

The complaint

Mr W complains about the quality of a car supplied to him by MotoNovo Finance Limited ("MotoNovo").

What happened

I sent Mr W and MotoNovo my provisional findings on this complaint on 9 December 2024. A copy of that decision is attached and forms part of this final decision.

I explained why I wasn't planning to uphold Mr W's complaint and asked both parties to let me know if they had anything to add.

Mr B responded and said he had no way of providing any further information. He said he didn't feel the decision was fair given I said the car had faults. He said it was the first time he had acquired an automatic car and he thought the gearbox should be good up to 140,000 miles before any issue occurred.

MotoNovo didn't respond.

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 relation to what Mr W has said about his expectations of how long the gearbox should last without issues, a gearbox is susceptible to wear and tear depending on how the car is driven and maintained. It is a serviceable component and taking consideration of these factors will depend on how long the gearbox may last. In this case, the issues with the car appeared more than 16 months after one repair had been carried out on the car and after around 11,250 miles being completed in the car. The car was also around nine years old at the time.

The test I am required to apply is whether the car supplied to Mr W was of satisfactory quality. In this case, given the factors I've mentioned, I'm satisfied the car had faults. However I don't think these faults make the car of unsatisfactory quality. This means that my provisional decision remains unchanged.

I note Mr W says he has no further information to provide. However, I'd like to reiterate that MotoNovo has said it is willing to reimburse Mr W should he obtain an independent report and it confirms that the car was of unsatisfactory quality in the first instance. Should he wish to do this, he will need to refer this to MotoNovo in the first instance.

My final decision

My final decision is that I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 January 2025.

Provisional decision

I've considered the relevant information about this complaint.

Having done so, I intend to reach a different outcome to that of our investigator. I've explained why in this provisional decision.

The deadline for both parties to provide any further comments or evidence for me to consider is 23 December 2024. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr W, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mr W complains about the quality of a car supplied to him by MotoNovo Finance Limited ("MotoNovo").

What happened

Mr W acquired a used car under a 48 month hire purchase agreement with MotoNovo in May 2022. The car cost £14,408. Under the agreement, Mr W was required to make 59 payments of £335.02, followed by one payment of £336.02 which included a £1 option to purchase fee, if he wanted to keep the car. The total amount payable under the agreement, including the deposit, was £20,102.20. At the time the car was supplied to Mr W, it was around seven years old and the mileage was reported as 61,808.

In June 2022, the car was repaired and the gear selector circuit board was replaced. This was at no cost to Mr W and the repair was carried out under warranty.

In October 2023, Mr W raised a complaint to MotoNovo. He said since February 2023, the car had an ongoing fault. He also said he had a gearbox service carried out on the car and said he was told it appeared the gearbox hadn't been serviced previously.

MotoNovo issued its response to Mr W's complaint and advised Mr W to obtain an independent report as it had been more than six months since the car was supplied to him. It said if the car it sold wasn't fit for purpose, it would reimburse Mr W up to £250 for the cost of the report.

Unhappy Mr W referred a complaint to this service in February 2024. He said after the initial repair, the car worked fine for eight months. He then said the car would feel like it wasn't in gear properly, but when it was restarted, it would feel fine again. He said alerts would appear on the dashboard to highlight that the gear wasn't in place. Mr W said he found there was an issue with the turbo in January 2024, but he wasn't aware of this. Mr W said he had to drive a long journey on two occasions and on both occasions he needed to top up the oil. He said he wondered if there was an oil leak. Mr W said he had mislaid the receipts and didn't have evidence to show the gearbox service.

Our investigator looked into the complaint and said it was likely there was a fault with the car. She said there was an issue with the gear selectors within 30 days of the car being supplied to Mr W and this issue continued from February 2023. She said she was persuaded the fault was pre-existing and that this fault made the car of unsatisfactory quality. She also said other faults Mr W had complained about such as the turbo were wear and tear issues. Our investigator said MotoNovo should pay for an independent report to identify what faults are present with the car, arrange the repair of the gearbox and if this isn't economical, to allow Mr W to reject the car. She also said MotoNovo should pay Mr W £200 for any inconvenience caused to him as a result of the faults with the car.

Mr W accepted and said that he believed the turbo had issues before the gearbox gave up but he accepted this was a wear and tear component.

MotoNovo disagreed. It said it accepted there was a problem with the car within 30 days of it being supplied to Mr W. However, it said following this Mr W contacted it in October 2023, which was 16 months after the repair and it asked Mr W to provide evidence of a fault or a failed repair and the mileage of the car. It said Mr W told it the mileage of the car was 75,000 but the mileage in January 2024 was 73,920, so it was clear that Mr W had done a fair amount of mileage in the car. It said the report from January 2024 was a basic diagnostic report and it didn't confirm faults were present at the point the car was supplied or that they were present as a result of a failed repair. It said Mr W should provide an independent report and if it was found in his favour, it would pay for the costs.

Our investigator obtained further information from the garage that carried out a diagnostic in January 2024. She said it was clear the initial repair failed and the faults identified – the gears, dual clutch and circuit board – were linked to the same car part. She said it was clear the initial fault wasn't repaired and so, MotoNovo should obtain the independent report. She said Mr W should be entitled to reject the car and he should be refunded payments from November 2023 with applicable interest and be paid an additional £200 compensation.

Mr W agreed. MotoNovo disagreed and said it should be down to Mr W to provide an independent report to show the current faults were present or developing at the point the car was supplied to him. Mr W said he didn't have the funds to pay for an independent report.

