

The complaint

Mr A is complaining about the quality of a vehicle supplied to him by MotoNovo Finance Limited (MotoNovo).

What happened

In December 2020, Mr A acquired a vehicle via a hire purchase agreement with MotoNovo. He paid no deposit and borrowed £8,250 – the cash price of the vehicle. The hire purchase agreement states the car was first registered in September 2016 and had done 36,000 miles by the time Mr A acquired it.

In July 2023, Mr A contacted MotoNovo to tell them the gearbox had failed. He said the car had now done around 51,000 miles and the manufacturer's warranty meant that the gearbox shouldn't fail before 60,000 miles – so he was complaining about the quality of the car.

MotoNovo told Mr A he would need to get an independent report to show that the quality issues were present or developing at the date of sale.

Mr A wasn't happy about this and said he instead wanted to raise a complaint under section 75 of the Consumer Credit Act 1974 ("Section 75"), because the car wasn't fit for purpose. He also complained that he'd tried to voluntarily terminate (VT) the agreement, but MotoNovo hadn't collected the car as he'd asked and instead had sent him a settlement figure.

MotoNovo did not correspond further about the gearbox issues but did pay Mr A £150 to compensate him for the distress and inconvenience caused by their poor service in relation to the VT process.

Mr A brought his complaint to our service and one of our investigators looked into it. But she didn't uphold it, saying that although it was clear a fault had arisen with the car, that didn't mean it wasn't of satisfactory quality when it was supplied. She said she hadn't seen any evidence that the gearbox issues were present or developing at the time MotoNovo had supplied the car to Mr A. And she said the car hadn't been cared for in line with manufacturer guidelines which may have caused or worsened any issues with the gearbox.

Mr A rejected our investigator's view and asked for an ombudsman's decision. He said our investigator hadn't considered the fact he was rejecting the car under Section 75. He added that the service book showed that the car had had a full service in August 2021, and that it had passed MOTs in 2021 and 2022 with no evidence of any gearbox problems. He therefore concluded that the gearbox fault was not a result of wear and tear but was a serious manufacturing fault and MotoNovo were therefore responsible under Section 75. In his response to our investigator's view, Mr A also noted that our investigator hadn't commented on his complaint that MotoNovo had attempted to force him into a settlement instead of the VT he wanted.

I looked into Mr A's complaint and issued a provisional decision on 21 November 2024. In that provisional decision I said I also wasn't inclined to uphold Mr A's complaint and explained why as follows:

“Mr A’s complaint covers two issues:

- The quality of goods supplied to him by MotoNovo; and*
- MotoNovo’s failure to act on his request to VT the agreement.*

Quality of goods

Mr A’s principal point of complaint is that his car was not fit for purpose. He therefore says he has a claim under Section 75. But Section 75 doesn’t apply to hire purchase agreements. That’s because a hire purchase agreement isn’t a debtor-creditor-supplier agreement as defined in Section 12(b) and (c) of the Consumer Credit Act 1974.

So I can’t say MotoNovo should have dealt with Mr A’s complaint as a Section 75 claim. But I can consider whether MotoNovo failed in their obligations under the Consumer Rights Act 2015 (CRA). In essence, goods supplied need to be as described, of satisfactory quality, and fit for a particular purpose. To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and other relevant circumstances at the time the goods were supplied. I have to decide whether the issues with this car were inherent defects that existed at the point of sale, or if instead they were as a result of wear and tear.

Mr A says his car was not fit for purpose when it was supplied – because the gearbox failed ahead of when he expected it to. But by the time the breakdown happened, Mr A had driven the car around 15,000 miles over the course of over two and a half years. And in total, the car had travelled 51,000 miles over nearly seven years. Mr A says the warranty ran for five years or 60,000 miles, whichever came first. So, the car was beyond the terms of the warranty by the time of the gearbox failure.

In addition, and understandably, Mr A hasn’t been able to provide any evidence suggesting that the fault was present or developing at the time of sale. And so I’m inclined to conclude that the gearbox failure was due to wear and tear, rather than a fault that existed at the point of sale. I realise this will be very disappointing for Mr A, and I can understand the upset the breakdown must have caused, but I can’t say that MotoNovo were at fault in supplying the vehicle – I’m persuaded that the car was of satisfactory quality when it was supplied.

