

Complaint

Miss T has complained about the quality of a car that MotoNovo Finance Limited (“MotoNovo”) supplied to her through a hire-purchase agreement.

Background

In October 2023, MotoNovo provided Miss T with finance for a used car. The car was just under eleven years old and it is my understanding that it had completed around 90,000 miles at the time of sale. The cash price of the vehicle was £10,995.00. Miss T paid a deposit of £500 and applied for finance to cover the remaining £10,495.00 required to complete the purchase. MotoNovo accepted Miss T’s application and entered into a 48-month hire-purchase agreement with her.

The loan had an APR of 16.9%, interest, fees and total charges of £2,898.72 and the total amount to be repaid of £13,893.72 (not including Miss T’s deposit) was due to be repaid in 35 monthly instalments of £372.01 followed by a final instalment of £373.01.

Miss T’s agreement was signed on 30 October 2023. Although it should be noted that Miss T didn’t collect and take possession of the vehicle until 2 November 2023.

I understand that Miss T experienced issues with the warning lights illuminating on the day the vehicle was collected. However, the warning lights and fault codes were reset by the supplying dealer on the same day. I’ve not seen any documentary confirmation of this and the supplying dealer has denied having any contact with Miss T about any difficulties she had. Nonetheless, what is not in dispute that Miss T began to experience difficulties with the vehicle shortly afterwards.

As far as I can see, Miss T had an issue with one of the cylinders on the engine as well as with the spark plugs and coils. Furthermore, although these additional issues are included for background purposes and are not important to this complaint, Miss T has also said that she has had problems with the wiring, headlight washers and there was some corrosion on the car.

Despite a number of attempts at contacting the supplying dealer Miss T was unable to get it to repair the vehicle. And she eventually paid £60 for a diagnostic report from an independent third-party garage in December 2023. Miss T then paid this garage £228 for replacement spark plugs to be fitted and repairs to the coil. This did not fully resolve the issues and she then paid a further £310 to a different garage for repairs to the purge canister and valve to be replaced in February 2024.

After this proved unsuccessful and as a result of getting not being able to resolve matters with the supplying dealer remedying the issues with the car, Miss T complained to MotoNovo in March 2024.

MotoNovo did not issue its final response to Miss T’s within its allotted eight weeks. As a result, it let Miss T know that she had the right to refer her complaint to our service at this

point and Miss T did so. MotoNovo nonetheless arranged for the vehicle to be inspected by an independent engineer.

The vehicle was inspected by the independent engineer on 5 March 2024. The engineer reported a heavy misfire when the car was started and this caused the engine management warning light to illuminate. The engineer attributed this to a fault on cylinder three of the engine and also confirmed that there were other fault codes stored in the vehicle's electrical control unit which confirmed that the misfire observed had previously occurred on multiple occasions. Finally, the engineer confirmed that it was their conclusion this fault was ongoing and present at the time the vehicle was supplied.

Subsequent to the engineer's report and after Miss T had already referred her complaint to us, MotoNovo issued its final response on 5 June 2024. MotoNovo upheld Miss T's complaint. It accepted that there were faults with the vehicle supplied. But it didn't think that this meant Miss T was entitled to reject the vehicle as the supplying dealer needed to have the opportunity to repair the car. It also agreed to pay Miss T £250 in compensation.

Miss T's complaint was then reviewed by one of our investigators. He thought that MotoNovo supplied Miss T with a vehicle that was not of satisfactory quality. So he upheld Miss T's complaint. However, he thought that the supplying dealer had not taken the previous opportunities it had to repair the vehicle and as this was the case, this meant that Miss T should be able to reject it.

MotoNovo disagreed with our investigator's view. It reiterated its view that the supplying dealer should be given the opportunity to repair the vehicle and Miss T should not be able to reject it at this stage. As this is the case, the complaint has been passed to me to decide.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, MotoNovo purchased the vehicle from the dealership Miss T visited. Miss T then hired the vehicle from MotoNovo and paid a monthly amount to it in return. MotoNovo remained the legal owner of the vehicle under the agreement until Miss T's loan was repaid.

This arrangement resulted in MotoNovo being the supplier of Miss T's vehicle and so it is also responsible for answering a complaint about its quality.

Having carefully considered matters, I'm satisfied that, as the parties are in agreement that it wasn't, I don't need to decide whether the car supplied to Miss T was of satisfactory quality. All I need to decide here is whether what MotoNovo has agreed to do to put things right for Miss T is fair and reasonable in all the circumstances of his complaint.

Miss T wishes to reject the vehicle. MotoNovo says that the supplying dealer should first be given the opportunity to repair it. I've considered what the parties have said and whether repair or a rejection of the vehicle would be the appropriate remedy to grant here – particularly as The Consumer Rights Act (2015) sets out that a supplier can have one attempt at a repair.

MotoNovo argues that the supplying dealer hasn't had an opportunity to repair the vehicle. I don't think that there is any dispute that the supplying dealer hasn't attempted to repair the vehicle. But this doesn't mean that it hasn't had the opportunity to do so. MotoNovo states

that it contacted the supplying dealer and it says that it was not contacted about the car and its departments are manned at all times to answer any calls and emails.

However, Miss T has provided a log of calls from her phone. And I can see that more than one call was placed to the dealer in the period after she was supplied with the vehicle. Furthermore, I've also seen MotoNovo's log of its correspondence with the supplying dealer. And I can see that there were instances where it emailed the supplying dealer and did not receive a response. I can also see instances where it made unsuccessful calls too.

