What's more, their report is based on an actual examination of the damaged parts, where a more accurate determination of the amount of time the damage has been progressing is possible.

MotoNovo have implied that the manufacturer's specialist had a vested interest because they stood to gain from their report i.e., they would be paid for the repairs. While this may be the case, the independent engineer hasn't said the manufacturer's specialist's findings are inconsistent with what they observed, nor that any of the recommended work is unnecessary. But what I consider more important is that the manufacturer's specialist had nothing to gain from saying when the fault likely developed – Mr Y paid for the repairs to the car regardless.

Finally, although MotoNovo have raised this, I don't consider the MOT record to be relevant in this instance. This is because an examination of the exhaust manifold doesn't form part of the MOT checks. As such, the presence or otherwise of a fault with the exhaust manifold wouldn't be reported as an MOT advisory or failure point.

Given all the above, I don't think the manufacturer's specialist's report should be discarded. What's more, on the balance of probability, I'm inclined to favour this report as it's based on an actual examination of the damaged parts. So, I'm satisfied the fault was present or developing when the car was supplied to Mr Y. This makes it not of a satisfactory quality, and MotoNovo need to do something to put things right.

The hire car evidence shows the car was off the road and undrivable between 13 February and 28 June 2023. During this period, Mr Y wasn't supplied with a courtesy car. As such, he was paying for goods he was unable to use. For the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, so I think that MotoNovo should compensate Mr Y for this.

Mr Y rented a car during this period, and he's asked for these costs to be covered. While I appreciate Mr Y's need for alternative transport, I'd also expect Mr Y to mitigate any losses. He hired a car from the outset, and before talking to MotoNovo about the issues with the car he'd been supplied with. I've also not seen anything to show me that he made MotoNovo aware he was in a hire car or gain any authorisation for this.

In his email of 28 November 2023, Mr Y explained this was his first car (and the freedom it gave him led to such a high initial mileage). Given this, I'm satisfied that Mr Y was used to travelling to work, seeing friends, socialising etc. by way of alternate transport means, and to revert to doing this a few months after being supplied with his first car would've allowed him to mitigate his costs.

As such, I don't think it's fair that MotoNovo should be asked to cover the full hire car costs, and instead they should refund him the payments he made during the period the car they supplied was off the road.

Mr Y has provided evidence of the repair costs for the car, and he says the car was repaired. Given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that MotoNovo reimburse these costs.

Finally, it's clear that Mr Y has been inconvenienced by having to arrange for the car to be repaired. And he was further inconvenienced by not being provided with a courtesy car. So, I

think MotoNovo should compensate him for this. The investigator recommended MotoNovo pay him £200, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my decision.

Therefore, it's my intention to ask MotoNovo to:

- remove any adverse entries relating to this agreement from Mr Y's credit file, for the period the car was off the road;*
- upon receipt of proof of payment, reimburse Mr Y the cost of inspecting the car and repairing the exhaust manifold, catalytic convertor, and turbo (up to a maximum of the £4,298.14 inspection and repair costs provided);*
- refund the equivalent of the payments Mr Y was charged for the period 13 February to 28 June 2023 (if the invoice for the repairs shows the car was repaired sooner than 28 June 2023, then MotoNovo should only refund the payments from 13 February 2023 to when the car was repaired);*
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr Y made the payments to the date of the refund[†]; and*
- pay Mr Y an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

[†]If HM Revenue & Customs requires MotoNovo to take off tax from this interest, MotoNovo must give Mr Y a certificate showing how much tax they've taken off if he asks for one.

Responses

Both MotoNovo and Mr Y accepted my provisional decision without further comment.

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.

As both MotoNovo and Mr Y have accepted my provisional decision, I see no compelling reason why I shouldn't now adopt this as my final decision.

Putting things right

For the reasons given in my provisional decision, and repeated above, MotoNovo should:

- remove any adverse entries relating to this agreement from Mr Y's credit file, for the period the car was off the road;
- upon receipt of proof of payment, reimburse Mr Y the cost of inspecting the car and repairing the exhaust manifold, catalytic convertor, and turbo (up to a maximum of the £4,298.14 inspection and repair costs provided);
- refund the equivalent of the payments Mr Y was charged for the period 13 February to 28 June 2023 (if the invoice for the repairs shows the car was repaired sooner than 28 June 2023, then MotoNovo should only refund the payments from 13 February 2023 to when the car was repaired);
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr Y made the payments to the date of the refund[†]; and
- pay Mr Y an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires MotoNovo to take off tax from this interest, MotoNovo must give Mr Y a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr Y's complaint about MotoNovo Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 15 February 2024.

Andrew Burford
Ombudsman