

## **The complaint**

Ms F complains about a car acquired through a Hire Purchase agreement with MotoNovo Finance Limited ('Motonovo'). Ms F had problems with the car and says the car isn't of satisfactory quality.

## **What happened**

Ms F acquired the vehicle in July 2023. When it was sold, it was seven years and eight months old, had covered around 112,000 miles and cost £7,495.00.

The car broke down in January 2024, by which time the car had been driven roughly 4,000 miles.

Ms F said there were a number of faults and referred these issues to the dealership in January 2024. She said didn't know how it could have so many faults so soon if the car had an MOT prior to it being supplied. She said she needed a courtesy car and referred to an issue raised with the dealership previously that was again faulty.

An inspection was carried out in January 2024. The mileage at this point was 116,893. This inspection found a number of faults, some of which were attributed to normal wear and tear for a vehicle of this age and use. But it thought other issues would have been developing at the point of supply.

Although it couldn't be accurately measured, the inspector thought the discs and pads were showing signs of wear and were potentially towards the end of their life-expectancy. Both rear shock absorber top damper dust covers were split and perished. The steering tie rod ball joints were leaking grease and both front control arm bushes were significantly split.

The inspection found the front timing cover was showing oil residue which had been there for a long time and leaking in areas. The front engine pulleys and crank pulley were distorted, misaligned or damaged. And the auxiliary belt was significantly shredded.

The boost pipe from the inlet manifold to the intercooler was perished and possibly split, requiring replacement. And the exhaust pipe had burnt through the engine undertray and this was showing long-term damage. They said this damage indicates either the wrong exhaust had been fitted or it had been fitted incorrectly. Fault codes were also found for the EGR and turbo.

Motonovo responded to the complaint in March 2024. It said the inspection that had been carried out found that the exhaust and engine pulleys were the responsibility of the supplier. However the remainder of the issues stemmed from normal wear and tear.

It said the dealership hadn't had any contact since the car was supplied and so there wasn't any evidence of the exhaust issue having been repaired previously and then subsequently failing. But the dealership did confirm the warranty company had been handling the matter and it was the manufacturer's repair centre that wasn't cooperating. It also confirmed it had offered Ms F £100 for the distress and inconvenience caused.

Unhappy with this outcome Ms F referred the complaint to our service.

She said the car broke down within five months and the garage that inspected the car thought it had been in an accident. She said within a week of acquiring the car, she noticed a strong exhaust smell and an exhaust specialist said it had been incorrectly fitted and it had burnt through part of its housing. She said the dealership fixed this issue, but a fault remains.

She said she's still paying £160 each month for finance, with £100 hire and insurance costs each week. She said the £100 offer isn't enough to get the car running. So she wants to hand the car back and have her payments refunded.

The investigator who first looked at the complaint felt the report was persuasive that the wear and tear items were what would be expected on car of this age and use. However the exhaust and engine pulley faults would have been close to failure at the point of supply and they said this made the car not of satisfactory quality.

They noted that Motonovo wanted the car to be repaired, however the investigator was persuaded by Ms F's testimony that the car already had exhaust faults which the dealer hadn't put right.

On that basis they thought that rejecting the car was now fair, along with a refund of her deposit and payments since the car broke down – and £150 compensation.

Motonovo felt there wasn't enough evidence that the dealership had tried to repair the car previously – and in the circumstances a repair would remain fair. 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.

Having done so I agree with the investigator's view and for much the same reasons.

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.

Ms F acquired the car through a Hire Purchase agreement with Motonovo. Under this type of arrangement, Motonovo became the supplier of the car and is responsible if the goods aren't of satisfactory quality when provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). 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 expect taking into account, among other things, the description, age and price of the goods. 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 car was supplied, it was several years old and had a considerable amount of mileage. In these circumstances, it would be reasonable to expect the car to have experienced significant wear and tear – and the potential for faults to occur would be much higher than a newer, less-used car.

However that's not to say that a supplier can't be held liable if a fault arises with the car. This will be dependent on the circumstances.

In this case an independent inspection was carried out which found a number of wear and tear items, including the brakes and suspension. The car had covered roughly 4,000 miles since purchase. These components would have incurred wear over this time on top of the wear and tear accrued over the previous years. I find no reason to disagree with the inspection's conclusions on this point.

Similarly, the inspector's conclusions that the exhaust and engine pulleys and auxiliary belt '*had minimal future life expectancy at the point of purchase and therefore were developing issue[sic]*' and as such were the supplier's responsibility to put right, was reasonable. A garage for the manufacturer found the auxiliary belt had shredded, requiring a replacement, and that the exhaust wasn't properly fitted causing it to burn through the under panel.

