

The complaint

Mr M complains about the quality of a car supplied to him by MotoNovo Finance Limited ("MotoNovo").

What happened

I sent Mr M and MotoNovo my provisional findings on this complaint on 30 August 2024. A copy of that decision is attached and forms part of this final decision.

I explained why I was planning to uphold Mr M's complaint and asked both parties to let me know if they had anything to add.

Mr M agreed.

MotoNovo disagreed. It said:

- it was unrealistic for a used car dealer to replace a timing belt on every car that it sold. There was no issue with the timing belt at the time it was sold to Mr M.
- Mr M took out an extended warranty for which timing belts were covered. Mr M didn't have the car serviced in line with the manufacturer recommendations in March 2022 and March 2023 and he serviced the car himself.
- The warranty provider denied the claim because Mr M had serviced the car himself.
- There is no evidence that Mr M serviced the car as he was expected to. Mr M clearly has knowledge of vehicle maintenance and so should have seen signs of the timing belt deteriorating – such as the engine misfiring, a ticking noise, oil leaking, smoke being emitted from the exhaust and a change in the RPM's etc.
- There was no evidence that Mr M was mis-led about the cambelt being replaced.
- Mr M said that he wouldn't have acquired the car if he had known the timing belt hadn't been changed. So MotoNovo questioned why Mr M didn't query this at the time given the car was sold without a full-service history.
- D said it didn't change the timing belt, and it has no evidence to show either way whether the timing belt was changed before it got the car.
- Mr M should take some responsibility of maintaining the car.

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 reviewed MotoNovo's comments and I agree that it isn't reasonable for a used car dealer to replace a timing belt on every car it sells. However, I would consider it reasonable for the dealer to maintain the car whilst it is in possession of it.

MotoNovo has highlighted that the car wasn't serviced by a professional. However, the terms and conditions of its agreement do not say that the car needed to be serviced professionally. Instead they say:

"6.1 You will..."

6.1.2. keep the Vehicle in good and substantial order and repair (and in the case of any motor vehicles in roadworthy condition) and in particular, at your own expense, repair all defective parts and when necessary replace such parts by parts of suitable quality.”

This doesn't confirm that the car needed to be serviced by a professional. And regardless of this, P said, when it carried out its independent report, that the car had been serviced in-line with the manufacturer's recommendations since the point of purchase. And so, given an independent expert has confirmed the car was serviced as it was expected to be and MotoNovo hasn't obtained any information to suggest otherwise, I'm persuaded that the services Mr M did carry out resulted in the car being maintained as it was expected to.

MotoNovo said that Mr M should have seen signs of the timing belt deteriorating. However, P said the cambelt failure occurred without warning. So I'm not persuaded that Mr M should have been aware that there was some kind of issue with the cambelt at any point before it failed.

In respect of MotoNovo's comments about the warranty, I've not been provided with supporting information about a warranty claim or the reasons why this was declined. But in any event, the warranty claim has no bearing on Mr M's claim under his hire purchase agreement.

In any event, my provisional decision said that the new manufacturer guidance suggests that the replacement of the cambelt isn't due until the car has completed 140,000 miles. And so, I'm not satisfied that that regardless of whether the cambelt was replaced at five years or not, given that the cambelt failed at around 60,000 miles, I don't think the cambelt was sufficiently durable. And this means I don't think the car was of satisfactory quality when it was supplied to Mr M. So it follows that I see no reason to change my provisional decision.

My final decision

I uphold Mr M's complaint. MotoNovo Finance Limited should put things right by doing the following:

- Pay Mr M £1,935.84 for the cost of the repair;
- Pay Mr M for the cost of the breakdown recovery, upon Mr M providing MotoNovo Finance Limited with a receipt of an invoice from the third-party recovery company;
- Pay Mr M £112.50 for the diagnostic testing;
- Pay Mr M £360 for the cost of the independent report;
- Pay Mr M 8% simple interest on these amounts from the date of each payment until the date of settlement;*
- Pay Mr M £150 for the distress and inconvenience caused; and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 November 2024.

Provisional decision

I've considered the relevant information about this complaint.

Having done so, I initially intend to reach a different outcome to our investigator.

I'll look at any more comments and evidence that I get by 13 September 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr M complains about the quality of a car supplied to him by MotoNovo Finance Limited ("MotoNovo").

What happened

Mr M acquired a used car under a 60 month hire purchase agreement with MotoNovo in October 2021. The car cost around £13,900 and alongside the car, Mr M purchased a dealer guarantee, fabric/paint protection and one further extra totalling £1,317. Mr M made a deposit payment of £3,950 and part exchanged his existing car which had a value of £2,480. Under the agreement, Mr M was required to make 59 payments of £184.44, followed by a final payment of £185.44 if he wanted to keep the car. The car was supplied by a dealership I'll refer to as "D". At the time the car was acquired by Mr M, it was around five years old and the mileage was 34,000.

