

The complaint

Mr L complains about a van acquired through a Hire Purchase agreement with MotoNovo Finance Limited ('Motonovo'). The van experienced engine failure and Mr L says this is a known issue for this manufacturer, but he's being expected to pay for an inspection to establish the problem. He said he can't afford an inspection and just wants to hand the van back.

What happened

Mr L acquired the van in June 2020. When it was supplied, it was one year and eleven months old, had covered 12,697 miles and cost £20,606.00.

He provided evidence of services carried out in March 2020 (12,704 miles), August 2021 (27,918 miles), December 2022 (56,817 miles).

Mr L said the van broke down on the motorway in December 2023. It was recovered to his home and then to a local specialist for the manufacturer in question.

The van was inspected and it was found a new engine would be required. It's been at this garage since January 2024 and hasn't been repaired. Mr L says this is a known issue for this component, but the manufacturer wasn't willing to pay for the repair.

The van failed in December 2023 as a result of a failed wet belt. At this point the car had covered roughly 68,000 miles in its lifetime. An invoice from January 2024 noted "*timing belt really delaminated with teeth coming off...causing cams not to turn*". No mileage was noted on this, but it said the cost of supplying and fitting a new engine would be £6,177 plus VAT.

Mr L complained and asked Motonovo if he could pause his payments. He said he wasn't able to work as a result of the van being out of commission. It seems Motonovo carried out an income and expenditure assessment shortly afterwards, but I can't see what came of this. Motonovo's notes at that time say "[manufacturer] *in possession of the van*", rather than the supplying dealership.

Motonovo responded to Mr L's complaint in February 2024. It said because of how long after the point of supply the fault occurred, Mr L needed to provide evidence that the fault was present or developing at the point of supply. It said an independent inspection would determine this. It also indicated in this reply that repairs had been completed.

Mr L then referred the complaint to our service.

The investigator initially felt the van should be repaired because of the premature failure of the wet belt, along with refunding Mr L's payments since the issue arose, the costs he'd incurred and £150 for the distress and inconvenience caused.

Mr L felt that given the amount of time that had passed he thought that rejecting the van would now be fair.

Motonovo said that because it was a manufacturer issue and not a point of sale fault, it wasn't something it was responsible for.

On review, because of the amount of time since it was returned, and without the repairs being sorted by the dealership's garage, the investigator thought it would be fair for the van to be rejected. They said the deposit, Mr L's payments and evidenced costs should be refunded as well.

Motonovo said it had been advised the dealership hasn't had the van since it was supplied. It also asked about the evidence around the known manufacturer issue.

Mr L confirmed the van had been at the manufacturer's garage since December 2023, which Motonovo had been advised of before. He provided an email from a mechanic confirming the delaminated and damaged belt. Motonovo was in touch with the manufacturer, however it felt there wasn't enough evidence of there being a fault.

Motonovo asked for the case to be reviewed by an ombudsman and so it has been passed to me to issue 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.

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Mr L acquired the van through a Hire Purchase agreement with Motonovo. Under this type of arrangement, Motonovo became the supplier of the van and is responsible if the van wasn't of satisfactory quality at the point of supply. As he entered into the agreement as a sole trader, the key legislation for me to consider is the Supply of Goods (Implied Terms) Act 1973 ('SGITA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

When the van was acquired it was still quite new and hadn't had all that much use. While a used van might have some wear and tear that a new one wouldn't, I wouldn't expect it to have significant faults and I would expect it to be used for a reasonable time without any arising.

The van broke down just over three years after Mr L acquired it and after having covered roughly 55,000 miles. In that time I would have expected wear and tear items to be attended to and potentially minor faults may have arisen. However, that's not to say that it's automatically reasonable if faults then happen after all that time.

In response to the investigator's initial view, Motonovo said because it was an issue with the manufacturer and not a point of sale fault, it didn't think it was liable for the complaint. However that's not the correct understanding of its responsibilities under Supply of Goods (Implied Terms) Act 1973, which applies to Motonovo as the supplier of the goods to Mr L.

The SGITA covers a range of factors that contribute to whether goods are of satisfactory quality. A key aspect of satisfactory quality under the SGITA is durability. And so I've kept this in mind when determining whether Mr L's van was of satisfactory quality at the point of supply.

In this case the investigator felt that the wet belt failing at 68,000 miles was premature, given they're supposed to last for at least 100,000 miles. From what I understand, researching timing belts for this van, the information outlined by the investigator seems on balance to be correct and I've been presented with no compelling information or evidence to contradict that.

As Mr L provided evidence that he'd properly serviced the van at regular intervals, the investigator thought the van wasn't sufficiently durable.

No evidence has been provided to indicate that user error contributed to this fault. And I'm persuaded that the wet belt has failed prematurely and this made the van not sufficiently durable and therefore made the goods not of satisfactory quality.

When explaining the circumstances of the complaint, the investigator did say the dealership had the van. However it was in fact with a local specialist garage for the manufacturer in question. Mr L had made Motonovo aware of this at the outset.

In its notes, Motonovo confirmed the van was not with '*the selling dealer*', but contact had been established with the manufacturer's '*central office*' and that the manufacturer was '*in possession of the van*'.

While the supplying dealership may not have had the van, it was with a specialist garage and Motonovo, as the supplier under the Hire Purchase agreement, had the opportunity to engage with them, make any necessary contact and take any steps that were needed.

In its final response it spoke about the potential for an inspection to be carried out '*now the repairs have been completed*'. However repairs haven't been completed.

Had this situation been addressed sooner, then a repair of the issue may well have been fair. However given the significant time that's passed I'm satisfied that it's reasonable for Mr L to now reject the goods, which is consistent with his rights under the SGITA.

I think it's fair for the van to be collected at no cost to Mr L, the agreement be ended with nothing further to pay. Mr L's deposit should be refunded, along with payments since December 2023 and recovery costs once they're evidenced. I appreciate this matter has caused a great deal of inconvenience, and Mr L had relied on the van for his work. In the overall circumstances, I think Motonovo should pay him £200 to reflect the inconvenience caused by these matters.

My final decision

My final decision is that I uphold Mr L's complaint against MotoNovo Finance Limited.

It must now:

- Collect the van (if this hasn't been done already) at no cost to Mr L
- End the agreement with nothing further to pay
- Refund Mr L's deposit/part exchange contribution of £5,250
- Refund payments since December 2023 onwards
- Refund the recovery costs incurred by Mr L, once evidence is provided
- Pay 8% simple interest on these refunds from the date of payment to the date of settlement*
- Pay Mr L £200 for the distress and inconvenience caused by what's happened
- Remove any negative information recorded with credit reference agencies

* If Motonovo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L 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 L to accept or reject my decision before 17 January 2025.

Scott Walker
Ombudsman