These significant repairs, fundamental to the operation of the car, aren't the type of issue you would expect soon after purchasing a car – even a used car with high mileage. I see no reason to depart from the conclusions of the inspector and investigator in relation to this. Motonovo doesn't seem to dispute this either.

So it's been established that in some respect the car had faults and wasn't of satisfactory quality when it was first supplied. Under the CRA consumers have a number of potential remedies, but what's available in any given situation is dependent on the circumstances.

If it's established that goods aren't of satisfactory quality outside of the first 30 days, consumers have the right to a repair or replacement. However if that repair or replacement fails, then a consumer has a right to reject the goods.

Part of the dispute remaining in this case is whether there has already been one attempt at repair, which would allow Ms F to reject the goods. Motonovo says the dealership didn't have the chance to make the goods 'conform to contract' previously and so it should be allowed to repair the goods now. Ms F says the dealership did previously attempt to repair the exhaust and so she wants to now reject the car.

Motonovo has provided internal emails which say the dealer had no contact since the point of supply. However a copy of an email I've seen from the dealership doesn't actually say this.

On further enquiry the dealership told Motonovo Ms F had been in touch, but the dealership directed her to contact a third party garage instead. This was because the dealership was busy and wouldn't be able to do the repairs themselves.

So this issue did previously arise and the dealership had been given the opportunity to attend to the issue and ensure the car conformed to contract.

Motonovo disagreed with the investigator's view in the main because the dealership's earlier opportunity to repair hadn't been adequately evidenced. However the dealership's own explanation is sufficient to establish this.

The car clearly had multiple issues, some of which were wear and tear, others which would have been faults that made the car not of satisfactory quality.

The dealership was aware of at least one of these issues. They confirmed to Motonovo that they had offered to cover the cost of repair if Ms F got it repaired elsewhere because they were too busy to repair it themselves. Ms F has said the repair was carried out under warranty by the supplying dealership, although they dispute this.

Either way, I don't think there's any reasonable basis to say the dealership wasn't aware of this issue.

Whether or not a third party garage did those repairs, at the direction of the supplier, and whether those repairs failed, doesn't impact the fact the dealership was aware of the matter and had been given the opportunity to make the goods conform to contract.

The goods did not conform to contract, and still do not conform to contract some ten months after this was raised with the dealership. Even if the dealership had a right to repair the goods themselves, I have to consider that they were obliged to do so in a reasonable amount of time and without significant inconvenience to Ms F. And I think the period in which it would have been able to do this has long since passed.

On this basis it's fair for Ms F to be able to reject the car with nothing further to pay. MotoNovo should collect the car from Ms F and end the agreement. Her deposit and payments since January 2024 should be refunded as the car hasn't been usable since then. I don't think payments prior to that should be refunded as it seems Ms F was broadly able to use the car as expected and I haven't seen persuasive evidence of her use being impacted.

Ms F says it's been necessary to pay for a hire car while the car hasn't been working. I acknowledge that expense would be a frustration given the need to keep up with the monthly payments under this agreement at the same time. However, with Motonovo refunding the monthly payments under the agreement since then in full, I don't think it's fair in this instance to hold it liable for the cost of her staying mobile during this time. She mentioned the use of the car was primarily for her son-in-law's benefit. And as such I think the costs outlined are more likely ones Ms F hasn't directly incurred in any event.

Similarly, it would seem as though much of the impact outlined in the evidence I've seen is reflective of the distress and inconvenience caused to Ms F's son-in-law. In considering this complaint, I need to consider the loss and impact on Ms F. Motonovo initially offered Ms F £100. I think increasing the total compensation to £150 (an increase of £50) is fair to reflect the trouble she's experienced in the circumstances.

### **My final decision**

My final decision is that I uphold Ms F's complaint against MotoNovo Finance Limited.

It must now:

- End the agreement with nothing further to pay

- Collect the car (if it hasn't already) at no cost to Ms F
- Refund Ms F's deposit of £500
- Refund Ms F's payments since January 2024
- Pay 8% simple interest on the above refunds from the date of payment to the date of settlement\*
- Pay Ms F £150 to reflect the distress and inconvenience caused\*\*
- Remove any adverse information that may have been reported to credit reference agencies in relation to the agreement

\* If Motonovo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms F how much it's taken off. It should also give Ms F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

\*\* If Motonovo does not pay this £150 compensation for distress and inconvenience within 28 days of the date on which we tell it Ms F accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 30 January 2025.

Scott Walker  
**Ombudsman**