In January 2022, Mr M says he contacted D as the car had issues with the infotainment system and it produced a draft on motorway journeys. He said one of these issues was fixed by D but the other wasn't. Mr M said the car had no problems in 2023.

In early January 2024, Mr M says the car broke down and wouldn't start. So Mr M called a roadside recovery service who were unable to repair the car. Mr M says D advised him to take the car to a third party garage. Mr M did this and the third party garage explained there was low compression and Mr M needed to take the car to an engine specialist. Mr M did this and says he was told they suspected the debris under the cover lifted the belt and this made the teeth come out of alignment causing the valves to touch the piston tops. He said he was told the car needed new valves, a rebuild using new seals, a new head gasket, head bolts, a new water pump and other things. Mr M says he was quoted £1,895.84 for the repairs. Mr M complained to MotoNovo and obtained an independent inspection report.

MotoNovo issued its response to Mr M's complaint in March 2024. It said it would be down to Mr M to show that the car wasn't of satisfactory quality at the time it was supplied to Mr M. MotoNovo said the cambelt was a maintenance item and D didn't need to replace it before the sale, even if it was overdue. It said Mr M had been able to travel more than 30,000 miles in the car over a two year period without the timing belt being replaced. So it said the car it had supplied was fit for purpose at the time it was acquired by Mr M.

Unhappy with this, Mr M referred his complaint to this service. Mr M said he wanted to reject the car and explained how the sale occurred and the things that were said to him by D. He said he took out the extended warranty which stated that timing belts would be covered with some exclusions. This was at a cost of £919. Mr M says he also paid £300 to reserve the car. Mr M said he received a partial service history with the car between 2019 and 2021 but not between 2016 and 2018. He said D had mis-led him into believing they had carried out a full check of the car and if they had carried this out, they would have noted the cambelt tensioner and cambelt needed servicing.

Our investigator looked into the complaint but thought the car was of satisfactory quality when it was supplied. He said the issue with the cambelt would have presented sooner taking into account the length of time Mr M had the car. He also said cambelts aren't guaranteed for life as they can sustain damage, stretch, distort and wear over time depending on how the car is maintained and used. He said Mr M had told this service he serviced the car himself by replacing filters, changing the battery and changed the oil. Our

investigator said he hadn't seen anything to suggest Mr M had the car professionally serviced in accordance with the manufacturer's recommendations. He said if he had, a competent mechanic would have identified the cambelt needed replacing. He also said D had no obligation to check the cambelt before selling the car to Mr M as he should have carried out his own due diligence. He said the issue was caused due to wear and tear and so, he didn't think the car was of unsatisfactory quality at the time it was supplied to Mr M.

Mr M disagreed. He said our investigator hadn't explained where the requirement to professionally and the manufacturers annual maintenance planner suggested the cambelt needed to be repaired in year four and year eight. He said in year four, in 2021, a competent mechanic did professionally carry out a service and should have replaced it then.

Our investigator said he had made an error and that the cambelt should have been changed in 2022 or 2023. He said he noted that D had carried out a service prior to Mr M acquiring the car, but there was no obligation on D to service all aspects of the car. He said the service record in 2021 didn't refer to the cambelt being serviced.

Mr M said that the cambelt snapped, the manufacturer recommended the cambelt was serviced in August 2021 before he acquired the car and D professionally serviced the car before he acquired the car in October 2021. He said during the sales process, he wasn't told the cambelt had an advisory or that it hadn't been changed. He said had he been told this, he wouldn't have acquired the car or he would have requested this was changed.

As Mr M remains in disagreement, the case has been passed to me to decide.

What I've provisionally 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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mr M has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

What I need to decide in this case is whether the car supplied to Mr M was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. MotoNovo is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers conditional sale agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mr M acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and – of particular relevance to this case - durability.

In this case, Mr M reported that the car cut out in January 2024. This was around two years and three months after it was supplied to him, during which he had been able to cover around 26,000 miles in the car.

After the car cut out, it was taken to a garage. A job sheet from this garage confirms the engine was rattling and the car was a non-starter. It confirms that there were no fault codes stored on the engine system but a compression test was carried out. This test found that cylinder one had substantially lower compression than the other three cylinders and it was suspected there was an internal engine fault with cylinder one, possibly piston or valves and the car needed to go to an engine specialist for a full diagnosis. The mileage at the time was 60,466.

The car was taken to a third party garage. The garage confirmed the engine didn't turn on and they found that there was debris under the cambelt cover, which had lifted the cambelt causing the teeth to come out of alignment, causing the valves to touch piston tops. The cost of the repair was £1,935.84.

