DRN-5761399

The complaint

Mr J complains about the quality of a car supplied to him by Motonovo Finance Limited ('MF').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

MF supplied Mr J a car in early August 2024. Mr J said he had electrical problems with it from an early stage in respect of intermittent warning lights regarding electrical problems which necessitated the dealer to look into things.

Mr J says he was unhappy that the supplying dealer ('Dealer A') arranged diagnostics with a main dealer garage ('Garage A') which he was unfairly charged for in part.

Mr J later complained to MF about some other things – he said the car had been sold to him without an MOT, with a different mileage to advertised, and with worn tyres and an out of date tyre repair canister. He also said that the car was still faulty and he wanted to reject it.

MF did not uphold any of Mr J's complaint points. This service looked into things. Our investigator looked into the initial quality issues – and concluded that MF didn't have to reimburse Mr J for the diagnostic he paid for.

Mr J escalated the matter to ombudsman. In doing so he pointed out that some of his complaint points had not been addressed. I issued a provisional finding as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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 with minimum formality.

I note here that MF issued a final response letter after Mr J complained about the initial faults with the car. Then after this letter Mr J raised further complaint points. MF then did a follow up response to these complaint points. So, I consider that this service is able to get involved and look at everything here. I also consider it pragmatic to deal with everything together in this instance rather than split the matter into separate complaints.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. MF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is 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 Consumer Rights Act 2015 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') 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 can be aspects of the quality of goods.

MF supplied Mr J with a second-hand car that was around 3.5 years old and had done around 21,200 miles at the point of supply. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered some wear and tear – and was likely to require more maintenance than you might see on a newer, less road worn model. However, I note the dealer priced it at £17,390 which is a not an insignificant amount. And the car wasn't very old or very high mileage. So there is a reasonably high expectation as to quality here – particularly in relation to certain issues coming to light early.

Here it doesn't seem to be in dispute that within the first couple of months of having the car Mr J was getting intermittent warnings on the dashboard related to the car power and 'presense' systems. There is a diagnostic from November 2024 showing Garage A found faults in respect of the power unit. It also appears that although no fault code was found for the 'pre-sense' issue there was a technical note about a known issue which needed a software update to remedy.

There is a suggestion from MF that the power unit problem was caused by Mr J running the battery flat and manually charging it. But he denies this. I think it is difficult to say that based on the second-hand information recounted by MF it is clearly Mr J's fault. He was not using the car very long – so the chances of it being down to him are certainly lessened. His testimony on this seems credible too. I also note there was another apparent electrical fault with the car at the time – where there is no suggestion that it was Mr J's fault. I don't know if the issues could be connected – but it also puts doubt in my mind as to what underlying system issues were present when Mr J took the car in the first place.

Looking at the situation broadly I think a reasonable person would not expect the sort of issues Mr J had with the car at an early stage. I note they appear to relate to underlying electrical and power systems rather than general wear and tear. And I have factored in the age and mileage of the car, and the very short time Mr J had it (in which he had travelled notable but not excessive mileage). In conclusion, I think the car as supplied was not of satisfactory quality under the CRA.

It seems the problems were dealt with by Garage A at the time through various software means. Just because something is fixed in a non-mechanical way doesn't mean a repair hasn't taken place. I think a repair is a reasonable remedy and I don't have persuasive evidence Mr J rejected the car within the first 30 days. However, Mr J was unhappy that he had to pay for part of the diagnostic cost which identified the issues with the car – so I have thought about this.

MF has indicated that it is fair Mr J pays for the diagnostic as it was unable to evidence why the battery had gone flat (and suggests Mr J had taken responsibility for this). It also points to it offering Mr J an independent inspection and the fact he took it to Garage A to get looked at instead.

I don't appear to have the call recordings between MF and Mr J leading up to the inspection, including any discussion about the offer of an independent inspection. And MF's system notes are not very informative when it comes to these discussions. However, I have looked to piece together what likely occurred from Mr J's testimony and what MF says in its response letter.

Overall, I am not persuaded Mr J simply refused a free inspection in favour of one that would cost him. It doesn't make sense why he would do that. It appears more likely, from what I have seen, that the selling dealer ('Dealer A') informed him it would arrange a diagnostic with Garage A and gave Mr J the impression it would cover the cost. Therefore, Mr J appears to have told the independent inspection company that its involvement might not be necessary. This seems reasonable to me – as an independent inspection could take longer and be more expensive (for MF) if things could get diagnosed and sorted out by Garage A more easily. If MF were concerned about what costs might be incurred outside of its offer of a report it could have liaised more closely with Dealer A about it and been clearer with Mr J about it beforehand. I don't have evidence to show this occurred.

