

The complaint

Mr J complains that the car he acquired through MotoNovo Finance Limited (“MFL”) wasn’t of satisfactory quality. He wants MFL to fairly and reasonably settle his complaint and cover the costs that he’s incurred.

What happened

Mr J entered into a hire purchase agreement in August 2023 to acquire a used car. The cash price of the car was £19,748, and the total repayable was £27,872.40, and was to be repaid through the credit agreement which was set up over a 48-month term with monthly payments of £411.83. At the time of acquisition, the car had already been driven nearly 35,000 miles and was just over three years old.

Mr J told us:

- In early January 2024, the car made an horrendous noise and a warning message appeared on the dashboard regarding the drivetrain;
- the car was recovered to a third-party garage where catastrophic engine failure was confirmed; a result of a shattered auxiliary drive belt;
- he initially asked MFL to accept rejection of the car, or for it to be repaired at no cost to himself;
- he’s out of pocket by more than £10,000, whilst also continuing to make his monthly rentals, for a car that he hasn’t been able to use;
- the effect this has had on his personal circumstances both his family and his work;
- he’s now arranged to have the car repaired himself using a specialist third-party, but he wants MFL to reimburse him his costs.

MFL rejected Mr J’s complaint about the quality of the car it had supplied. 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 issue was wear and tear only; and that it could not be held liable for what had happened.

But MFL did say that the service it had provided hadn’t been as good as it should’ve been, and it noted Mr J’s dis-satisfaction with the length of time taken for it to respond to his complaint. Because of this, it awarded him £50 in recognition of that delay.

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 was a fault with the car but – based on the independent inspector’s report – he thought it was more likely that the issues Mr J 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.

Mr J disagrees so the complaint comes to me to decide. He says he doesn’t accept our investigator’s findings because the car had completed below average mileage. And he says that although normal wear and tear would be expected, in this case, nothing was recorded in the vehicle inspection that was undertaken prior to purchase. And because of this, and the

inability to examine the auxiliary belt, any conclusion around wear and tear is simply an assumption.

Mr J also highlighted several inaccuracies in the report's data - length of ownership, and the car being 'on hire', when it wasn't – and he says his own garage disagrees with the findings of the independent engineer.

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 Mr J won't take it as a discourtesy that I've condensed his 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. Mr J should note, however, that although I may not address each individual point that he's raised, I have given careful consideration to all of his 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 Mr J 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 Mr J 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 Mr J to show the fault was present when he first acquired the car. So, if I thought the car was faulty when Mr J 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 Mr J has experienced problems with the car. That has been well evidenced by both his testimony and the information he's sent us, including invoices and details of repairs being undertaken. But, whilst I accept that there has clearly been an issue with the auxiliary belt and the engine, MFL would only be responsible for putting things right if I'm satisfied that this issue was present or developing when the car was supplied – that is to say, the car wasn't of satisfactory quality when Mr J first acquired it.

The third party instructed by MFL to carry out an independent inspection of Mr J'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:

- The customer had reported *"abnormal, horrendous noise form the engine"*.
- *"the belt had failed and contaminated behind the crankshaft pulley, blocking the oil pump pick-up strainer having passed the seal behind the crank pulley"*

So, I'm satisfied that the fault that Mr J complained of are present and as he described.

But the simple existence of the fault in itself 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:

- *"we were able to identify faults with the vehicle in the form of a worn bearing shell, the condition related to in-service deterioration"*.
- *"Failure of the auxiliary drive belt at the vehicles age recorded mileage could only be considered a deterioration-related issue, wear and deterioration of the auxiliary belt and the fragmented portions of this belt entering into the sump of the vehicle, causing the reported restriction of oil flow and the subsequent damage to the bearing shell seen at the time of inspection due to a lack of adequate oil supply"*.
- *"The deterioration of the belts often is connected with ageing, vibration, damage, under bonnet temperatures and fatigue of the materials used in these hard-pressed components. Once an engine is running, the belt operates continuously. High under-bonnet temperatures plus constant flexing ultimately takes their toll on the belt material and over time even the best belt will deteriorate or wear and need replacement"*.

The report concludes that *"We would consider, based on the evidence available at the time of our inspection, that the failure would not have been present at the point of sale and in our opinion, would have developed due to wear and deterioration within the ownership of the current client" ... "We consider the fault would not have been present at the point of inception even allowing for the deterioration to be progressive"*.

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 Mr J's comments and concerns about the inaccuracies in the independent inspector's report, but I don't think this makes a difference. The third party was approached by MFL when Mr J first highlighted an error in the report, and this Service also contacted it again in December 2024 to seek clarity on this matter.

A senior engineer confirmed that *"...with the further evidence/clarification of the dates of sale, date of complaint and mileage at the point of sale...we would consider that the faults were not present at the point of vehicle sale, as the vehicle has covered sufficient mileage for these faults to have developed solely within the period of hire"*. It went on to confirm that *"We would clarify that damage to the auxiliary belt would have been wear and deterioration...Auxiliary belts are a wear and tear item, and it would not be unexpected for it to deteriorate at this age and mileage"*.

So, it's clear to me that the engineer makes no cautionary statements 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 and independent evidence to the contrary, I'm not persuaded that Mr J's car was of unsatisfactory quality when supplied. So, I can't hold MFL responsible for the problems Mr J has experienced with it.

And although Mr J's garage has a different view about what happened, it's neither independent, nor in a position to give an opinion on the existence of the fault relative to the point of supply.

Finally, Mr J's asserts that the car had been driven less than the average annual mileage of 12,000 miles, but this isn't correct. A number of independent sources separately state that the average annual mileage is in the range of 7-8,000 miles. And although Mr J says his car "*has never been on hire*" – it has. This is the correct way of expressing the situation with respect of a car supplied under a *hire purchase* agreement. The car isn't owned by the customer until the finance agreement has been settled; a customer pays monthly rentals or payments over the term of the agreement, and can then elect to take ownership of the car by paying the final *balloon* payment, which in this case would be £8,932.50 followed by an *option to purchase fee* of £1.

Taking into account all the evidence, I can't uphold this complaint. I know Mr J will be disappointed with this decision, but I hope he understands why I've reached the conclusions that I have.

My final decision

My final decision is that I do not uphold this complaint.

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

Andrew Macnamara
Ombudsman