

The complaint

Mrs J complains that the car she acquired through MotoNovo Finance Limited (“MFL”) wasn’t of satisfactory quality. She wants MFL to fairly and reasonably settle her complaint and repair the faults that have arisen or provide her with a replacement car.

Mrs J is represented in her complaint. For ease of reading, any reference to “Mrs J” refers to the testimony of both Mrs J and her representative.

What happened

Mrs J entered into a hire purchase agreement in August 2023 to acquire a used car. The cash price of the car was £16,250, and the total repayable was £21,700.40, and was to be repaid through the credit agreement which was set up over a 60-month term with monthly payments of £357.49. At the time of acquisition, the car had already been driven nearly 50,000 miles and was just over four years old.

Mrs J told us:

- She first experienced issues with the car within a couple of days of acquiring it; there was a problem with one of the windows, the start/stop system, and the Bluetooth wasn’t working properly, but she called into the dealership and had these things repaired under warranty and at no cost to herself;
- in January 2024, she heard a rattling noise and saw smoke coming from the car. She was close to a garage associated with the manufacturer, so she called in;
- she was told the car shouldn’t be driven, and the issue related to the water pump;
- the car couldn’t be driven, so she had to pay to have it towed home again, and she was then without use of the car for several weeks and had to rely on using another family member’s car;
- she decided to pay for the repairs to the water pump herself, but soon after, she experienced further issues with the car – a mechanic told her that the spark plugs were rusty and jammed;
- MFL will not take responsibility for what’s happened, and she needs it to fix the car or get her a replacement.

MFL has investigated all three of Mrs J’s complaints:

- It upheld her first complaint about the window, Bluetooth and start/stop functionality. It confirmed that these had been remedied under warranty and at no cost to Mrs J. But it offered her £75 in compensation because of the delay in dealing with her complaint.
- It rejected Mrs J’s second complaint about the rattling noise, the worn drive-belt and the damage to the water pump. It said it based this on the conclusions of an independent inspection that had taken place. But it did offer Mrs J £100 in compensation because of delays in dealing with her complaint.

- It rejected her third complaint about the state of the spark plugs. It said that under the Consumer Rights Act 2015 (CRA), because the car had been in Mrs J's possession for more than six months when she raised this complaint, it would require her to commission an independent report demonstrating the vehicle was either not fit for purpose or not of satisfactory quality at the point of sale. But it did say that *"the cost of this report would be reimbursed up to the cost of £250.00 if reported faults are not found to be your liability"*.

MFL told this Service that *"An initial inspection of the vehicle [independent engineer] was inconclusive. They could not confirm if the current condition of the vehicle was present / developing at sale, had developed after sale or was a result of previous unsuccessful repairs. They did initially comment on the durability of the vehicle, however. We raised two queries with [independent engineer] following the inspection, including the evidence of previous repairs completed by the dealership. [Independent engineer] have since concluded that the previous repairs are not related to the current condition of the vehicle, the vehicle has been durable and has been 'driven to destruction' (drive-on damage caused by the customer)"*.

Unhappy with its response, Mrs J brought a complaint to this Service, but her complaint only relates to the second complaint she made to MFL. Her first complaint had been resolved and, in any event, it was too late to bring it to this Service. And Mrs J hasn't chosen to obtain an independent inspection of the car in respect of her third complaint.

Our investigator looked at this complaint and said she thought it should be upheld. She concluded that the car wasn't of satisfactory quality when MFL supplied it to Mrs J.

MFL disagrees so the complaint comes to me to decide. It says the independent engineer's report is clear, and there's no evidence that these faults were present or developing at the point of supply; MFL can't be held responsible for them.

My initial conclusions are set out in my provisional decision. In it I said I didn't think Mrs J's complaint should be upheld, and I explained my reasoning as follows:

"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 Mrs 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 Mrs 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 Mrs J to show the fault was present when she first acquired the car. So, if I thought the car was faulty when Mrs 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 Mrs J has experienced problems with the car. That has been well evidenced by her testimony. But, whilst I accept that there has clearly been an issue that manifested itself in the seized water pump, MFL would only be responsible for putting things right if I'm satisfied that this issue and the related issues were present or developing when the car was supplied – that is to say, the car wasn't of satisfactory quality when Mrs J first acquired it.