Voluntary termination

I can see Mr A told MotoNovo he wanted to VT the agreement on 20 August 2023. And MotoNovo instead suggested on 24 August 2023 that a settlement might be a better option for Mr A. Mr A then complained about this on 25 August 2023. MotoNovo addressed Mr A’s complaint in mid-October 2023. They apologised for the poor service they’d provided, paid Mr A £150, and asked him to call them to proceed with the VT process.

The hire purchase agreement terms say that to end the agreement, Mr A needed to write to the person he made payments to – so MotoNovo. But I don’t think the wording in the contract suggests that the agreement would be terminated as soon as such written communication was received. So I don’t think it was unreasonable for MotoNovo to ask Mr A to call them to proceed with the VT.

I can see Mr A continued to run up default interest and arrears on his account, at least until January 2024. But I can’t say this was MotoNovo’s fault. They tried to contact Mr A by phone, text message, email and letter to discuss the VT and he did not respond.

In summary, MotoNovo paid Mr A £150 to compensate him for their initial oversight in responding to his request to VT the agreement. And they made it clear what he needed to do next to progress the VT. I don't think they need to do anything further to address the issue and so I'm not inclined to uphold this aspect of Mr A's complaint."

MotoNovo didn't reply to my provisional decision. Mr A didn't accept it. In summary, he said:

- I hadn't explained why Section 75 didn't apply and he was assured by other sources that it did.
- The car hadn't exceeded the mileage limit on the warranty when the gearbox failed and therefore the car that was sold to him was not fit for purpose.
- His mileage was low and the car had a full service history for the whole time he used it and yet I was suggesting that he was responsible for all the wear and tear that had taken place. Instead, he said, the car had done more than 70% of its total mileage by the time he bought it, and therefore the fault must have been present at that point.
- MotoNovo didn't ask him to call them about the voluntary termination – instead they were trying to steer him in the direction of settlement. He wrote to MotoNovo as required by the terms of the agreement, and therefore the agreement terminated as soon as he sent that message.
- The £150 compensation after everything he has gone through is insulting.

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 thought about the points Mr A has made. He's not submitted any new evidence and his comments haven't persuaded me to change my mind. I'll explain why below:

Section 75

Section 75 of the CCA explicitly states that it relates to debtor-creditor-supplier arrangements: *"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."*

A hire purchase agreement is not a debtor-creditor-supplier arrangement because the creditor and the supplier are the same party – in this case, MotoNovo.

Quality of goods

Mr A bought a car that was over four years old and had done more than 36,000 miles. And the price he paid reflected the fact that it wasn't a new car. It would be reasonable to expect that the car would already have suffered some wear and tear. I didn't intend to suggest that Mr A was responsible for all the wear and tear on the vehicle – instead he bought a car with a certain amount of wear and tear, and in doing so, accepted the risk that the car might have more mechanical issues than a brand new car.

It is unfortunate that the gearbox failed before it reached the warranted mileage. However, I can't say that means MotoNovo sold Mr A a car that wasn't fit for purpose. I've still seen no

evidence that the fault with the gearbox was present or developing at the time Mr A bought the car.

Voluntary termination

I appreciate Mr A's frustration that his agreement was not terminated as he requested. But MotoNovo's email of 20 October 2023 suggests that they set out Mr A's options to him on 24 August 2023. And in that email, on 20 October 2023, they clearly asked Mr A to contact them to proceed with the VT process. So I can only direct compensation relating to the period between 20 August 2023 and 20 October 2023 as by that later date it was clear what Mr A needed to do to continue with the VT. I don't think it's reasonable to hold MotoNovo responsible for Mr A's lack of action after they'd advised him of next steps, and so I won't be asking them to pay any further compensation.

My final decision

As I've explained above, I'm not upholding Mr A's complaint about MotoNovo Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 January 2025.

Clare King
Ombudsman