

complaint

Mr C complains that a used car he got with finance provided by FirstRand Bank Limited (trading as MotoNovo Finance) is of unsatisfactory quality.

Mr C has been represented at times by a third party but I've referred to anything that's been said on his behalf as if Mr C had said it himself, to keep things simple.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 20 December 2019. A copy of this provisional decision is attached and it forms part of my final decision.

In my provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties. Both parties have now responded.

Mr C accepts my provisional decision but he's unhappy that he had to pay to insure the car while it was out of use and he asked me to take this into consideration.

MotoNovo doesn't accept what I have said and says (in summary):-

- after 6 months of ownership the onus lies with Mr C to prove that faults were present or developing at the point of sale;
- it asked Mr C to supply a suitable report showing there was a fault present or developing at the point of sale but he didn't;
- MotoNovo spoke to the manufacturer and, whilst the manufacturer agreed the issue with Mr C's car initially looked as if it might be due to the known fault, further investigation revealed that it was not related to the recalled part so the manufacturer did not accept responsibility and refused to pay for repairs.

my findings

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

I understand it is frustrating for Mr C that he paid for insurance while this car was off the road. I understand he bought another vehicle during that time and I think it would probably have been open to him to transfer or cancel this insurance if he'd wanted to - which would have served to mitigate his losses. I'm not persuaded that I can reasonably require MotoNovo to provide a refund in this respect, in this situation.

I have considered MotoNovo's comments carefully. MotoNovo has acknowledged that even the manufacturer here agreed initially that this breakdown looked as if it was due to the failure of the recalled part. For the reasons set out in my provisional decision, I remain of the view that it was not fair or reasonable for MotoNovo to insist that Mr C supply an expert's report - in these particular circumstances. And I think it was open to MotoNovo to have the car checked independently, if it had reason to think there was another cause.

I appreciate MotoNovo says the manufacturer subsequently declined to cover the repairs because the recalled part wasn't at fault. And I've seen a reference in some correspondence

from the manufacturer to the breakdown having resulted from an oil issue. If the issue here was oil related then I would have expected one of the dealers that MotoNovo contacted in August 2018 to mention this - but neither of them did (in the call recordings that I have listened to).

The manufacturer wouldn't send Mr C any reports or findings in relation to this car. Our investigator has also been unable to obtain any further information from the manufacturer - despite several emails and phone calls. I understand MotoNovo has similarly not been provided with the results of any investigation undertaken by (or on behalf of) the manufacturer.

I can't be certain what went wrong with this car exactly, from the information I've seen. But, for the reasons I've explained already, I remain of the view, that it's more likely than not this car had an inherent issue when it was supplied. And I see no fair or reasonable grounds to depart from my provisional conclusions.

my final decision

My decision is I uphold this complaint and I require FirstRand Bank Limited (trading as MotoNovo Finance) to:-

1. refund repair costs of £1,225 along with recovery costs of £130 and £45 for diagnostic tests, on provision of evidence of payment;
2. refund any finance payments made from May 2018 until February 2019;
3. pay interest on the above refunds at 8% simple per year from the date of payment to the date of settlement;
4. remove any adverse information from Mr C's credit file in relation to the period referred to at 2 above; and
5. pay Mr C £200 compensation for distress and inconvenience.

If MotoNovo considers that it's required by HM Revenue & Customs to withhold income tax from the interest payment referred to above, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he requests one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 April 2020.

Claire Jackson
ombudsman

copy provisional decision

complaint

Mr C complains that a used car he got with finance provided by FirstRand Bank Limited (trading as MotoNovo) is of unsatisfactory quality.

background

Mr C got this car in September 2017 with a hire purchase agreement (HPA) from MotoNovo. It was three and a half years old, cost £7,250 and had 21,000 miles on the clock at the point of supply. In May 2018 the car broke down and had to be recovered to a local garage. The garage found evidence of coolant in the cylinders. It told Mr C that the engine had overheated which had damaged the cylinder head and block. The garage thought the engine in Mr C's car might have a known manufacturing defect and suggested he take the car to a main dealer to be checked.

