DRN-5401399

The complaint

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

What happened

MotoNovo supplied Miss U with a used car on a hire purchase agreement in June 2022. The cash price of the car was around £7,000 and it had covered around 58,600 miles since first registration in March 2013. The hire purchase agreement required payments of around £163 for 53 months followed by a final payment of around £164. Miss U paid a deposit of around £500.

In January 2023 Miss U said that a degas coolant hose failed and she took it back to the dealer who I'll call P. She paid around £400 for a repair.

The car failed an MOT in July 2023 and Miss U paid around £150 to replace defective rear reflectors and wipers which she said had been on the car since it was supplied.

In November 2023 she paid around £250 for another coolant issue which was repaired by P. In January 2024, the car broke down and it was recovered to a garage which diagnosed catastrophic wear to the turbo and an engine replacement was required. Miss U said she paid £160 for recovery and around £240 for a diagnostic.

Miss U complained to MotoNovo. She explained what had happened and made the following points:

- There were known coolant issues that were not disclosed
- She found out too late that the engine could have been replaced by the manufacturer under a goodwill scheme which related to an inherent fault
- The car was not of satisfactory quality nor fit for purpose
- There was a MOT failure – due to illegal and dangerous rear reflectors
- There was an inadequate pre-sale inspection and servicing, and omission of critical maintenance costs she'd incur
- Her complaint to the supplier was met with hostility and lack of transparency

MotoNovo said that as the most recent fault occurred more than six months after the car was supplied Miss U 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, Miss U supplied a report from an independent organisation I'll call Expert A, but MotoNovo declined to accept any liability stating that the report didn't conclude the fault was present or developing at the point of sale.

An investigator here looked at the complaint. He said that there wasn't sufficient evidence that there was a fault which made the car of unsatisfactory quality. He didn't recommend that MotoNovo do anything to resolve the complaint.

Miss U disagreed. In summary she said:

- Evidence the investigator relied on, including the replacement of the wet belt was incorrect
- The service history was incomplete and there were questions about whether key parts had been replaced in line with the manufacturer recommendations
- Information about the wet belt replacement was intentionally obscured
- The wet belt should have been replaced earlier
- The MOT history was irrelevant in relation to the condition of the wet belt
- There was a conflict of interest as the previous owner was also the technician who serviced the car and conducted the MOT
- There was another breach of contract in relation to the rear reflectors being illegal
- There were further breaches of law and contract such as the Consumer Rights Act 2015 (CRA), Misrepresentation Act 1967, Consumer Protection from Unfair Trading Regulations 2008, Road Traffic Act 1988, Fraud Act 2006, and the Supply of goods and Services Act 1982

I issued a provisional decision which said:

Negotiations and description of the goods

Miss U said that information about the wet belt replacement was intentionally obscured and that there was a conflict of interest because the previous owner was an employee who also serviced the car and carried out the MOT.

I can't see that MotoNovo have specifically addressed this point in the final response although I can see it was something that Miss U raised. In considering this point I've had regard for the relevant legislation and guidance.

I think section 56 of the Consumer Credit Act 1974 might be relevant here. This provision has the effect of deeming the broker to be the agent of MotoNovo in any antecedent negotiations. So MotoNovo is responsible for the antecedent negotiations the broker carried out direct with Miss U.

But the difficulty here is that the broker here isn't P, it is a different entity who I'll call E. As far as I'm aware Miss U's allegations are that P didn't disclose something that was material to her decision-making process. I don't think MotoNovo are responsible for what Miss U was or wasn't told during the negotiations for the car, as their agent E wasn't involved in these discussions.

Even if it could be argued that MotoNovo is responsible for what P said or did, I'm not yet persuaded that Miss U was misled.

Miss U has explained the service history, and the high cost of potential future repairs may have influenced her decision to acquire the car. As she had access to the service history, which appears to show it was somewhat limited, it's not clear the goods weren't as described. It was open to Miss U to have arranged her own inspection prior to buying the car. Or she might have sought advice on the costs of ongoing maintenance and repairs, which might not be the responsibility of MotoNovo.

Miss U had opportunities prior to the agreement going ahead to check the service history or to have the car inspected – and even if we could look at P's actions, it's not clear it omitted to tell her something it was required to.

The sales order, the sales invoice, and the car's service book – which confirm the history of the car, were provided to Miss U. I'm satisfied this information was enough for Miss U to ask any questions at this point if she had any concerns. She was happy to take delivery of the car based on the information she'd been provided with. And that information was correct. So, it follows that I'm not persuaded Miss U was misled about the car's service history prior to entering into the agreement.