Having carefully considered this, I'm satisfied the car supplied to Mr M had a fault as the cambelt failed. I now need to consider whether this fault makes the car of unsatisfactory quality.

Mr M has provided an annual maintenance planner which shows that every four or five years the cambelt and tensioner should be changed. This is listed as routine maintenance. The manufacturer's website from the time confirms:

"How often should I change my cambelt?"

We recommend changing your cambelt once every four years for cars registered before September 2009, and every five years for cars registered after. If you reach the recommended mileage limit before 4 or 5 years, you may need to change the cambelt sooner."

I've seen a copy of the servicing records which show a service was carried out in March 2019, February 2020, March 2021, October 2021 and March 2022. Receipts have been provided to show the air filter oil filter and cabin filter were purchased in August 2022 and it is noted in handwriting that a service was carried out, with a reference number. A further receipt shows an oil filter was purchased in June 2023 and it is handwritten that a service was carried out with a reference number. Lastly, a receipt has been provided to show that a battery was purchased in October 2023.

Mr M obtained an independent inspection report from a company I'll refer to as "P" in February 2024. The inspection was carried out whilst the engine was partially dismantled. P said it had checked with the manufacturer who had confirmed that the timing belt should be changed, *"at every 40,000 miles or 4 years old but no longer than 5 years"*. P said the manufacturer had recently updated the guidance to confirm that there was no age limit for a cambelt change and the recommended mileage was 140,000 for this particular car.

P's report says:

"The "short engine" was inspected and it was clear that the valves had made contact with the pistons which would have caused distortion of the valves. This in turn has compromised the sealing of the combustion chamber.

The camshaft drive belt (timing belt) was inspected in detail and was noted that there was a section which was fraying and deteriorating. This was not in-line with the rest of the belt which was in good condition and serviceable. There was age related damage to the belt which had manifested itself in an area deteriorating and becoming frayed.

The water pump and the associated idler pulleys were also inspected for evidence of age related wear. However, there was no undue issues and the belt running gear was also found to be serviceable. The belt itself, as can be seen in the images and detailed previously was

damaged for approximately 10 centimetres in length, with the frayed area coming into contact with the belt itself and between the belt and the timing belt sprocket gear resulting in the belt jumping.

The area of damage to the belt has not been caused by continual contact with a foreign body as this would manifest in the belt being damaged throughout the entirety of its length.

I am aware of the recent change in advice about replacing the belt however, this would affect a newer belt had one been fitted at the correct time. The timing belt fitted to the vehicle at the time of manufacture should have been changed prior to my Client purchasing the vehicle.

CONCLUSIONS

The vehicle has been serviced in-line with manufacturers recommendations since the point of purchase. The replacement of the cam belt is not due until 140,000 miles. However, the original belt should have been changed at no more than 5 years old, my Client relied on the information provided at the point of sale.

The failure of the cam belt has occurred without warning and well after the recommended lifespan provided by the manufacturer which is 5 years.

The cause of the failure is as a result of a failed timing belt.

If the vehicle had been serviced in-line with manufacturers recommendations the failure would not have occurred."

P in its report confirms that the damage to the cambelt hasn't occurred due to contact with a foreign body, which I assume P means is the debris that was found. This is because only a section of the cambelt was frayed and if the failure had been as a result of the debris in totality, all of the cambelt should have reasonably been frayed. P confirms that if the car had been serviced in line with the manufacturer's recommendations, the failure would not have occurred.

When Mr M acquired the car, it was around five years and two months old. Taking into account the manufacturer official servicing recommendations at the time Mr M acquired the car and supporting information that Mr M has provided, I'm satisfied he had the car serviced as he was expected to. The official guidance from the time according to P was that the car should have had the cambelt changed at no more than five years old. Mr M acquired the car after it was five years old and so, I think the cambelt should have been changed prior to him acquiring the car. This means the car should have had a cambelt change at the latest, by August 2021. However, it doesn't appear this has happened.

Even if I'm wrong about suggesting that the cambelt should be changed at five years, the new manufacturer guidance suggests that the replacement of the cambelt isn't due until the car has completed 140,000 miles.

The car was around five years old at the time it was supplied and the mileage was around 34,000. One of the considerations of whether goods are of satisfactory quality is durability. Here, the cambelt needed replacing when the car was around seven and a half years old and at around 60,500 miles.

In this case, the failure occurred, despite P confirming the car had been serviced and maintained correctly by Mr M. And so, given it failed having done less than half the mileage suggested by the manufacturer's new guidance, I think the cambelt failed prematurely and so it wasn't durable.

