

## The complaint

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

## What happened

On 4 November 2022, Mr E was supplied with a used car through a hire purchase agreement with MotoNovo. He part-exchanged his existing car and paid a £1,600 deposit; financing £10,765.07 over 61 months; with 59 monthly payments of £278.91 and a final payment of £279.91. At the time of supply, the car was around six and a half years old and had done 77,379 miles (according to the MOT record for 18 October 2022).

Mr E said the car broke down within a few weeks of it being supplied to him. The supplying dealership wouldn't let him reject the car without first having the chance to inspect and repair it. Which they did and repaired a fault to the drivetrain. However, Mr E says this repair was unsuccessful, and the fault reoccurred.

Mr E agreed to the dealership attempting a second repair, and substantive repairs were done to the car's engine. This took about three weeks, during which time Mr E wasn't supplied with a courtesy car. The invoice for this work states engine replacement and shows that this work was completed on 13 February 2023, at which point the car had done 85,617 miles – 8,238 miles in the roughly three months it had been in Mr E's possession.

However, Mr E says the fault was still there, and he complained to MotoNovo. MotoNovo arranged for an independent engineer to inspect the car. This inspection took place on 13 June 2023, when the car had done 96,072 miles – 10,455 miles in the four months since the engine was repaired, and 18,693 miles in the seven months since the car was supplied.

The engineer said there was an issue with the rear brakes being almost worn out but, given the mileage Mr E had done since the car was supplied, this was *"sufficient mileage for brake wear to have originated and progressed to the point that repairs are required."*

The engineer also commented that the car was now in limp mode. However, *"the background information suggests the vehicle had been taken back to the sales agent due to a lack of compression, there was no suggestion the current symptoms could be associated with a lack of compression, so it's unlikely the current symptoms can be associated with the previous repairs."*

The engineer went on to say *"the symptoms are more likely to be the result of, either a failure of the van solenoid oil pressure system, or the vanos units may have become lazy in operation as a result of general wear and tear; this would hardly be surprising as the vehicle has now covered almost 100,000 miles. Having to replace Vanos units on a vehicle that has covered almost 100,000 miles would be classed as general maintenance ... we are able to confirm that [the car] would have been considered fit for purpose at the time of its purchase and of a satisfactory standard."*

In conclusion, the engineer said, *“although there is an underlying issue with the vehicle, this is considered to be the result of natural wear and tear through general usage which has only developed into an issue that requires rectification after purchase.”*

Mr E wasn't happy with this report. He said that, after speaking to *“many mechanics”*, he believed the issue with the Vanos system resulted from the work done on the engine in February 2023, which included a replacement of the timing chain. MotoNovo forwarded these comments to the engineer who'd inspected the car, and they said *“while the information provided is a little inconsistent (it refers to a ‘replacement engine’, but the detailed work doesn’t support that statement) this does not affect the issue determined at the time of our inspection. Our Report highlighted that the vehicle’s Vanos units ... are reaching the end of their in-service lifespan & require replacement as a result of normal wear and tear. Even if the work carried out previously is clarified as per the job-sheets, it would not alter the Report’s conclusions.”*

As a result of this, MotoNovo didn't uphold Mr E's complaint. Mr E wasn't happy with this response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, while there was a fault with the car, the evidence showed this was as a result of normal wear and tear. So, she didn't think MotoNovo needed to do anything about this. However, the investigator said that MotoNovo should refund the equivalent of three weeks payments for when the car was being repaired, and Mr E wasn't supplied with a courtesy car, and they should also pay him £200 for the distress and inconvenience he'd been caused by the initial faults and repairs to the car.

Mr E didn't agree with the investigator's opinion, and he again said that he thought the Vanos system had been affected by the repairs to the engine in February 2023. He didn't think it was fair that he had to wait for the dealership to be able to inspect the car (between November 2022 and February 2023) and he wanted to be compensated for the additional fuel he'd used driving the car for around four weeks in limp mode. He also didn't think the £200 recommended was sufficient to cover his taxi costs to return home from the dealership, and to get to and from work, in the three weeks when the engine was being repaired.

