

complaint

Miss M complains that a used car she got with finance provided by FirstRand Bank Limited (trading as MotoNovo Finance) was of unsatisfactory quality.

Miss M is represented by a relative, but I'll refer to anything that's been said on her behalf as if Miss M had said it herself - to keep things simple.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 8 November 2019 – a copy of this decision is attached and 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.

Miss M accepted my provisional findings. She supplied paperwork that indicates she paid a deposit of £500 for this car. Our investigator sent this to MotoNovo so it had the chance to comment. MotoNovo accepted my provisional decision and it hasn't objected to refunding the £500 deposit.

my findings

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

In light of the responses received from the parties, I see no reason to depart from my provisional conclusions except to clarify that the amount of the deposit which should be refunded is £500.

my final decision

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

1. take the car back at no cost to Miss M and cancel the finance with nothing further owing;
2. refund the deposit of £500;
3. refund any payments made towards the finance from March 2018;
4. refund/pay garage costs incurred by Miss M after 8 March 2018 in respect of repair attempts and storage - upon receipt of relevant invoices/proof of payment from Miss M;
5. if it has not already done so, refund the cost of the expert's report;
6. pay interest on the refunds above at 8% simple a year from the date of payment to the date of settlement;
7. remove any adverse information recorded on Miss M's credit file; and
8. pay Miss M £200 compensation for distress and inconvenience.

If MotoNovo considers that it's required by HM Revenue & Customs to withhold income tax from the interest referred to above, it should tell Miss M how much it's taken off. It should also give Miss M 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 M to accept or reject my decision before 28 December 2019.

Claire Jackson
ombudsman

**copy provisional decision
complaint**

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Miss M is represented by a relative, but I'll refer to anything that's been said on her behalf as if Miss M had said it herself - to keep things simple.

background

Miss M got this car in August 2017 with a hire purchase agreement (HPA) from MotoNovo. Seven months later a light came on in the car and it was taken to a local garage. That garage told Miss M that the engine would need to be replaced - as it looked as if the oil had never been changed which caused extensive damage.

Miss M contacted MotoNovo but it didn't think there was enough evidence to show that the car was faulty at the outset and wouldn't accept liability. It sent Miss M some information about independent experts who might be able to inspect the car and provide a report.

Miss M arranged for one of those experts to check the car. He agreed the engine is damaged and needs replacing. He thought the engine should have lasted much longer and the damage had probably resulted from accelerated wear due to long term maintenance failures. Miss M sent a copy of the expert's report to MotoNovo but it didn't accept responsibility.

MotoNovo said (in summary):

- the expert highlighted the significance of past servicing but this car was supplied without a service history and Miss M knew that - so she accepted the risk that the car might not have been maintained previously;
- it would have been reasonable for Miss M to have the car serviced soon after sale in these circumstances - but she didn't; and
- Miss M was able to drive the car around 5,000 miles after supply which shows it was of satisfactory quality when she got it and her failure to maintain resulted in engine damage.

MotoNovo agreed to refund the cost of the expert's report and offered to pay Miss M £150 as a goodwill gesture.

One of our adjudicators looked into the matter and he recommends the complaint should be upheld. He thinks it's likely this car was faulty at the point of supply - based on the conclusions of the independent expert. He doesn't think the fact that Miss M accepted the car without a service history means it was fair or reasonable to supply a car with a developing and progressive fault. He's satisfied the car needs a new engine and he doesn't think repair is a reasonable option at this stage. He says MotoNovo should:

- take the car back at no cost to Miss M;
- cancel the finance with nothing further to pay;
- refund all of the payments that Miss M has made since 8 March 2018 and remove any arrears accumulated during this period;
- refund garage costs incurred after 8 March 2018 relating to repair attempts and storage - upon receipt of related invoices from Miss M;
- remove any adverse information recorded on Miss M's credit file in relation to the HPA; and
- pay Miss M £200 compensation for distress and inconvenience.