Furthermore, Miss T has been consistent in saying that she was directed to what was and wasn't covered by the warranty when she spoke to the supplying dealer. And I note that an email which MotoNovo sent to the supplying dealer on 24 May 2024, which Miss T will not have seen, indicates that the supplying dealer may have previously suggested that Miss T should use the warranty to get the issues on the vehicle resolved.

So having considered everything, I'm not persuaded that the supplying dealer did always respond to correspondence in the way that has been suggested. Furthermore, I also find what Miss T has said about contacting the supplying dealer about the fault only to be directed to what might and might not be covered by the warranty to be likely bearing in mind the supplying dealer appears to have told MotoNovo that Miss T should make a warranty claim. In these circumstances, I think it is more likely than not that the supplying dealer was notified that Miss T was having problems with the car and that it did have the opportunity to repair the vehicle - albeit it chose not to utilise this opportunity.

I'm also mindful that if a repair is carried out it must be done so within a reasonable time and without significant inconvenience to the consumer. Given Miss T has been reporting issues with the vehicle to MotoNovo, at least, since March 2024 and she's been without the use of it since then, I don't think that a repair being carried out now would be within a reasonable period of time. It's clear that the length of time has already caused her significant inconvenience.

I think that it's also worth noting that the independent engineer's report states that there is a misfire on cylinder three. However, it goes on to say that the vehicle requires **further investigation under workshop conditions in order to ascertain the root cause of the faults and what remedial action is required** [my emphasis].

I haven't seen any evidence of there being any other diagnosis or estimate. So at this stage, I'm satisfied that it is only the symptoms of the fault with the car that have been diagnosed. I haven't seen any detail on what would be repaired, what a repair would involve, or even when Miss T is likely to have use of the car again.

This means I can't say it's more likely than not a repair would even result in the issues present being resolved. This is particularly as the issues with the vehicle appear to be engine related and there is the possibility that any repair may, in any event, prove to be uneconomical in the circumstances. Therefore, I'm not persuaded that there is a sound rationale for the supplying dealer to repair the vehicle – notwithstanding any previous opportunities which may or may not have presented themselves.

In these circumstances, I'm satisfied that the fair and reasonable resolution here would be for Miss T to reject the vehicle and for MotoNovo to collect it from her. As Miss T will have rejected the vehicle, I'm satisfied that MotoNovo should end its agreement with her and ensure that she has nothing further to pay on it. This will seek to place Miss T in the position she would be in had she not entered into the hire-purchase agreement in the first place, so I'm satisfied that MotoNovo should refund Miss T the £500 deposit she paid to the motor dealer with interest at 8% per year simple.

While I accept that there was some impairment and some inconvenience as a result during this period, Miss T nonetheless appears to have use of the car up until the end of February 2024. So I'm satisfied that MotoNovo can keep the payments Miss T made up to and including her February 2024 payments.

However, there is no dispute that Miss T has not had use of the car from early March 2024, therefore I think that MotoNovo should refund all of the payments that Miss T has made from her March 2024 payment, plus interest at 8% a year simple.

Miss T has provided evidence to show that she paid £60 for a diagnosis in December 2023 and that she incurred costs of £228 and £310 for repairs carried out to the vehicle in December 2023 and February 2024. I think that she incurred these costs as reasonable attempts to ensure that she could start using the vehicle again and that they were reasonable attempts to mitigate any loss – particularly as Miss T hadn't received a response from the supplying dealer and MotoNovo, in any event, also took four months to provide a response to her complaint. So I'm satisfied that MotoNovo should pay Miss T the amount she paid for the diagnosis and these repairs with interest at 8% a year simple.

I've also considered the distress and inconvenience that Miss T experienced and the impact of her being without a vehicle since March 2024. I appreciate that Miss T has gone through a very difficult time in her personal life. I also think that while I don't think that the problems with the car were the root cause of the difficult time Miss T has had, nonetheless they will have increased her stress at what was already an extremely tough period. Miss T will have had to have taken time to contact the supplying dealer, other garages and also MotoNovo in an attempt to rectify matters at a very difficult time for her.

Having considered all of this, I'm persuaded that Miss T was caused distress and inconvenience as a result of MotoNovo supplying her with a car that was not of satisfactory quality. And while I recognise that MotoNovo has already made an award of £250, I think MotoNovo should pay Miss T a further £150 to reflect the distress and inconvenience caused by MotoNovo supplying her with a car that was not of satisfactory quality.

Fair compensation – what MotoNovo needs to do to put things right for Miss T

Overall and having considered everything, I think it is fair and reasonable for MotoNovo to put things right for Miss T by:

- collecting the car from Miss T at no cost to her;
- ending the hire-purchase agreement and ensuring that Miss T has nothing further to pay. MotoNovo should also remove any adverse information it may have recorded against Miss T as a result of this agreement from her credit file;
- refunding her deposit and all of the payments that she made to the agreement from March 2024 onwards;
- reimbursing her the £60, £228 and £310 she paid for the diagnosis and repairs to the vehicle;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Miss T to the date the complaint is settled;

- paying her £150 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires MotoNovo to take off tax from this interest. MotoNovo must give Miss T a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss T's complaint. MotoNovo Finance Limited should put things right for Miss T in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 24 September 2024.

Jeshen Narayanan
Ombudsman