

complaint

Miss G complains that the used car she acquired via a hire purchase with FirstRand Bank Limited (trading as "MotoNovo") wasn't of satisfactory quality.

background

In September 2017 Miss G acquired a used car via a five year hire purchase agreement with MotoNovo. The car was seven years old and had a mileage of around 71,300.

Although the car had originally passed an MOT in March 2017 the dealership decided to re-test it in order to provide a full 12 month MOT when it was sold. The car underwent an MOT test at the beginning of September 2017, which it failed due to the strut having excessive movement, the rear brake binding the outside wheel, and issues with a headlight and registration plate lamp.

MotoNovo says repairs to these faults were carried out two weeks later, but the car wasn't re-tested for an MOT at that time.

Miss G acquired the car around two weeks after it had failed the MOT. MotoNovo says that Miss G was told the car needed to have a new MOT test and that would take an extra day to arrange. It says Miss G said she was in a hurry and agreed to take the car and bring it back for the MOT when she had more time, as the original one was still valid.

Miss G disputes she was aware the car had a recently failed MOT. She says the dealership told her they would do a new one as part of its customer service and this would provide the car with a full 12-month MOT.

Miss G took the car, and returned it in October 2017, when it passed its MOT.

Miss G says that she had problems with the car within a short time of acquiring it. She reported a number of problems to the dealership about wheel noise, the vehicle shuddering and the car cutting out. She says that in the first six months repairs were carried out to the car's brakes, battery, back plate and particulate sensor.

Miss G says the car continued to feel unsafe and driving it was a poor experience. In July 2018 Miss G contacted MotoNovo and said she wanted to terminate the agreement as the car had gone into limp mode and was undrivable. MotoNovo offered to voluntarily terminate the agreement but Miss G was required to pay 50% of the credit costs. Miss G declined to do this, and a complaint was opened by MotoNovo.

Miss G was advised by the dealership that the car needed an oil service, but she disagreed. MotoNovo said that in order to investigate if past repairs had failed, or whether there'd been a fault at the point of sale, it would need an independent engineer's report.

Miss G says she looked into getting an independent report, but was told it would only be visual and wouldn't strip the car. She said she was concerned that this would be a waste of money if the issue with the car was electrical. She arranged instead for the car to have a diagnostic report prepared by the manufacturer.

The diagnostic report stated that the car's software was outdated; the back plate was scraping off the brake disc; and there was leaking from the radiator and intercooler pipe.

MotoNovo again requested that Miss G arrange for the car to be independently inspected, and said without such a report there was no evidence it hadn't been of satisfactory quality at the point of sale.

Miss G complained to this service. Our investigator recommended that Miss G's complaint should be upheld. She said she accepted that Miss G hadn't agreed to take the car with a failed MOT, and that she hadn't known about the September 2017 MOT when she'd acquired it.

Our investigator said she thought the evidence showed the car had had repairs in the first six months but that these hadn't been successful. So she thought the car hadn't been of satisfactory quality at the point of sale.

In January 2019 Miss G arranged for some repairs to be carried out in order to have the car MOT'd and taxed. However the repairs hadn't fully fixed the car. The investigator noted the car had been used by Miss G and so recommended that MotoNovo could either have it fully inspected to show it was of satisfactory quality at the point of sale, or alternatively allow Miss G to reject it.

If the car was rejected, then MotoNovo was to:

- End the agreement with nothing further to pay
- Collect the car
- Refund Miss G 30% of her monthly payments under the agreement together with 8% interest as compensation for the distress and inconvenience caused to her by the issues and the number of repairs required by the car
- Refund the most recent repairs undertaken in January 2019 plus 8% interest

MotoNovo disagreed with our investigator's view. It said when the car was sold it had a valid MOT in place from March 2016 and that Miss G had agreed to take the car "pending repairs." It said the MOT failures had all been fixed before Miss G had acquired the car.

It said the current problems with the leaking radiator/coolant had arisen 16 months after Miss G had acquired the car and so weren't faults that had arisen at the point of sale. These could be due to wear and tear, and so MotoNovo wasn't liable for them.

The complaint was passed to me as the parties couldn't agree. I issued a provisional decision along the following lines.

Under the Consumer Rights Act 2015 goods that are supplied must be of "satisfactory quality," "fit for purpose" and "as described". When deciding the meaning of "satisfactory condition" for a used car then account needs to be taken of its age and mileage.

I'd seen that at the point of sale the car was a little over seven years old and had a mileage of about 71,000, which was close to the average mileage for a car of that age. Miss G had bought it for a little under the guide price for a car of that age and model. I appreciated with a car of that age that, unlike a new car, some issues with wear and tear would be expected to arise over time. However, it should've still been fit for purpose.

MotoNovo said that at the time the car was sold it had a valid MOT in place, as the original MOT it passed in March 2016 was still valid. It also said Miss G was fully aware the car had failed an MOT in September 2017 and was told the repair work highlighted by that had already taken place. And it was agreed she'd bring the car back for the MOT to be redone.

Miss G said she wasn't aware of the failed MOT, and had been told the new MOT was part of the dealership's service.