MotoNovo doesn't think this is fair. It asked for an ombudsman to review the matter and says (in summary):

- the third party garage found there was barely any oil present and low oil levels can cause significant damage over a relatively short period so Miss M's use of the car and negligence in not having it serviced contributed to the engine failure;
- the expert found faults were developing at point of sale but he also said excessive crankcase pressure had affected the engine and this was caused by a lack of maintenance and/or poor or missed servicing - so Miss M should be accountable for that;
- the expert said the car had only achieved about a third of its normal life expectancy which is questionable as this depends on the way a car is maintained and driven; and
- garages and testing stations have been required to check the diesel particulate filter (DPF) as part of the MOT test since February 2014 and this car passed in 2016 and 2017 without any problems.

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.

MotoNovo supplied this car to Miss M under a finance agreement. So it was required to ensure that the car was of satisfactory quality at the point of supply under the Consumer Rights Act 2015 (CRA).

MotoNovo says Miss M was able to drive the car for about 5,000 miles after supply which shows it was of satisfactory quality when she got it. She also knew the car didn't have a service history so she accepted the associated risk and then damaged the engine by failing to have the car serviced within six months of getting it.

the lack of service history

I must take the relevant law (amongst other things) into account when I make my decision. I am satisfied that MotoNovo was required to ensure that this car was of satisfactory quality at the point of supply - and that obligation cannot generally be excluded or restricted under the CRA.

Miss M has confirmed that she knew this car did not have a full service history. If I understand MotoNovo correctly, I think it suggests this should impact on the level of quality she could reasonably expect of this car.

I don't think it's unusual for used cars to have some or all of the service history missing - evidence that a car has been serviced can be lost or mislaid. And I can't fairly find that simply telling a customer there's no service history available means that consumer is deemed to accept that a car wasn't maintained - and appreciate the impact that this may have on durability in particular.

Miss M says the salesman here assured her that this car had been checked and was in good condition. And she relied on that when she accepted the car and agreed to take out the finance. I can't be certain what was said exactly at the time. But, if a consumer like Miss M was told that a vehicle had no service history and it was being supplied without even the most basic of pre-sale checks - and she understood and accepted the associated risk (as MotoNovo seems to be suggesting here) - I would expect to see this not only documented very carefully but also reflected in the price paid.

I have seen nothing to show that's what happened here. I'm not persuaded that the lack of service history should have alerted Miss M to the fact there was a maintenance problem - or means she should have had this car serviced sooner - in these particular circumstances. And I see no fair or reasonable grounds to find MotoNovo should be relieved of its obligation to supply goods of satisfactory quality, in this situation.

was the car of satisfactory quality?

The level of quality that is satisfactory will vary according to individual circumstances but it's generally reasonable to consider the cost, mileage and age at the point of supply in the case of a used car. Miss M got this car in August 2017. It was about four years old and cost just over £10,000 with around 92,000 miles on the clock. I think a reasonable person would appreciate that a car like this was not likely to be perfect - there would be some wear and tear present and parts would need to be repaired or replaced sooner or later.

As far as I can see, Miss M didn't have any issues with the car until March 2018 when the oil warning light came on. I acknowledge she'd been able to drive the car about 5,000 miles by this stage. That's a bit less than the average mileage - of around 1,000 miles a month. And I think this issue would probably have been apparent sooner - within six months - if the car had been driven by an average driver. I am not persuaded that the fact Miss M was able to drive as far as she did means there was no fault present at the point of supply.

When the car was taken to a local garage, it found significant engine damage and evidence which suggested oil had never been changed. The independent expert who inspected the car concluded (essentially) that lack of servicing over the long term had probably caused this problem. He said (insofar as it's relevant here)

"the vast majority of the wear present...causing the over pressurisation of the crankcase, will have been developing prior to the point of [supply]...the condition may have been difficult to identify at commencement but [it] was developing [and]..lack of servicing [has caused] internal engine issues which would, on the balance of probability, have been developing to a certain extent at purchase. The condition is progressive ...over an extended period [and] the vast majority of the wear present which ..[caused] the fault..will have been developing prior to the point of hire commencement. The condition under review is not the type to have solely developed in the hire period without substantial deterioration at the point of hire".

