

The complaint

Mr T has complained about the quality of a car provided on finance by MotoNovo Finance Limited (MotoNovo).

What happened

MotoNovo supplied Mr T with a new car on a hire purchase agreement in February 2023. The cash price of the car was around £24,000 and it had covered around ten miles since first registration in October 2022. The hire purchase agreement required payments of around £425 for 59 months followed by a final payment of around £430. Mr T paid a deposit of £5,000.

Mr T said that the car was supplied with a temporary fix for the navigation and radio system. Mr T said he was told that this would be fixed very quickly, but when the car had its first service it was still not fixed, and he said he was told there was no pending recall.

Mr T tried to resolve the matter with the selling dealer who I'll call M. He said he was concerned that the fault would never be repaired, and that the car would lose value. He continued to challenge M on when the repair would be made.

In May 2024 Mr T contacted MotoNovo to raise a complaint. He said he had a change in circumstances and wanted to end the agreement but was concerned that the resale value of the car wasn't what was expected due to the fault. MotoNovo said that as the fault was reported more than six months after the car was supplied Mr T needed to provide an expert report confirming the faults were present or developing at the point of sale.

After issuing their final response on this basis, Mr T supplied copies of the communication with M. MotoNovo reviewed the evidence and commissioned an independent report from an engineer I'll call Expert A. In July 2024 following the submission of the report MotoNovo changed their position and made an offer so that Mr T could reject the car.

MotoNovo offered to collect the car and unwind the agreement with nothing further to pay. It said it would refund the deposit plus simple interest and remove the agreement from Mr T's credit record.

MotoNovo said that as Mr T had driven around 25,000 miles since the car was supplied, it would retain all the monthly payments. It also said it paid £950 for the distress and inconvenience caused. It calculated this on the basis of £150 for distress and inconvenience plus a payment of £50 per month for impaired use.

Mr T referred his complaint to our service. He said that as he was able to demonstrate the fault was present at supply and recorded this within the first 30 days, he should be entitled to a full refund in line with the Consumer Rights Act 2015 (CRA).

An investigator here looked at the complaint, she said that she would have calculated the refund in a different way but thought that the refund was broadly fair. She said that as the car had been used by Mr T, the CRA allowed for a deduction to be made.

Mr T didn't agree, he said that the cash value of the car which his payments had been based on was clearly incorrect, so it would be unfair to say that paying £425 per month for his use was fair. Mr T said he found it impossible to accept he wouldn't get a full refund for returning faulty goods.

The complaint has been passed to me to make 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've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. MotoNovo is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The CRA is also of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory."

It isn't clear here whether the problem with the navigation and radio was something that was brought to Mr T's attention before he entered into the agreement. This is important to note because there seems to have been an agreement that the problem would be fixed, which might mean that formed part of the agreed contract. And the fix didn't happen within a reasonable amount of time.

If Mr T was aware of the fault before he took delivery of the car, the repair of the fault would be considered an express term of the contract. When the repair wasn't carried out within a reasonable amount of time (if not specified) that could be the breach of contract. If Mr T wasn't aware of the fault until he had taken delivery, the fault would likely be considered a fault that makes the car of unsatisfactory quality because the car came with a defect. So, I think I can still deal with the complaint even with the uncertainty.

There doesn't appear to be any disagreement between the parties that there was a breach of contract and Mr T could reject the car. For the avoidance of doubt, I do think there has been a breach of contract here. A brand-new car should be supplied without even minor defects. And if there was an arrangement to repair then this formed an express term of the contract which has been breached. But what I need to consider in this case is whether the refund offered to Mr T was fair. It is on this question, and the broader question of whether the compensation is fair, that I must reach a conclusion.

Although MotoNovo are responsible for whether the car was of satisfactory quality at the point of supply, it isn't responsible for M's actions in dealing with Mr T after supply of the goods. MotoNovo weren't aware of any issues with the car until Mr T contacted it in May 2024. So, it didn't have an opportunity to sort things out earlier. I don't think it's fair to hold

MotoNovo responsible for everything that went wrong prior to it being notified of the issue. Mr T could have taken further steps to minimise the impact of the problem.