Mr C had the car checked by two main dealers. He says they both agreed about the cause of the breakdown and one said the number of the engine in his car did not match the logbook, suggesting the engine had been replaced at some point. Mr C felt the car was mis-sold and of unsatisfactory quality so he contacted MotoNovo.

MotoNovo got in touch with both of the main dealerships that had checked the car. The first one (that I'll refer to as C) confirmed coolant was found in the engine cylinders but said it hadn't investigated the specific cause of that. The second dealer (that I'll refer to as L) said the car has the correct engine fitted and this had overheated and needed replacing but the car was outside the manufacturer's warranty period and it was waiting to see what Mr C wanted to do.

As Mr C had acquired the car ten months earlier and been able to drive it about 3,000 miles after that, MotoNovo thought it was unlikely the car was faulty when he got it. MotoNovo told Mr C it would reconsider if he provided an independent engineer's report showing the problem would have been present or developing at the outset.

Mr C had the car fixed in January 2019 and paid about £1,500 for a new engine, clutch and turbo. He told our investigator he had to pay about another £1,000 for temporary insurance, amongst other things, while the car was off the road. He says this whole experience has been very stressful, he has now sold the car and he wants MotoNovo to reimburse his financial losses.

One of our investigators looked at the evidence. He's satisfied it's likely this car had a significant engine problem which the manufacturer has accepted is a defect. He considers the car was probably of unsatisfactory quality at the point of supply. He recommends MotoNovo should refund eight monthly payments (for the time Mr C was unable to use the car) and reimburse £130 recovery costs, £45 for diagnostic checks and £1,225 for repairs, plus interest.

Mr C accepted this outcome but MotoNovo asked for an ombudsman to review the matter. It says (in summary)

- Mr C had the car for more than six months so the onus was on him (under the Consumer Rights Act 2015) (CRA) to show that faults were present or developing at the point of supply;
- Mr C was able to drive over 2,856 miles in about four months and he's unlikely to have been able to do that if the car was faulty when he got it;
- there's no manufacturer's recall for Mr C's registration, a dealer has confirmed the car's got the correct engine and the manufacturer hasn't accepted liability for the breakdown; and
- Mr C needed to provide independent evidence in this situation but he didn't and there's nothing to show that this car had faults present or developing at the point of supply.

my provisional findings

I've considered all the evidence and arguments available so far to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete - as some of it is here - I make my decision on the balance of probabilities. In other words, I consider what is most likely to have happened, in the light of the available evidence and the wider circumstances.

MotoNovo supplied this car to Mr C under a HPA and it was obliged to ensure that the car was of satisfactory quality when he got it, under the CRA. This service provides informal dispute resolution and I must take account of the relevant law (amongst other things). I'm satisfied this includes the CRA here. But, it's not my role to apply the law - only a court can do that. I make my decision based on what I think is fair and reasonable - in all of the circumstances of this complaint.

There's no dispute that Mr C's car broke down in May 2018 and the engine had to be replaced. Mr C thinks the breakdown was caused by the failure of a specific part that the manufacturer of this car has accepted was defective - namely a coolant hose. MotoNovo doesn't think there's enough evidence to show what went wrong with Mr C's car. Given the time he's had it, the distance covered and the fact the problem appeared more than six months after the car was supplied, it considers Mr C needs to provide evidence that the car had an inherent issue present at the point of supply.

I accept that 19(14) of the CRA says if goods do not "conform to the contract" (are of unsatisfactory quality for our purposes) within six months of supply then they're taken not to have conformed at the point of supply. But, I don't think that means any issue arising *after* six months must not have been present at the point of supply. Section 19(15) of the CRA says the presumption under s19(14) doesn't apply if it's established goods did conform to the contract at the outset - or its "*application is incompatible with the nature of the goods or with how they failed to conform with the contract*".

I don't think cars of this age and mileage usually need the engine replacing. And I'm satisfied, from paperwork I've seen, that the relevant manufacturer has acknowledged there is an issue with a specific part in some of its engines - like the one in Mr C's car. I appreciate this doesn't mean that every breakdown involving this sort of engine must have been caused by this known defect. But, I think it is reasonable to consider the manufacturer's recall and its potential relevance to what happened here.

