

The complaint

Ms C complains that the car she acquired through MotoNovo Finance Limited (“MFL”) wasn’t of satisfactory quality. She wants MFL to fairly and reasonably settle her complaint and cover the costs that she’s incurred.

What happened

Ms C entered into a hire purchase agreement in January 2024 to acquire a used car. The cash price of the car was £4,462, and the total repayable was £5,499.48, and was to be repaid through the credit agreement which was set up over a 36-month term with monthly payments of £147.18. At the time of acquisition, the car had already been driven nearly 75,000 miles and was around 11 years old.

Ms C told us:

- she acquired the used car around 9 January 2024, and at the time of test driving it, she expressed some concerns about the brakes, but was assured that the car would have an MOT before it was transferred to her and any issues would be checked;
- when she collected the car three days later, she was advised it had passed its MOT;
- within 16 weeks of acquiring it, the car developed a number of faults and was deemed unsafe to drive;
- she accepts that a car of its age will have experienced wear and tear, but these faults have left her feeling uneasy;
- she’s continued making her monthly repayments and has paid out a lot of money for repairs, including transport from one garage to another; some new tyres; and at the time she brought her complaint to this Service, she had quotes for further repair work including a new lambda sensor; ABS pump parts; brake pads and discs, and the associated labour.

MFL rejected this complaint. It said it hadn’t seen any evidence that the problems with the car were present or developing at the point of supply. It explained that an independent inspection had concluded that the car was durable; the issues were wear and tear only; and that the supplying dealership could not be held liable for them.

Our investigator looked at this complaint and said he didn’t think a complaint about the quality of the supplied car should be upheld. He said there was no dispute that there were faults with the car but – based on the independent inspector’s report – he thought it was most likely that the issues Ms C experienced were a result of normal wear and tear and were not present or developing at the point of supply. And he concluded that the car was not of unsatisfactory at the point of supply. But he did say that MFL hadn’t handled things as well as it should’ve done, and because of this, Ms C incurred some additional costs. Accordingly, he asked MFL to pay Ms C £300 in recognition of this.

MFL accepts our investigator’s opinion and said it would be prepared to pay £300 to Ms C.

Ms C disagrees so the complaint comes to me to decide. She says although she accepts the independent report’s conclusions, she suspects that an *“underlying or undetected defect at*

the point of sale may have been a contributing factor". And, because of this, the supplying dealership should prove there was no defect at the point of sale. And she questioned whether the brakes had been tested thoroughly during the MOT and asked for sight of a copy of the brake test that would've been completed. Ms C also told this Service that she'd now voluntarily terminated her finance but would like MFL to cover half the repair costs that she's incurred.

MFL asked the supplying dealership to provide a copy of the brake test but was advised that due to the time that had elapsed, it no longer retained a copy of it.

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 our investigator – and I'll explain why.

I hope that Ms C won't take it as a discourtesy that I've condensed her complaint in the way that I have. Ours is an *informal* dispute resolution service, and I've concentrated on what I consider to be the crux of this complaint. Our rules allow me to do that. Ms C should note, however, that although I may not address each individual point that he's raised, I have given careful consideration to all of her submissions before arriving at my decision.

When looking at this complaint I need to have regard to the relevant laws and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Ms C is a regulated consumer credit agreement this Service is able to consider complaints relating to it. MFL is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 ("CRA") there is an implied term that when goods are supplied "the quality of the goods is satisfactory". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods. So, what I need to consider in this case is whether the car *supplied* to Ms C was of satisfactory quality or not.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless MFL can show otherwise. But, if the fault is identified after the first six months, then it's for Ms C to show the fault was present when she first acquired the car. So, if I thought the car was faulty when Ms C took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask MFL to put this right.

I don't think there's any dispute that Ms C has experienced problems with the car. That has been well evidenced by both her testimony and the information she's sent us, along with the findings of the independent inspection. But, whilst I accept that there have been issues with the brakes; the brake pads and discs; and the rear wheel cylinders, MFL would only be responsible for putting things right if I'm satisfied that these issues were present or

developing when the car was supplied – that is to say, the car wasn't of satisfactory quality when Ms C first acquired it.

The third party instructed by MFL to carry out an independent inspection of Ms C's car is a recognised and trusted expert in this arena. From reading its report, it's clear that it was provided with an accurate background that clearly set out the issues.

In their report, the engineer said the following:

- *"It is our opinion that the brakes are currently dangerous".*
- *"We have also found that when braking, the vehicle can pull to either the right or left and also can apply the brakes more to the front or the rear randomly. This would indicate that the split braking system is not operating correctly and is compensating more to one side or the other or front to back randomly. This would indicate, most likely, an issue with the ABS pump that feeds the brakes over the split system, which is a safety feature in case one of the brake systems fails, there is at least the secondary system on the split system to compensate for this".*
- *"The rear wheel cylinders are made from aluminium with the brake pipe ferrules and the brake cylinder lead nipples of steel and therefore these are causing a chemical erosion reaction forming white powder".*

So, I'm satisfied that the faults that Ms C complained of are present and as she described.

But the simple existence of the faults in themselves isn't enough to hold MFL responsible for repairing the car or accepting its rejection. The legislation says that this will only be the case if the fault was present or developing at the point of supply; the car supplied was not of satisfactory quality.

The independent report went on to address this, and the independent engineer made the following points:

- *"The brakes could not have been in this condition for any period of time".*
- *"We have found that there is general wear and deterioration to the front brake pads and discs and drums are fitted to the rear".*
- *"It is clear from an engineering perspective that the brakes could not have been in this condition at the point of purchase as braking is extremely difficult and we would not have been able to cover 3,417 miles in 4 months with the brakes in this condition".*
- *"...we do not consider the faults found to have been present or developing at the point of purchase. The faults are wear and tear related that have developed since purchase. We do not consider the selling agent responsible for the cost of repairs when taking into account all the information..."*

The report concludes that *"We would conclude in our professional opinion that when taking into account all the information and the fact that the vehicle has covered 3,417 miles in a 4-month period, these faults could not have been present and developing at the point of purchase. The faults are wear and tear related that have developed since purchase".*

So, on the basis that the fault was *not* present or developing at the point of supply, I can't say that the car was of unsatisfactory quality when it was supplied.

I've considered Ms C's comments and concerns about the missing brake test paperwork, but I don't think this makes a difference. I say this because the engineer who conducted the independent inspection makes no cautionary statements in their report about the conclusions reached, or that a different conclusion may have been reached with additional information.

The instruction of an independent inspection is what's required and expected of MFL in these circumstances. And in the absence of any other persuasive evidence to the contrary, I'm not persuaded that Ms C's car was of unsatisfactory quality when supplied. So, I can't hold MFL responsible for the problems Ms C has experienced with it.

Like our investigator, I don't think MFL handled things as well as it should've done when its attention was first brought to the issues and faults with the car. The advice and information it gave Ms C was not accurate, and should've been better, and it caused Ms C to incur some costs. Consequently, I'm going to direct it to pay Ms C the £300 recommended by our investigator if it hasn't already done so.

I know Ms C will be disappointed with this decision, but I hope she understands why I've reached the conclusions that I have.

Putting things right

MotoNovo Finance Limited's handling of the situation should've been better, and its failings caused Ms C additional costs and distress. So I'm going to ask it to pay her £300 compensation in recognition of this.

My final decision

My final decision is that I do not uphold a complaint about the satisfactory quality of the car at the point of supply. But MotoNovo Finance Limited's handling of the situation should've been better, and I uphold this aspect of the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 28 March 2025.

Andrew Macnamara
Ombudsman