As MotoNovo remains in disagreement, the case has been passed to me to decide.

What I've provisionally 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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time.

I've read and considered the whole file and acknowledge that Mr W has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

What I need to decide in this case is whether the car supplied to Mr W was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. MotoNovo is the supplier of the car under this type of agreement and so, is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mr W acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this case, I can see that in June 2022, a repair was carried out around three weeks after the car was supplied to Mr W. The mileage at the time was 62,671. So, Mr W had travelled around 850 miles in the car by that point. The gear selector circuit board was replaced and a diagnostic was carried out. There is no commentary on the job sheet to confirm why the circuit board was replaced or what symptoms the car was showing before the replacement was carried out. Although I note Mr W has said this was due to a problem with the gearbox. A repair was carried out at no cost to Mr W and this seemed to rectify the issue.

Following this, Mr W said further issues appeared in February 2023, around eight months after the repair was carried out in June 2022. Mr W says the issue has continued since February 2023 and he hasn't used the car since November 2023.

In January 2024, a diagnosis was carried out by a garage I'll refer to as "P". I've been provided with a copy of this. The mileage at the time was recorded as 73,920. So by this point, Mr W had travelled around 12,100 miles in the car. The diagnostic report highlighted various fault codes that had been reported.

In relation to the gearbox, intermittent fault codes were stored since September 2023 which showed that gear one was listed as not-selectable, gear five couldn't be engaged, clutches one and two were closing/opening unintentionally, the output speed sensors had no signal, there was unexpected mechanical gear disengagement and the main pressure adaptation had exceeded the upper offset limit. Some of these issues had only occurred as often as two times, but others had occurred around 75 times. These are the number of times the issue occurred after the car was started.

Further intermittent fault codes were stored for the glow plugs, the turbocharger, the oxygen sensors and other areas. However, these faults had only occurred a maximum of three times since around November 2023.

Having reviewed this, I'm satisfied that the car supplied to Mr W had faults. This is because I have seen the initial repair job sheet and a diagnostic report confirming the fault codes that are present and the repairs that were carried out.

I now need to consider whether these faults make the car of unsatisfactory quality.

Our investigator asked P to provide further comments on what the diagnostic report concluded. P said, *"there are still one or two grey areas even with the best diagnostic equipment in the world. Until more invasive investigations are carried out some of the fault codes are only guides."* From this I take that whilst fault codes were listed, further investigation was needed to confirm the actual issues with the car.

P went on to say, *"The report does conclude that there is a fault with the gears as well as the dual clutch and possibly the Mechatronic unit (which could also be described as circuit board). The report does indicate that a repair is needed. However we cannot be certain as to how many of the faults are mechanical or electronic until a certain level of dismantling is undertaken. This would entail the removal of transmission and strip down for further investigation. Some of the faults may certainly relate to the previous repair to the circuit board as described. As we have no information of that repair we cannot comment."*

I've considered P's further comments carefully. P has confirmed the faults with the gears and the dual clutch and said there is a possibility there is an issue with the circuit board. However, P says further investigation is needed to determine the faults. I note the circuit board was previously replaced in June 2022 and P suspects that some of the faults may relate to the previous repair but couldn't comment on this. This is inconclusive and it doesn't make a determination. In fact it alludes to further dismantling being required and states the faults *"may"* relate to previous repairs. However, P hasn't determined that the faults that present on the car did relate to the previous repairs and said that some of the fault codes were guides.

I'm required to determine whether the car was of satisfactory quality at the time it was supplied to Mr W. The car was around seven years old at the time it was supplied and the mileage was around 61,808. One of the considerations of whether goods are of satisfactory quality is durability. Here, there was an issue with the gears and dual clutch when the car was around nine years old and at around 74,000 miles.

Having thought about this, I think a reasonable person would consider that gears or a dual clutch may need replacing or repairs carried out at this point. I note the car was able to travel around 11,250 miles between June 2022 and January 2024. Mr W said his normal use of a car would be around 8,500 miles a year and I note he's said one of the repairs meant he had to travel 500 miles. However, I'm satisfied the car was on the whole used in the way that Mr W intended to at the outset. I think the gears and dual clutch are issues which a reasonable person would consider may need replacing or repairing at around 74,000 miles when these faults occurred. So I'm minded to conclude that the issues have occurred due to reasonable wear and tear. It follows that I think the gears and dual clutch were durable and so, I'm satisfied the car was of satisfactory quality at the time it was supplied to Mr W.

In relation to the fault that has occurred to the turbo, I note this has fault occurred twice since December 2023. However, as our investigator has pointed out and Mr W has accepted, the turbo is susceptible to wear and tear.

I also appreciate that Mr W said he had a gearbox service carried out and comments were made to him that it couldn't be seen that a gearbox service had been carried out. However, there is a lack of supporting information from Mr W and so I can't consider this.

I understand my provisional decision is likely to come as a disappointment to Mr W. However, MotoNovo has said it is willing to reimburse Mr W should he obtain an independent report and it confirms that the car was of unsatisfactory quality in the first instance. Should he wish to do this, he will need to refer this to MotoNovo in the first instance. I will also take this opportunity to remind MotoNovo of its obligations to treat Mr W with forbearance and due consideration if he is suffering from financial difficulties.

My provisional decision

My provisional decision is that I do not intend to uphold Mr W's complaint

Sonia Ahmed
Ombudsman