

The complaint

Ms S complains about a car she got under a hire-purchase agreement with MotoNovo Finance Limited. She says that over time the car has presented several significant faults and that it was not of satisfactory quality.

Background to this decision

I recently issued my provisional decision setting out the events leading up to this complaint and my intended conclusions on how I considered the dispute best resolved. I've reproduced that provisional decision here and it is incorporated as part of my overall findings. I invited both parties to let me have any further comments they wished to make in response, and I will address their responses later in this decision.

My provisional decision

Ms S entered into a five-year hire-purchase agreement under which MotoNovo supplied her with a car she'd seen at a dealer "E". At the point of supply in March 2022, the car was just over seven years old and, as I understand it, had mileage of around 56,250. The cash price of the car was £8,369.01, with Ms S paying a deposit of £400.

Unfortunately, by early September 2022 the car had suffered a total engine failure. Ms S had covered just over 4,250 miles. According to work cards E undertook major repairs to the vehicle, including – at no cost to Ms S, save for a courtesy vehicle – replacing the engine, turbo, flywheel, clutch and slave cylinder. The work was completed in November 2022.

Ms S was able to use the car for another 7,000 miles until June 2023, when it again broke down. She took the car back to E who said it required a second new turbo and a replacement catalytic converter and O2 sensor. This work was carried out in August 2023, again at no cost to Ms S, though I understand she paid for an oil and filter change. However, within a couple of weeks the car again broke down and Ms S complained to MotoNovo, who instructed an independent engineer "A" to carry out an inspection and report.

A's report suggested that the current problem could be connected to the recent replacement of the catalytic converter, which might have been due to inadequate diagnosis of an underlying problem. It said further investigation under workshop conditions would be required to determine the underlying fault. Nevertheless, A also offered the opinion that the current faults were a matter of wear and tear that had developed since Ms S acquired the car. Noting the content of A's report, MotoNovo declined to accept liability for the problems with the car.

Our investigator wasn't persuaded to uphold the complaint, concluding that the original issues were down to reasonable wear and tear. She further considered the current problems with the car were not present when the car was supplied, and appeared to be linked to the work carried out in June 2023. The investigator didn't think MotoNovo was responsible for this work.

Ms S didn't accept the investigator's conclusions and asked that an ombudsman review the case, as the final stage in our process.

What I've provisionally decided – and why

Because Ms S acquired the car from MotoNovo as a consumer, the arrangements are covered by – among other things – the Consumer Rights Act 2015 ("CRA"). One effect of the CRA is that the hire-purchase agreement is to be read as including a term that the car would be of satisfactory quality. Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability.

Ms S's claim is that the car MotoNovo supplied to her failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality.

I'm fully aware the car was far from new and so the standard a reasonable person might expect from it would be lower than for a car that had covered fewer miles. Buying a used car carries some inherent risks, not least of which is that sooner or later items will need repair or replacement. That said, the price attached to the car and the general expectation of freedom from minor defects suggests that a reasonable person would not expect it to breakdown so catastrophically so soon after it was supplied.

I consider it safe to say a reasonable person would expect to get rather more than 4,250 miles use of the car, even taking into account its age and prior mileage. That the car needed a new engine, turbo, flywheel, clutch and slave cylinder less than six months after supply suggests to me that the car didn't meet the CRA requirement of satisfactory quality when it was supplied. I consider this is something MotoNovo ought to have taken into account when reviewing its potential liability, A's report on the car's current condition notwithstanding.

In my view it's an important aspect that speaks to the state of the car at the point of supply. I say this because it's by no means clear that after E carried out the work, the car conformed to contract. While Ms S was able to use it for a further six or seven months, it broke down again at that point. One of the items reported as requiring replacement was the turbo; a part that had already been replaced at the first repair. That might suggest that whatever was causing the failure was not properly remedied by the September 2022 work, and that an underlying fault persisted.