In summary, I am not persuaded the power issues were likely down to Mr J based on the evidence I have seen. Nor, am I persuaded he acted unfairly in respect of allowing Garage A to carry out initial diagnostics. So I think MF should reimburse him the £216 he has paid toward the diagnostics. It is worth noting that this is also likely to be less than what MF would have had to pay the independent inspection agency had Mr J gone down that route in any event.

I also note Mr J has said he was without the car for a day when it was being fixed. So I think he should get back a pro-rated refund of one day of his monthly rentals to reflect this.

Mr J has complained the finance was agreed with MF without the car having a valid MOT and refers to it being 'invalidated' by this. I am not going into matters such as enforceability of finance agreements – that is for the court. However, based on what is fair and reasonable I am not upholding this aspect of his complaint. I note the MOT was carried out on the day the finance agreement was signed so even if this was technically after it was signed I don't think it's fair and reasonable to say Mr J was supplied an unroadworthy car or that the finance agreement should have been cancelled.

Furthermore, Mr J has said there was a mileage discrepancy on the odometer at the time he got the car compared with the documented mileage on the finance agreement. He says that it had done an additional 39 miles to that recorded (36 before the MOT and an additional 3 miles after). I don't think it is entirely clear what the situation was here. If what Mr J says is accurate I think he would have likely been able to check the mileage of the car prior to agreement – and discover the majority of the additional mileage. But in any event I consider the total discrepancy is so minimal that it likely has no material impact on the condition or value of the car or Mr J's decision to take it. Also, I don't see where he raised it with Dealer A around the time of sale as I would have expected if it was such an issue. So I don't consider it is fair that MF has to do anything in relation to this now.

I also note Mr J has pointed out that when he got the diagnostic carried out in November 2024 by Garage A it was noted that the car had close to worn tyres and an expired tyre repair cannister. I expect if the car was sold with unsafe tyres or related wheel safety issues

it would have been flagged by the MOT. So I don't consider it likely the car was sold in an unsafe condition. I also note that tyres and consumable (like the repair spray) are generally seen as wear and tear items. By the time the issues were identified Mr J had travelled around 2,500 miles in what was already a second-hand car. So I think it is difficult to say that these issues rendered the car of unsatisfactory quality – I think they are part and parcel of the regular upkeep and maintenance of a car.

I am sorry to hear that Mr J complained to MF about ongoing issues with the car and asked to reject it. But I don't see where he provided it with any persuasive information to show he had a basis for doing so– so I can't fairly say it should have done more here. I also note that he has now decided to part ways with the car – which makes it more challenging getting to the bottom of any ongoing issues now.

I am sorry to hear about how Mr J says his experience with the car has impacted him. And I know I am not giving him exactly what he has asked for – but if he disagrees with my decision he is free to reject it and pursue his case against MF by more formal means instead.

My provisional decision

I partially uphold this complaint and direct MotoNovo Finance Limited to:

- *Reimburse Mr J £216 for the diagnostic costs he paid Garage A; and*
- *refund him for one day of rental relating to when the car was in with Garage A for repairs on 21 November 2024; and*
- *pay 8% simple yearly interest on these refunds calculated from the date of payment to the date of settlement.*

If MF considers it should deduct tax from my interest award it should provide Mr J with a certificate of tax deduction if he requests this.

MF accepted this but Mr J did not.

In summary, Mr J said:

- He had restricted use of the car from August 2024 until January 2025 because of underlying faults (and he was told by MF to stop driving it when he called them to report the faults on 14 November 2024); and
- he would like me to consider awarding him distress and inconvenience for what has gone on.

I issued another provisional finding which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank the parties for their responses to my initial provisional finding. I am only commenting on what I consider key and material here. After considering what Mr J has said I think it fair to modify my redress.

I can see Mr J contacted MF on 14 November 2024 reporting the issues with the car. The system notes are unclear about whether he was advised to stop driving then but I can see he told MF about the warning lights and that he was reluctant to drive at the time. So it seems likely it would have told him not to drive from that point. So, on reflection I think it

more likely than not that Mr J reasonably didn't have use of the car from 14 November 2024 until when it was repaired. So he should get a pro-rated refund of payments from 14 November 2024 up to and including the 21 November 2024.

Mr J says he had impaired use due to the power issues from the start of the agreement in August 2024. But it looks like he told MF the issues started in mid-September which isn't consistent with that. Furthermore, he has been able to travel in the car about 2,500 miles up until the repair was carried out which is notable. So I am not persuaded his use was appreciably impacted prior to the repairs. However, I note he told MF the issues were intermittent and when it happened the car had difficulty starting so I think it fair that MF refund him 5% of monthly payments paid up to 14 November 2024 to reflect impaired use up until the repairs.