The information available on the manufacturer's website says the recalled part is a particular type of hose. I have listened to recordings of two calls MotoNovo made to C and L enquiring about the checks done on Mr C's car. I note the first person MotoNovo spoke to at L said the problem was due to a coolant leak and, given the engine involved, the speaker thought that suggested it was probably due to the particular part that's subject to the manufacturer's recall. I accept another technician then came on the line and said the repairs required weren't covered by the manufacturer's warranty. But, I think it would have been reasonable for MotoNovo to question L a bit further about the likely role of the recalled part in the breakdown - given the first technician's comments.

In light of these comments, and the fact that Mr C's car has the sort of engine that may contain the faulty part which the manufacturer had already identified and subjected to a recall, I am minded to find it's more likely than not this breakdown was caused by an inherent manufacturing issue.

I've seen an exchange of emails between the manufacturer and Mr C and I acknowledge the manufacturer hasn't accepted liability. But I think the reason the manufacturer gave Mr C for not doing so seems inconsistent with the findings of both main dealers. The manufacturer told Mr C that one of the dealers had said the problem with his car was caused by oil, not coolant. Whereas the evidence I've seen indicates both main dealers told MotoNovo that the issue was due to a coolant problem not an oil leak - and the third party garage that saw the car first identified the issue as coolant, not oil related.

On balance, I think the evidence suggests it's more likely than not this car had an inherent manufacturing issue. If MotoNovo had any doubts about that, it could have arranged for the car to be inspected by an independent third party. I appreciate MotoNovo felt it was up to Mr C to do this but I don't think that was fair or reasonable, in these particular circumstances.

On the evidence I have at the moment, I can't be absolutely certain what went wrong with this car. But, I wouldn't expect a car of this age and mileage to require a new engine, in the usual course of events. I think the available evidence suggests the nature of this breakdown was consistent with the failure of an engine part that the manufacturer has acknowledged may be defective in this sort of car. This seems to be what L concluded was the most likely cause initially and I'm minded to find, on balance, that this car probably had an inherent manufacturing issue.

I'm satisfied this issue would have been present or developing at the point of supply meaning the car was of unsatisfactory quality when Mr C got it. And I am inclined to agree with our investigator's recommendation that Mr C should have the money he paid for recovery, diagnostic checks and repairs refunded.

Mr C has supplied an invoice showing he paid £1,225 to have the engine replaced. This says he paid another £296 for work to the clutch and turbo at the same time. If this work was required as a direct result of the engine breakdown then I might be minded to find it fair that MotoNovo should refund the cost of this as well. But, I don't currently have sufficient evidence to reasonably make such a finding. It is open to Mr C to provide additional evidence in response to this provisional decision and I will take that into account when I make my final decision.

It looks as if Mr C was unable to use the car from May 2018 until February 2019 as a result of the faulty engine. I agree with our investigator he should have the monthly payments made during this time refunded. I note Mr C says he has incurred additional costs in respect of insurance and other things but I have no evidence about that. If Mr C is able to supply some more information - along with supporting documents ideally - I will consider this when I make my final decision.

As far as I can see Mr C maintained his repayments towards the finance agreement but, in the event that MotoNovo recorded any adverse information on his credit file during the time the car was off the road, I consider this should be removed. Mr C has explained how difficult was for him to be without a car for such a long time - the stress he experienced had an impact on his mental health and caused financial problems. I am minded to find MotoNovo should pay Mr C £200 compensation for his upset and inconvenience.

I now invite the parties to consider my provisional findings and let me have any further comments or information by the date below. After that I'll look at all of the available evidence and make my final decision.

my provisional decision

Subject to any further submissions that I may receive from the parties by 3 January 2020, my provisional decision is I intend to uphold this complaint and require FirstRand Bank Limited (trading as MotoNovo Finance) to:-

- 1 refund repair costs of £1,225;
- 2 refund the cost of recovery £130 and £45 for diagnostic tests;
- 3 refund finance payments made from May 2018 until February 2019;
- 4 pay interest on the above refunds at 8% simple per year from the date of payment to the date of settlement;
- 5 remove any adverse information from Mr C's credit file for the period referred to at 3 above; and
- 6 pay Mr C £200 for distress and inconvenience.