Having thought about all of this carefully, I think a reasonable person would consider that a cambelt would last longer than this. I appreciate that the car was able to travel around 26,000 miles before it cut out, but the cambelt is a part which a reasonable person would expect to last a considerable amount of time. And it wouldn't be reasonably expected that a car would suffer a major component failure, without any prior notification, considering the

age and mileage at the time the car failed. And so, given Mr M maintained the car as he was expected to, I don't think the cambelt was sufficiently durable. I also think the cambelt should have been changed prior to Mr M acquiring the car. It follows that I don't think the car was of satisfactory quality when it was supplied to Mr M.

I've gone on to think about what MotoNovo needs to do to put things right.

I think Mr M should be entitled to a repair of the car. I don't think a rejection of the car is appropriate given how long Mr M has had the car.

In this case, Mr M said he needed the car and arranged for the car to be repaired. This was carried out in April 2024. Mr M has provided supporting information to show the cost of the repair was £1,935.84. The invoice lists an MOT as part of the work carried out. Official records show that an MOT was carried out in April 2024. The invoice Mr M has provided isn't itemised, but when Mr M referred his complaint to this service, he said he had been quoted £1,895.84 for the repair of the car. There is a difference in £40 between the quote and the actual cost with the MOT included. I think the £40 increase is more likely than not down to the cost of the MOT being carried out. As the cost of the MOT is an ongoing cost that Mr M will always be liable for, I don't think MotoNovo should be liable for the cost of the MOT. So, I think MotoNovo should pay Mr M £1,895.84 with applicable interest.

When the car broke down in January 2024, Mr M contacted a roadside recovery company to assist in recovering the car to a garage. Mr M hasn't provided any supporting information to confirm whether this was at a cost to him. However, MotoNovo should pay the cost of this recovery with applicable interest, upon Mr M providing an invoice to show the cost of the recovery.

The garage carried out compression tests at a cost of £112.50. Mr M has provided an invoice to confirm this cost and so I'm satisfied MotoNovo should pay this cost with applicable interest as it was only incurred as a result of the fault with the car.

Mr M also obtained an independent report at a cost of £360 and he has provided supporting information to show this. As this was obtained to show that the car had a fault, as suggested by MotoNovo in its final response letter, I think MotoNovo should pay this cost.

In January 2024, the car was taken to a third party garage. It remained there until April 2024 until repairs were completed. As Mr M didn't have use of the car during this time, I've considered what is the fairest way to put things right.

Mr M's monthly payments under the agreement were £185.44. He didn't have use of the car for three months, so he was charged £553.32 by MotoNovo under the terms of his agreement.

Mr M has provided supporting information which shows a car was hired between 20 January 2024 and 2 February 2024. This was at a cost of £349.71. The invoice is in the name of Mr M. Mr M has also provided a further invoice showing a car was hired between 11 February 2024 and 25 February 2024. This was at a cost of £215.32. However the only driver and the main driver listed on the invoice isn't Mr M. And so, as it isn't a loss Mr M appears to have incurred, I don't think MotoNovo should pay this amount to Mr M. Mr M has also provided alternative transport costs for the use of trains and taxis. These total £133.41.

Having thought about all the costs Mr M has mentioned, I consider that Mr M would have to have made a payment to keep mobile during the three months. And so, given that the cost of the hire car that I am considering and the cost of alternative transport amount to less than the total of the three monthly repayments, I think MotoNovo should pay the cost of three monthly payments Mr M paid under the agreement, with applicable interest. I don't consider that MotoNovo should pay for the costs of car insurance that Mr M incurred as these are ongoing costs that Mr M would have paid to stay mobile.

MotoNovo should also remove any adverse information reported for the agreement from January 2024.

I've also considered the impact of Mr M being without a car for around three months. He said he was denied the use of his car and had to make alternative travel arrangements. He also said he incurred substantial costs in relation to the matter and he had to use his credit card to pay for the repair of the car. He said this led to an increase of his debt.

Having thought about this carefully, I consider that Mr M was caused distress and inconvenience as a result of the issues with the car. I understand that the car broke down and following this, he had to have the car inspected a number of times by different parties and I'm persuaded this caused distress and inconvenience to him. So, I think MotoNovo should pay Mr M £150 to reflect the distress and inconvenience caused.

My provisional decision

My provisional decision is that I intend to uphold Mr M's complaint. I'm minded to instruct MotoNovo Finance Limited to put things right by doing the following:

- Pay Mr M £1,895.84 for the cost of the repair;
- Pay Mr M for the cost of the breakdown recovery, upon Mr M providing MotoNovo Finance Limited with a receipt for an invoice from the third-party recovery company;
- Pay Mr M £112.50 for the diagnostic testing;
- Pay Mr M £360 for the cost of the independent report;
- Pay Mr M 8% simple interest on these amounts from the date of each payment until the date of settlement;*
- Pay Mr M £150 for the distress and inconvenience caused; and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

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

Sonia Ahmed
Ombudsman