I note Mr J has requested a payment for distress and inconvenience so I have thought more about this. I can see that the issue has caused Mr J worry and inconvenience in getting the car repaired especially as he has mentioned his ill health making this worse. I can't see that it went on for a prolonged period of time, and MF did appear supportive when Mr J contacted it (offering to have a report done at its cost as well) which mitigates the situation. After considering our guidance on awards for distress and inconvenience I think that an additional award of £150 is fair and reasonable here.

Mr J has referred to the time post the repairs and not using the car up until January 2025. As I mentioned before there is not persuasive evidence that the car was inherently faulty after it was repaired. And now Mr J has sold it the matter is more difficult to get to the bottom of. So I don't think it fair that MF award a greater refund here.

Mr J has referred to the 8% out of pocket interest award on refunds. I am not sure what Mr J means by this award being 'devalued' and 'pointless'. He refers to a 'clawback' but I don't know exactly what he means. If he refers to MF deducting tax from any interest award – this is something it can fairly chose to do if it is required. MF will issue a certificate of deduction which Mr J can use to enquire about any rebate he may be entitled to.

For completeness, I note that Mr J said he would not have purchased the car if the full facts had been known about the condition. However, it is not reasonable to deem this a mis-sale of the car when MF were not aware of the fault with the car. Furthermore, Mr J has sold the car now – which presents issues with a remedy of recission in any event.

My provisional decision

I partially uphold this complaint and direct Motonovo Finance Limited to:

- *Reimburse Mr J £216 for the diagnostic costs he paid Garage A; and*
- *refund him pro-rated rentals relating to the days from 14 November to 21 November 2024;*
- *refund him 5% of each monthly rental paid relating to the period from inception of the agreement up to 14 November 2024;*
- *pay 8% simple yearly interest on these refunds calculated from the date of payment to the date of settlement; and*
- *pay him £150 for distress and inconvenience.*

If MF considers it should deduct tax from my interest award it should provide Mr J with a certificate of tax deduction if he requests this.

MF accepted the decision. Mr J says he largely agrees with my findings but says in summary:

- I have misunderstood the law by stating that it is unreasonable to deem this a mis-sale due to MF's knowledge of any faults. And that under the CRA MF is liable whether it knew the condition of the car or not.
- The car did not met his needs or fulfil what it should have done and caused significant impact on him – and he considers he should get back a large proportion of his deposit.
- He disagrees that MF should be able to deduct tax from the 8% interest award.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

I do not mean this as a discourtesy – but I disagree with Mr J's assertion that I have misunderstood the law. I understand that a finding of breach of contract under the CRA is not dependant on the knowledge of the supplier of any faults. I don't consider I claimed otherwise. In fact I have made a finding there was a breach of contract under the CRA in relation to specific initial quality issues Mr J had with the car without reference to MF's prior knowledge of any faults.

When I referred to the knowledge of MF it was in respect of what appeared to be a claim by Mr J for recission of the contract on the basis that had he been made aware of a fault at the time of sale he would never have bought the car. However, I don't think this can fairly be deemed a mis-sale warranting recission for the reasons I have already given.

I thank Mr J for reiterating the impact of the situation on him. I am sorry to hear about the impact on him and his health. However, I was already aware of these points and I don't consider my redress is unfair in the particular circumstances. In summary, I accept MF is liable for some issues initial with the car. But I disagree that Mr J has evidenced that it is liable for anything that occurred after that. It follows that the level of distress and inconvenience I can fairly hold MF liable for is more limited here.

I respectfully disagree that I can direct MF on tax matters. If Mr J considers he is due a rebate or that MF has acted unfairly in making any tax deduction he can escalate this with HMRC.

Putting things right

I direct MF to put things right as set out below.

My final decision

I partially uphold this complaint and direct Motonovo Finance Limited to:

- Reimburse Mr J £216 for the diagnostic costs he paid Garage A; and
- refund him pro-rated rentals relating to the days from 14 November to 21 November 2024;
- refund him 5% of each monthly rental paid relating to the period from inception of the agreement up to 14 November 2024;

- pay 8% simple yearly interest on these refunds calculated from the date of payment to the date of settlement; and
- pay him £150 for distress and inconvenience.

If MF considers it should deduct tax from my interest award it should provide Mr J with a certificate of tax deduction if he requests this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 September 2025.

Mark Lancod
Ombudsman