Quality of goods

The Consumer Rights Act 2015 (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."

The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances might include things like the age and mileage at the time of supply and the car's history.

The CRA says 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.

This is the basis on which I can consider this complaint. I can't consider a complaint about the actions of the previous owners, what P did after the car was acquired, or how earlier MOTs were conducted.

As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality at the point of supply. It doesn't seem to be in dispute that there were faults with the car.

Miss U reports that the degas hose failed in January 2023 and there was another issue with the coolant later in 2023. I've seen the invoices, and it's clear repairs were made. But I don't have any independent evidence about those faults, or whether they made the car of unsatisfactory quality at the point of supply.

Miss U also pointed out that the car failed an MOT in July 2023 due to rear reflectors being illegally tinted and therefore not compliant with road safety regulations. I can see that the MOT failure was reported as "rear reflector defective or damaged by more than 50% of the reflecting surface rear." The MOT history doesn't go into sufficient detail to indicate a fault that was already present, rather than damage. The images I've been provided don't persuade me, as a non-expert, that the reflectors were illegal. I'm not saying something definitely didn't go wrong, merely that I don't think it would have been unreasonable for MotoNovo to have expected there to be some sort of supporting evidence. So, I don't intend to direct MotoNovo to cover the costs of earlier repairs/replacements.

Miss U said there was a low oil pressure warning in January 2024, and the car was recovered. She sought advice from an independent garage.

Miss U supplied a diagnostic from a main dealer which said "Due to lack of lubrication, engine has suffered catastrophic wear, including turbo, splines have excessive movement. Vehicle will now require replacement engine/turbo." Miss U also said that the main dealer told her that the manufacturer would have replaced the engine on a goodwill basis had the coolant issues been raised with it earlier. I don't have any evidence that this offer was available, nor that P ought to have been aware of it and should have told Miss U. Information

available online indicates that there was a goodwill scheme, but it had specific criteria including a full service history, so I'm not sure that the car would have been eligible anyway. I also have to note that MotoNovo weren't aware of any issues prior to March 2024, and P wasn't acting as its agent when it conducted repairs on the cooling system.

The report from Expert A explains the importance of servicing and maintaining oil levels and that although further dismantling would need to take place to confirm the cause, often these are wear related faults. Expert A didn't establish a link between previous repairs and the current condition of the car, nor did he say the responsibility lay with the supplier. I don't find I need to comment on whether or not parts of the car had been or should have been replaced earlier, as this isn't something that is a requirement with a second-hand car.

The car supplied to Miss U was used, around nine years old and had covered around 58,600 miles. There would be very different expectations of it than if it was a brand-new car. The car cost around £7,000 which is significantly less than if it was new. The price paid reflects the age and condition of the car.

Miss U was able to drive the car for around 6,400 miles before the car broke down in January 2024. This is important to note as some of the issues may have arisen or become apparent during this time and they may not have been present or developing at the point of supply.

We don't have a lot of information about how the car was serviced during its lifetime, or while it was in Miss U's possession. I can see a service book which is stamped in March 2021 when the car had completed around 55,500 miles. There is a further stamp in May 2022 shortly before the car was acquired with mileage shown as 58,625. This seems to correspond with the sales invoice which said, "serviced as recommended."

But there appears to be a big gap in servicing between when the car was first registered and the first noted service. There is no requirement that the car would have a complete service history before it was acquired, and I can't see any clear evidence that Miss U was told it was fully serviced. Miss U took the car to a third party for an MOT in July 2023, and she appears to accept that she didn't service the car after it was supplied in June 2022. Unfortunately, the history of the car is an unknown risk when buying a used car, but that is usually reflected in the price. The service history, either before or after supply, might be a key factor in what has caused the catastrophic failure, as explained by Expert A.

I can understand that Miss U is disappointed that the car has such a significant problem, that might not be cheap or easy to rectify. She has also reported earlier problems but given all that information was available to Expert A there hasn't been any link made between earlier repairs and the current fault or that the earlier repairs were down to something that made the car of unsatisfactory quality at the point of supply. What I have to bear in mind is that just because I've seen there were faults with the car, and that the latest fault came about around a year and a half after supply, this doesn't necessarily mean the car wasn't of satisfactory quality when it was supplied.

I'm sorry to disappoint Miss U, but without sufficient evidence of a fault which made the car of unsatisfactory quality at the point of supply, I find I don't have the grounds to direct MotoNovo to do anything further.