I'm satisfied the expert is independent and seems to have relevant expertise and experience. His report is fairly detailed and I think it seems to be thorough. I find it reasonable to give some weight to what he says. I have considered what MotoNovo says about the DPF and MOT checks but I am not persuaded this means the expert's conclusions are wrong.

On balance, I think it is more likely than not this car had significant engine damage and that was caused by a failure to service and/or maintain the vehicle over some time - before it was supplied to Miss M. So, I've given some thought as to whether this means that a car of this age and mileage was of unsatisfactory quality at the point of supply.

As I explained above, I think it's usually accepted that there will be some wear and tear present when a consumer acquires a used car. But, I don't think most people would expect to have to replace the engine in a four year old car - even one that had 92,000 miles on the clock - after just seven months. And I am satisfied it's likely this car was of unsatisfactory quality at the point of supply.

putting things right

Under the CRA a supplier like MotoNovo may be entitled to have one opportunity to arrange for repairs in this situation. And I can see that MotoNovo looked into the cost of that after Miss M supplied the expert's report. I am satisfied Miss M instructed this expert because MotoNovo told her it wouldn't accept liability without further evidence. Miss M duly supplied MotoNovo with a report from an independent expert that says the car had a fault that was present or developing at the point of supply but MotoNovo continued to reject her complaint. For the reasons I've explained already, I don't think that was fair.

I'm conscious Miss M has now been without this car for some considerable time. It looks as if the repairs required are significant and likely to delay matters further. I am not persuaded it's reasonable to expect Miss M to have to wait for this car to be fixed in these particular circumstances. I am inclined

to agree with our adjudicator and find MotoNovo should allow Miss M to reject the car and cancel the finance.

The paperwork I have seen says Miss M didn't pay a deposit when she got the car - if that's not right I would be grateful if the parties could please let me know.

It looks as if Miss M was able to drive the car without any problems until March 2018. I think it's reasonable she should pay for that use, so I'm not going to ask MotoNovo to refund payments due for the period from August 2017 until March 2018.

I am satisfied however that Miss M wasn't able to use this car after that. And I am minded to find MotoNovo should refund any payments Miss M made towards the finance from (and including) March 2018. I consider MotoNovo should also remove any adverse information recorded about the finance from Miss M's credit file.

If Miss M has incurred diagnostic, storage or associated charges as a result of having the car checked by her local garage then I think MotoNovo should pay for that as well - provided Miss M is able to supply relevant invoices/proof of payment. If Miss M is able to provide this evidence in response to these provisional findings that would be helpful - as it should mean I'll be able to deal with any refund due specifically in my final decision.

I am satisfied that Miss M is likely to have experienced distress and inconvenience as a result of being supplied with this faulty car. And I find it fair that MotoNovo should pay her an additional £200 compensation to reflect that.

I now invite both parties to consider my provisional findings and let me have any further comments or additional evidence by the date below. After that I'll consider 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 22 November 2019, my provisional decision is I intend to uphold this complaint and require FirstRand Bank Limited (trading as MotoNovo Finance) to

- 1 take the car back at no cost to Miss M and cancel the finance with nothing further to pay;
- 2 refund any deposit (if one was paid);
- 3 refund any payments made towards the finance from March 2018;
- 4 refund/pay garage costs incurred by Miss M after 8 March 2018 in respect of repair attempts and storage - upon receipt of relevant invoices/proof of payment from Miss M;
- 5 if it has not already done, so refund the cost of the expert's report;
- 6 pay interest on the refunds above at 8% simple a year from the date of payment to the date of settlement;
- 7 remove any adverse information recorded on Miss M's credit file; and
- 8 pay Miss M £200 compensation for distress and inconvenience.