It seems here that Mr T and M were aware of an issue with the navigation and radio system and there was a temporary fix in place. Mr T agreed to a repair and was waiting for this to be carried out. I can't see that Mr T validly sought rejection of the car through the trader (which for the purposes of the CRA is MotoNovo) until around May 2024. Even if he had clearly stated that he wanted to exercise this right before this, I would still need to go on to consider what use Mr T had of the car.

Putting aside the inconvenience which I will refer to next, Mr T has broadly had use of the car since taking out the agreement in February 2023. I've seen the collection report, and an image of the odometer shows that Mr T has been able to drive around 26,500 miles since the car was supplied. That isn't insignificant mileage given he had the car for around 15 months, albeit there wasn't a cap on the mileage under the agreement.

Mr T has mentioned that he is legally entitled to return the car and get a full refund. However, I don't think this is accurate or fair in any event. Mr T has been using the car and covered about 26,500 miles in it. If the fault became apparent after supply, which as I've said isn't clear, then the relevant part of the CRA section 24(8) says:

"If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered."

The CRA doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure for example. I've thought about what a fair deduction would be and have considered relevant guidance on what fair usage should be, such as the guidance set out in the "Consumer Rights Act: Guidance for Business" published by the Department for Business, Innovation and Skills. I've been mindful of the following elements of the guidance which would be relevant to this complaint such as that fair usage should reflect the use the consumer has had from the goods. Considerations can be made for all relevant information when assessing how much use the consumer has had and what level of deduction would be appropriate to reflect this, and relevant information can include, for example, the type of goods, the intended use, expected lifespan etc.

Whether or not the fault was apparent before or after delivery, I think it is reasonable for Mr T to pay for the use he has had. If he didn't have the car, he would no doubt have had to pay something to keep himself mobile. But I also accept Mr T has not had the experience I'm sure he was expecting when acquiring a new car.

I'm mindful that Mr T has told us that the cash price didn't reflect the value of the car and he wouldn't have entered into the agreement if he had known the repair wouldn't be made. This might indicate he was aware of the problem before he entered into the agreement. But Mr T hasn't shown MotoNovo how much less the car was worth with this issue. I think the payments he made broadly covered the depreciation in value. If Mr T didn't want the car knowing about the fault, he didn't have to accept delivery (if the issue had already been highlighted), or he could have sought rejection with MotoNovo at an earlier stage. The agreement has now been unwound, so he hasn't paid the full price of the car, but he has paid towards his use.

So, my starting point is that MotoNovo is able to retain the monthly payments for the period Mr T has been using the car. And Mr T should get back an amount to reflect the time he has been using the car but with impaired use. MotoNovo said it based its calculation on £50 per monthly payment for impaired use. So that works out at around 10% of each payment Mr T

made. There isn't a perfect solution here or an industry standard calculation to be used but considering the nature of the fault and the use, I think that is fair.

MotoNovo first heard about the problems Mr T was experiencing in May 2024. I appreciate that Mr T said that he got unnecessary pushback initially, but I don't think it was unreasonable for MotoNovo to require some evidence of the breach of contract. MotoNovo were able to commission a report and make an offer which meant the car was handed back by late July 2024. I don't think that is an unacceptable period of time to deal with the matter. MotoNovo couldn't help Mr T any earlier as it wasn't on notice about the issue.

However, I do accept that Mr T had been trying to deal with the issue himself for some time and it would have caused frustration and annoyance. Mr T appears to have been generally happy with the car other than this fault, and it was due to a change in circumstances and concern that the resale value of the car might not be in line with what he had hoped, that he raised his concern with MotoNovo. MotoNovo said its offer for distress and inconvenience was £150. This seems broadly in line with our approach to fair compensation, particularly given MotoNovo didn't know earlier about the issue.

Mr T has been paid £950 which I think broadly matches what I would have awarded for impaired use, and what I think fair compensation for damages caused by a breach of contract would look like. So, it follows that I think this is a fair and reasonable way to resolve the complaint.

I appreciate Mr T is unhappy he feels he's lost out. I'm sorry to disappoint Mr T, but I find I don't have the grounds to direct MotoNovo to refund anything further.

My final decision

My final decision is that MotoNovo Finance Limited has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 March 2025.

Caroline Kirby
Ombudsman