Miss U disagreed with the provisional decision. She said there were legal and evidentiary points that required reconsideration. She said there were significant inconsistencies and legal misapplications in the provisional decision. In summary of those points she said:

- There was a breach of contract as the sales order form said the car would be serviced as recommended, but there was no evidence that a full service or a pre-delivery inspection took place.
- Either the inspection or service didn't happen, or it was negligent as it didn't identify a major risk. This is in breach of the Supply of Goods and Services Act 1982.
- She questioned why I'd accepted that the service was completed.
- She questioned whether I think a lack of pre-delivery inspection constituted a reasonable industry practice.
- The burden of proof should not be on the consumer to prove that a service didn't happen.
- Progressive degradation of the wet-belt wasn't a sudden event which means that at the point of supply the fault was already present or developing, making the car not of satisfactory quality.
- The wet belt was already in a high-risk state as it had exceeded the manufacturer's six-year replacement recommendation by three years.
- The dealership failed to disclose the condition of the wet-belt and sold the car at full market value despite its incomplete service history.
- I must acknowledge that the wet belt degradation is progressive, and cannot argue that the defect wasn't present at the time of supply.
- Why have I disregarded the expert's conclusion that the failure was foreseeable.
- My decision is inconsistent with other decisions, and I must justify the criteria for assessment compared with other decisions.
- I've misapplied the burden of proof requiring a higher evidentiary standard than the CRA. The CRA says that a consumer must demonstrate on the balance of probabilities that defect was present at the time of sale.
- The balance of probabilities is 51% likelihood rather than absolute proof or certainty.
- P's claims are accepted without evidence, while the consumer must meet an unfairly high standard.
- As MotoNovo financed the transaction and Section 140A of the Consumer Credit Act 1974 (s.140A) applies it has enforced an unfair relationship by failing to investigate the misrepresentation and breach of contract, and causing financial and emotional harm.
- MotoNovo mishandled the claim and there were factual inaccuracies in their correspondence.

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.

Miss U has provided detailed submissions in response to the provisional decision. I acknowledge her strength of feeling and I've read and considered everything she's said, but I've summarised the key points here. While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

Firstly, I am very sorry to hear about the difficulties Miss U has described to this service. However, I think it is worth noting at this early stage that I am not upholding her case. I know Miss U is unlikely to be happy with this decision. However, my role is to resolve disputes informally. She does not have to accept it and may choose (after seeking legal advice as appropriate) to take more formal action, such as through a court.

Miss U has referred to other decisions by this service in cases which she considers similar to her own case. I should make clear that my decision is based on the evidence and

information relating to Miss U's case, rather than any other complaint that might, on the face of it, appear to have similar features.

I should also point out that the Financial Ombudsman decisions don't have precedent value as certain court judgments do. I need to consider Miss U's complaint by deciding what I think is fair and reasonable in the individual circumstances. Even saying that, it's important to note that while the financial arrangement and goods supplied had similarities in the decisions Miss U referred to, the circumstances were very different.

For the purposes of this complaint the relevant legislation here is the CRA rather than the Supply of Goods and Services Act 1982.

The CRA says that "goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer much be taken not to have conformed to it on that day". This means it is assumed that where a fault occurs which makes the car of unsatisfactory quality within the first six months, it is generally up to the business to put things right. After six months it falls to the consumer to demonstrate the fault would have been present or developing at the point of supply. Miss U said that this burden of proof is unfair on the consumer. I can understand Miss U's sentiment, but I have to have regard for the relevant legislation.

As a starting point Miss U needed to demonstrate the fault would have been present or developing at the point of supply. Miss U commissioned an expert to look into the problem for her. The expert she commissioned is well versed in providing opinions for the court. But in this case Expert A hasn't made any finding on the liability being with the supplier. I don't hold myself to be an expert with mechanical engineering. I'm somewhat reliant on the experts that have seen and inspected the car. And where there isn't a finding on where liability lies, and why, I find myself having to draw a conclusion taking into account all the specific circumstances of this case.

The CRA doesn't specify that the standard of evidence is tested using the balance of probabilities. Our service uses that approach as part of our fair and reasonable approach to resolving complaints, where some of the information is inconclusive. I accept that there is a chance that the fault was present or developing at the point of supply, but I'm not able to say it was more likely than not, because of the other potential factors that might cause the fault. I think that if it were more likely than not, then the expert would have clearly said this.

Miss U has said that the wet belt should have been replaced because it was three years overdue. But if you applied that standard to all parts of second-hand cars generally then it is problematic, because all the parts would have to be replaced before being sold if there was any sign of wear. I think a reasonable person would accept that buying a second-hand car comes with some risk of parts wearing and needing maintenance sooner than you would expect on a brand-new car that isn't as road worn. And unfortunately, not all second-hand cars have been serviced or had parts replaced in line with manufacturer's recommendations. But that doesn't necessarily mean that the car isn't of satisfactory quality.