I have noted A's report also indicated the possibility of an undiagnosed underlying fault, saying that further investigation under workshop conditions would be required to establish this. I haven't seen anything to suggest that MotoNovo instructed that further investigation. That doesn't seem to me to be a reasonable approach for the lender to take, given that there was a clear indication of a lack of satisfactory quality at point of supply, and the possibility that the car still failed to conform to contract. While A's report suggested the current faults were down to wear and tear, I can't accept this assertion in light of the clear conflict in the report saying that further investigation was required to establish the underlying cause.

That leaves open the possibility that the current problems are connected to an issue present when MotoNovo supplied the car to Ms S, and that the root cause has never been properly identified or fixed.

Overall, I'm not minded to conclude that a car that in a little over a year and a half has suffered a complete engine failure, has had two replacement turbos and a replacement catalytic converter and continues to manifest problems that render it unusable could reasonably be said to be of satisfactory quality. I've no reason to think that these problems are attributable to Ms S's use of the car. Noting the timeline, the issues with the car suggest that MotoNovo is liable to Ms S for a breach of the contractual term to supply a car of satisfactory quality.

The CRA says that goods that don't conform to contract at any time within six months of the consumer taking delivery are to be taken as not conforming to it at the point of supply, unless it is established that the goods did conform to contract on that day. Having considered the evidence on which MotoNovo has based its position, I'm not currently persuaded it's done enough to rebut that presumption. I don't consider the reports MotoNovo obtained contain sufficient depth of investigation to safely conclude that the car was of satisfactory quality when MotoNovo supplied it to Ms S.

It follows that I'm not currently minded to find that MotoNovo has dealt fairly with the situation by declining Ms S's claim for the reasons it has. I can further understand why Ms S has the concerns she does about the car, and why she wants to return it. Due to her need for a working vehicle, Ms S has obtained another car, but has had the continued financial burden of paying for the unusable car MotoNovo supplied. I think it appropriate to take this into account when determining the appropriate way to resolve matters.

In light of the attempts to address the car's problems that have been unsuccessful, and the apparent ongoing failure to diagnose a root cause, I think Ms S would be entitled to reject the car when it failed in September 2023. I note the CRA makes provision for the trader to make a deduction for use, and noting the use Ms S did make of the car, I think that's fairly reflected by the monthly payments she made up to that point.

To settle matters, I proposed that MotoNovo promptly arrange to collect the car, and terminate the credit agreement from the point Ms S was no longer able to use the car after it broke down in August 2023. I further proposed that MotoNovo reimburse – with interest – some of Ms S's payments under the credit agreement to reflect her impaired use of the car, along with costs she'd incurred due to the car's failure. And I said it should pay Ms S additional compensation for her time and trouble caused by its handling of matters.

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

Responses to my provisional decision

Ms S accepted my intended conclusions and said she'd be happy with the proposed resolution. MotoNovo didn't respond within the time set out in my provisional decision to do so. In the interests of bringing matters to a close I'm now proceeding with my 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.

In my provisional decision I set out my intended findings and the reasons for them. As I've said, I've received no comment from MotoNovo in respect of my findings, or any evidence that leads me to reach a different conclusion. And Ms S has told me she has nothing further to add.

I therefore adopt those findings – and my resolution proposals – in full in this final decision.

Putting things right

For clarity, I consider a fair resolution to be for MotoNovo to take the following steps:

1. collect the car at no cost and minimal inconvenience to Ms S;
2. terminate the hire-purchase agreement with an effective date of September 2023, ensuring that her credit file reflects the finance agreement as fully settled from that point;
3. reimburse in full the monthly payments Ms S has made since then under the hire-purchase agreement;
4. refund Ms S's £400 deposit along with the out of pocket costs she paid for the courtesy vehicle in 2022 (£125) and the replacement oil and filter in August 2023 (£150);
5. pay interest on the sums in 3. and 4. at a rate of 8% simple per year, from September 2023 until the date it pays this settlement. If MotoNovo deducts tax from the interest element of this award, it should provide Ms S with a tax deduction certificate should she ask for one; and
6. pay Ms S £300 in recognition of her distress and inconvenience

My final decision

For the reasons I've set out here and in my provisional decision, my final decision is that to resolve Ms S's complaint MotoNovo Finance Limited must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 13 December 2024.

Niall Taylor
Ombudsman