

complaint

Miss J complains that a car she has been financing through an agreement with FirstRand Bank Limited, trading as MotoNovo Finance ("MotoNovo"), was of unsatisfactory quality.

background

Miss J took receipt of a used car in October 2018. She financed the deal through a hire purchase agreement with MotoNovo. At the point of supply the car was about 12 years old and had already completed 98,000 miles.

Within the first couple of weeks Miss J had problems with the car. The dealership replaced the spark plugs and coil pack but Miss J says that the next day she noticed white smoke coming from the exhaust. She complained to MotoNovo on 12 November 2018 she was concerned this fault might suggest the cylinder head was cracked. She said she'd like to return the car but MotoNovo wouldn't allow that and said they'd need to investigate. But subsequently they wrote to Miss J to explain they now thought the car had been repaired successfully and were closing the complaint. But that wasn't the case so Miss J referred her complaint to this service.

Our adjudicator reviewed a video that Miss J had sent her and was persuaded that the car was still emitting white smoke. She noted Miss J had barely used the car and had only completed 1,343 miles since she took receipt of it, seven months earlier. She thought this supported the view the car was still not working properly. So she suggested MotoNovo should allow Miss J to invoke her short term right to reject the car and end the finance agreement. And, as she'd had little use of the car, she thought MotoNovo should refund all instalments she'd made towards her finance agreement since November 2018. She also thought it was clear Miss J had been inconvenienced by their actions and they should pay her £250 compensation.

But MotoNovo disagreed. They wanted to have a diagnostic performed on the car to establish whether there was a fault and, as our adjudicator didn't think this was necessary, they asked for a final decision by an ombudsman.

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 agree with the adjudicator's view. I know that will disappoint Miss J so please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Miss J acquired her car under a hire purchase agreement. The hire purchase agreement is a regulated consumer credit agreement and as a result our service is able to look into

complaints about it. The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then MotoNovo are responsible. The relevant law also says the quality of goods is 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.

In a case like this which involves a car the other relevant circumstances would likely include things like the age, mileage and price at the time the car was supplied to Miss J. The car here was around 12 years old and had travelled 98,000 miles so I wouldn't expect it to be fault free but I would expect it to not be experiencing significant problems.

I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the car was faulty when supplied and this fault made the car not of satisfactory quality, I'd think it fair and reasonable to ask MotoNovo to put this right.

The relevant legislation says that:

"...goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day."

As Miss J reported the issue within the first 30 days she was within her short term right to reject the car. But she authorised repairs on it.

I'm persuaded those repairs have not been successful because:

- the video Miss J has provided seems to demonstrate the problem she reported to MotoNovo in November 2018. The car's registration plate can be seen and it's the same registration that was noted in the invoice for repairs in November 2018. So I'm persuaded that it is Miss J's car.
- Miss J has only covered 1,343 miles in the car since she took receipt of it. The hire purchase agreement was written with an *"expected mileage"* of 10,000 miles per year. So I think this supports Miss J's assertion that she hasn't been comfortable using the car due to the persistent fault
- Miss J complained to MotoNovo on 12 November 2018 and told them there was a fault. I've not seen evidence of the successful repair they said had been carried out when they wrote to Miss J in January. I think it's likely if a repair had been carried out there would have been such evidence

I think there's sufficient evidence here and I don't think it's necessary to complete a diagnostic and delay a resolution to the matter any further.

I'm therefore persuaded that it's most likely the car wasn't of satisfactory quality at the point of supply and as repairs have been unsuccessful Miss J should now be allowed to reject it.

I agree that Miss J has had very little use of the car and I'm therefore asking MotoNovo to refund instalments from November 2018.

Miss J has evidently been inconvenienced by matters and it's fair and reasonable she's compensated for this. I think, in the circumstances, the adjudicator's suggestion MotoNovo pay Miss J £250 is a fair one.

my final decision

For the reasons I've given above I uphold this complaint and tell FirstRand Bank Limited to:

- cancel the finance agreement with nothing more to pay
- collect the car at no cost to Miss J
- pay Miss J £250 to compensate her for the distress and inconvenience caused by their actions
- refund all monthly finance instalments Miss J has paid from, and including, November 2018
- remove any adverse reports they may have made to her credit file in relation to this issue

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 31 August 2019.

Phil McMahon
ombudsman