Just because a part is starting to wear it doesn't mean that a fault is present or developing at the point of supply. Expert A said "the condition is consistent with inadequate lubrication, possibly as a consequence of debris contamination from the wet belt (cambelt); however, further dismantling would be required to positively confirm the condition of the wet belt as to whether this is the root cause of the problem. The current findings are based on the evidence seen and would have to be considered provisional".

Although Expert A has placed some weight on the oil starvation being caused by a known wet belt issue, he hasn't been able to confirm this is the case. Other relevant information

Expert A referred to includes the servicing history both past and present, and could indicate that oil starvation has been caused by something else. In order to make a reasonable finding on durability I would need to be more persuaded on what had caused the fault.

Miss U has said that P's claims are accepted without evidence whereas she is being held to an unfair standard. Our service isn't able to marshal or compel witnesses, and we're essentially looking into MotoNovo's liability as a financial services provider. We can't direct the selling dealer to do anything here, or provide any evidence, so we have to base our outcome on what is presented to us by the parties.

In any contract for the supply of services there is also a term implied by the CRA that the standard of the service should be conducted with reasonable care and skill. This is a contract for the supply of goods rather than services, so I won't go onto to consider the manner in which the disputed pre delivery service/inspection was carried out as it isn't relevant.

But if something that formed part of the agreed contract didn't get carried out, such as a full service, then that could be a breach of contract for which Miss U is entitled to damages. I appreciate how difficult it is to demonstrate that something didn't happen. Emails from P indicate that a pre-delivery service would take place, but Miss U said it didn't.

I haven't ruled out that a full service didn't take place, and I accept, as Miss U points out, the service history doesn't show it. But the service book does indicate that some sort of service took place in May 2022. I don't think I've seen enough to show that an additional full service was an agreed part of the contract. There is a handwritten note on the order form, which is difficult to read, it might say "serviced as recommended". What that means is open to interpretation – it could be manufacturer recommended, or simply that it was recommended to have some sort of service by this point in time, which the service book indicated that it had.

As far as I'm aware there is no requirement for a full service to take place. My role isn't to comment on whether not completing a service is a reasonable business practice, but then again, I'm looking into a complaint against the finance provider. I understand that a pre-delivery inspection should take place to ensure the car was roadworthy, safe and of satisfactory quality. But I don't have sufficient evidence to show that it is more likely that a pre-delivery service didn't take place.

I'm not persuaded that a pre-delivery service would have uncovered a problem with the wet belt, especially since Expert A said further dismantling would be needed to check it. It ought reasonably to have established if oil was needed, but it would be difficult for me to say it didn't check this given how long the car has driven until it encountered a problem, and the fact that it also passed an MOT.

I find it unlikely that the car could have gone on to drive a further 6,400 miles if the oil levels weren't as they should be at the point of supply, and I don't think this type of service could have established wear to a part that isn't relatively easily accessible.

Miss U said that the misrepresentation and misleading omissions made her relationship with MotoNovo unfair. When considering whether representations and contractual promises by P can be considered under s.140A I've looked at the court's approach to s.140A.

In Scotland & Reast v British Credit Trust [2014] EWCA Civ 790 the Court of Appeal said a court must consider the whole relationship between the creditor and the debtor arising out of the credit agreement and whether it is unfair, including having regard to anything done (or not done) by or on behalf of the creditor before the making of the agreement. A

misrepresentation by the creditor or a false or misleading presentation are relevant and important aspects of a transaction.

Section 56 ("s.56") of the CCA has the effect of deeming the broker to be the agent of MotoNovo in any antecedent negotiations.

Miss U hadn't raised s.140A with MotoNovo. But taking this into account, as I said in my provisional decision, the difficulty here is that P isn't the broker, so it wasn't acting as MotoNovo's agent when it conducted the negotiations for the car. So, I can't fairly say that any alleged misrepresentation or misleading omission has made the relationship unfair. But I have also considered whether MotoNovo's handling of the claim led to unfairness.

When MotoNovo gave its response to this complaint, it didn't have access to Expert A's report, which was provided later. Miss U has said its poor complaint handling has led it to reach an unfair outcome. Based on the evidence it had at the time I don't think its answer was unreasonable.

For the reasons I've set out already in my provisional findings and above, I am not persuaded, on balance, that there are sufficient grounds for me to reasonably find that this car was of unsatisfactory quality or not as described when it was supplied. That means I am unable to uphold this complaint.

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 Miss U to accept or reject my decision before 1 May 2025.

Caroline Kirby
Ombudsman