Mr E also asked if he could have the car inspected by another independent engineer. However, despite being given the opportunity to have this inspection done, Mr E hasn't provided any additional inspection report.

Because Mr E didn't agree, this matter has been passed to me to make a final 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'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 E 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 E to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr E 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.

I've seen a copy of the independent engineer's report, dated 13 June 2023. The key parts of this report have been quoted above, so I won't repeat them here. However, it's clear from this report that the fault with the car present during the inspection wasn't related to any previous repairs, nor was it present or developing when the car was supplied to Mr E.

I've also noted the engineer confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

In his complaint to MotoNovo, and in his comments on the investigator's opinions, Mr E has explained why he thinks the failure of the Vanos units is related to the previous repairs. However, the independent engineer has considered Mr E's evidence about this and explained why it doesn't alter the conclusions that the current fault is as a result of normal in-service wear and tear. I've also noted that Mr E hasn't provided any additional independent evidence i.e., a report from another independent engineer, that supports his view about the cause of the fault.

From the mileage figures I've seen, Mr E was doing around 2,600 miles a month in the car, which is substantially more than what could be considered average mileage. And I don't think he would've been able to do this mileage if the car was faulty when supplied, or if the repair that took place in February 2023 had failed.

As such, and while I appreciate this will come as a disappointment to Mr E, I'm satisfied the current fault is as a result of the Vanos system reaching the end of its natural life, and not as a result of either something that was present or developing when the car was supplied, or because of a failed repair. So, I won't be asking MotoNovo to repair the car, or to allow Mr E the right of rejection.

However, this doesn't mean that MotoNovo shouldn't do something to recognise the initial faults with the car, and that Mr E was without transportation for three weeks while repairs to the engine were taking place.

## **Putting things right**

The car was off the road and undrivable for three weeks in late-January and early-February 2023, while the engine repairs were being done. During this period, Mr E wasn't supplied with a courtesy car, so he was paying for goods he was unable to use. Mr E has said that he had alternate transport costs during this period and has provided quotes for journey costs through an app he said he used to book and pay for the taxis he's used during this period.

However, this app stores details of all journey's taken, and the cost of those journeys. Mr E was asked to provide this information and has been given the opportunity to do so. But no information has been provided. As such, I can't be sure of what Mr E's alternate transport costs were. Given this, I'm satisfied the fair solution would be for MotoNovo to refund the equivalent of the payments Mr E made during this period.

While I appreciate how frustrating it must've been for Mr E to have to wait until the dealership had garage space before they could inspect and repair the car; as the independent engineer has confirmed the current fault is unrelated to the previous faults and repairs, I don't think this delay resulted in the failure of the Vanos system.

The evidence shows that Mr E was driving the car while in limp mode, and this would likely have resulted in a higher fuel consumption. It's clear that Mr E has been inconvenienced by having to arrange for the car to be repaired twice, and by the additional fuel costs he likely incurred as a result of driving in limp mode. So, I think MotoNovo should compensate him for this. The investigator had recommended MotoNovo pay Mr E £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 final decision.

Therefore, MotoNovo should:

- remove any adverse entries relating to this agreement, for the period from November 2022 to February 2023, from Mr E's credit file;
- refund the equivalent of three weeks payments for the period the car was being repaired and Mr E had no courtesy car;
- apply 8% simple yearly interest on the refund, calculated from the date Mr E made the payment to the date of the refund<sup>†</sup>; and
- pay Mr E 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.

<sup>†</sup>If HM Revenue & Customs requires MotoNovo to take off tax from this interest, MotoNovo must give Mr E 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 E'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 E to accept or reject my decision before 18 April 2024.

Andrew Burford  
**Ombudsman**