I agreed with our investigator that it seemed unlikely Miss G would've taken the car knowing it had failed an MOT. I didn't think many people would've understood that the original MOT wasn't invalidated by a second test. I also thought most people would've been concerned to hear that a car they'd intended to buy had failed a roadworthy test. I'd seen no evidence that Miss G was shown that the repairs had been undertaken, and I thought she would've wanted that if she'd agreed to take the car and then bring it back later for the test.

I'd seen the paperwork that MotoNovo said showed the repair work was undertaken. It's three "Parts Invoices" together with a copy of the failed MOT. These documents have handwritten ticks and a note on one page saying "MOT repairs". But I didn't think this was particularly clear in proving that the repairs had been undertaken on the date shown for the invoices. But I was aware the car had passed an MOT in October 2017, so it was likely it was repaired at some point before that.

MotoNovo said the car went straight to the MOT test when brought in by Miss G in October 2017, so no repairs had been carried out at that time. But I'd seen no evidence that confirmed that was what had happened. So I didn't think the evidence I'd seen was enough to say the car had been repaired before Miss G acquired it.

Miss G said there were issues with the car after four weeks of her acquiring it, and she'd also had to fit a new battery within that month. The issues she'd raised concerned wheel noise, the vehicle shuddering and it going into limp mode.

I didn't think it was disputed that the car had various repairs to the brakes, back plate and diesel particulate filter all within the first six months. Miss G said these repairs didn't fix the problems and so she'd had a diagnostic report prepared. This report was conducted in September 2018 and found that the brake disc was scraping on the backing plate and that there were leaks around the radiator and the intercooler pipe (which was noted as excessive). Miss G said the technician who'd carried out the diagnostics told her that the reason for the juddering was due to the leaking coolant.

MotoNovo was asked by our investigator to have the car independently inspected but it chose not to do so as it said there was no evidence the car was faulty at the point of sale. But I disagreed with MotoNovo's view here. I thought the evidence showed that Miss G had raised a number of complaints about the car's performance within the first six months of the agreement. And that the issues Miss G had had with the car continued despite various repairs being carried out, and didn't appear to have changed in nature over time (for instance the car continued to judder, cut out, and go into limp mode). And while I accepted that a problem with the battery may well have been due to wear and tear (they do requiring replacing over time), I didn't think the other issues were ones that would've been expected in car of that age. I thought most people would've expected the car to have lasted longer than it had.

So looking at the evidence, I thought it supported Miss G's view that the car wasn't of satisfactory quality at the point of sale. I thought it was likely the leaks from the radiator and of the coolant were either present or developing when Miss G acquired the car. And as MotoNovo had declined to obtain evidence to show the car was of satisfactory condition, then I think it was fair and reasonable for Miss G to now be able to reject the car and for the agreement to come to an end with nothing further owing.

I'd seen that in the time Miss G had had the car she had driven around 9,000 miles. That was about half the average expected mileage. So I thought it would've been fair for MotoNovo to reimburse her half of the monthly payments she had made under the agreement as compensation for the distress and inconvenience of not being able to use the car as she'd intended.

Miss G also paid for some repairs to the car in January 2019 as she'd needed to get it taxed and needed it to have a valid MOT to be able to do so. I thought this was reasonable for her to have arranged these, and I thought it would be fair for MotoNovo to reimburse these cost in the circumstances.

So I was intending to uphold Miss G's complaint.

Miss G says she agrees with my provisional decision. She says she was never made aware that the car had failed an MOT before she'd acquired it and only learnt this once she'd complained to this service and her complaint was investigated.

MotoNovo hasn't responded.

my findings

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

I haven't changed my view as I haven't been asked to re-consider any of the evidence or my conclusions. So for the reasons set out above I'm upholding Miss G's complaint and I'm asking MotoNovo to do the following:

- End the agreement with nothing further to pay and mark it as settled
- Collect the car at no cost to Miss G.
- Reimburse her 50% of the monthly payments she has made under the agreement together with interest
- Ensure there is no adverse information about this agreement in Miss G's credit file.
- Reimburse Miss G the costs of the repairs to the car carried out in January 2019, subject to vouching, together with interest
- Reimburse Miss G the costs of the road tax taken out in January 2019, subject to vouching, together with interest.

my final decision

For the reasons given above, I'm intending to uphold Miss G's complaint. To resolve matters, I'm asking FirstRand Bank Limited to do the following:

- End the agreement with nothing further to pay and mark it as settled
- Collect the car at no cost to Miss G
- Reimburse her 50% of the monthly payments she has made under the agreement together with interest at the rate of 8% per year simple from the date of payment until the date of settlement
- Ensure there is no adverse information about this agreement in Miss G's credit file.
- Reimburse Miss G the costs of the repairs to the car carried out in January 2019, subject to vouching, together with interest at the rate of 8% per year simple from the date of payment until the date of settlement
- Reimburse Miss G the costs of the road tax taken out in January 2019, subject to vouching, together with interest at the rate of 8% per year simple from the date of payment until the date of settlement.

If FirstRand Bank Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss G how much it's taken off. It should also give Miss G a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 24 May 2019.

Jocelyn Griffith
ombudsman