The third party instructed by MFL to carry out an independent inspection of Mrs 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 vehicle started with a heavy squeal coming from the auxiliary belt and the water pump on idle. No warning lights or warning messages were illuminated on the dashboard".*
- "On inspection of the engine assembly, there were metallic fragments found to the area of the crank pulley and also upon the crank pulley, which we would suspect to be that potentially the water pump has seized within the engine block, causing the metallic fragments to expel out".*

So, I'm satisfied that the faults that Mrs J complained of are present and as she 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 and addendums went on to address this, and the independent engineer made the following points:

- "In our opinion, we can confirm the coolant was found to be depleted".*
- "We would suspect heavy potential oil and coolant cross-contamination".*
- "We consider the vehicle has been subject to an element of drive-on damage with the coolant being depleted and the heavy squeal coming from the auxiliary belt and water pump".*

The addendums concluded that:

- Earlier repairs "do not relate to the water pump failure and therefore are not failed/unsuccessful repairs".*
- "I do consider based on the evidence which is available to myself at this time, that the vehicle has been durable whilst in the ownership of the current client. However, the vehicle has been driven to destruction".*
- "Water pumps will deteriorate over a period of time, this is shown by the gland leaking within the pump and often a pink residue forming on or around the pump. There would be a loss of coolant, and the owner is responsible for regular oil and coolant checks in between servicing and this is a practice which is often overlooked".*

So, on the basis that these faults were not present or developing at the point of supply; were not the result of previous repairs that subsequently failed and; the car has been durable, I simply can't say that the car was of unsatisfactory quality when it was supplied.

Moreover, 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 currently persuaded that Mrs J's car was of unsatisfactory quality when supplied. So, I can't hold MFL responsible for the problems Mrs J has experienced with it.

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

I asked each party to let me have further information that I'd not already seen, by 23 May, that they'd like me to consider.

Mrs J says she doesn't agree with my provisional decision. I will not repeat all of her submissions here but, in summary, she says:

- She didn't notice any issues with the car, other than a funny noise, until January 2024 when she took it to a garage where it conducted a health check (and she's provided this Service with a copy of this document);
- she'd seen no warning lights, hadn't checked the coolant levels, and had not had the car serviced;

MFL was given sight of the vehicle health check provided by Mrs J, but having reviewed it, it said it agreed with the provisional 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 thank Mrs J for her comments, and I've considered them alongside all the evidence and arguments submitted by both parties, in order to decide what's fair and reasonable.

It may be helpful at this stage for me to explain that, although a number of points have been raised in response to my provisional decision, I will only be addressing those issues I consider to be materially relevant to the complaint in hand. Both parties should note, however, that although I may not address each individual point raised, I have given careful consideration to all of the submissions before arriving at my decision.

Having considered all of the evidence, I have reached the same conclusions as set out in my provisional decision and for the same reasons. However, I would like to make the following comments:

- The health check simply details what's wrong with the car – what faults the garage identified as part of its assessment. And the existence of these faults is not disputed by either party, or by the independent engineer;
- the legislation says that I can only hold MFL responsible for faults in certain circumstances, and some of these reasons include;

- if the fault was present or developing at the point of supply;
- if the fault is a result of a failed repair;
- if the car supplied was not durable.

And I'd need evidence of any of these things to persuade me that a car supplied *may* not have been of satisfactory quality.

- In this particular case, the independent engineer was quite clear. They said:
 - *"We can confirm the coolant was found to be depleted" ... "the owner is responsible for regular oil and coolant checks in between servicing and this is a practice which is often overlooked".*
 - Earlier repairs *"do not relate to the water pump failure and therefore are not failed/unsuccessful repairs"*.
 - *"We consider the vehicle has been subject to an element of drive-on damage with the coolant being depleted" ... "I do consider based on the evidence which is available to myself at this time, that the vehicle has been durable whilst in the ownership of the current client. However, the vehicle has been driven to destruction"*.

On the basis that these faults were not present or developing at the point of supply; were not the result of previous repairs that subsequently failed and; the car has been durable; I simply can't say that the car was of unsatisfactory quality when it was supplied.

In summary, I do not uphold Mrs J's complaint. I know she'll be disappointed with the outcome of her complaint, but I hope she 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 Mrs J to accept or reject my decision before 20 June 2025.

Andrew Macnamara
Ombudsman