

## **The complaint**

Mrs O complains about the quality of a car that was supplied to her under a Personal Contract Purchase (PCP) agreement with FirstRand Bank Limited (trading as Motonovo Finance).

## **What happened**

In April 2019 Mrs O took out a PCP agreement with Motonovo for a car. The car was just over three and a half years old and had travelled approximately 67,286 miles. The cash price was £10,598.

On 1 February 2020 the car broke down after the gearbox failed. The dealer carried out a repair at no cost to Mrs O, replacing the gearbox with a reconditioned unit and returning the car to her on 3 March 2020.

On 10 September 2021 the car again had to be recovered to Mrs O's local garage, who told her the gearbox had failed. Mrs O says she contacted Motonovo, who advised her that she'd need to provide a specialist report to show the current issue was related to the previous repair.

On 22 September 2021 Mrs O made a formal complaint to Motonovo. She emailed them again on 28 September 2021, saying a specialist had quoted £1,100 + VAT to repair the gearbox. She asked Motonovo to advise her of the next steps.

Mrs O authorised the garage to go ahead with the repair. She later received a letter from Motonovo, acknowledging her complaint and telling her not to authorise any diagnostic or repair work. She says she didn't receive this until 4 October 2021.

Mrs O collected her car on 9 October 2021. She paid £1,835.18 for the repair, which resolved the problem. But the following week Motonovo got in touch to say her complaint wouldn't be upheld. They said she'd denied them the opportunity of investigating the problem by having the gearbox repaired. Unhappy with this response, Mrs O brought her complaint to us.

Our investigator didn't think Motonovo had treated Mrs O fairly. He noted there was no dispute that the gearbox was faulty in February 2020 – and the dealer had accepted liability for this. He didn't consider the car to be of satisfactory quality or reasonably durable at the time it was supplied to Mrs O. And he wasn't persuaded that the dealer's repair had remedied the problem.

The investigator said Mrs O would have the right to reject the car. But as she'd had the fault put right, he felt it would be fairer for Motonovo to cover the cost of that work, plus interest at 8%. As Mrs O had been without a car for 22 days, he thought she should also have a refund of the payment she'd made to Motonovo for that period.

Motonovo asked for an ombudsman to review the case. They said Mrs O had been advised not to complete repairs in an email sent to her on 29 September 2021. They stressed that

gearbox failure can be caused by lots of different factors, providing examples of some of the common causes. They said there was a lack of evidence as to the cause of the failure in this case. And that, as Mrs O hadn't allowed them an opportunity to arrange an independent inspection, all evidence had been lost.

### **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.

Mrs O complains about a car supplied under a PCP agreement. Entering into consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can consider Mrs O's complaint against Motonovo.

Motonovo have pointed out Mrs O made an earlier complaint about the gearbox, to which they issued a final response in March 2020. I won't make any finding or award from this period as this would be the subject of the earlier complaint. But, in order to make a finding on the new complaint, I do need to consider the overall history of the car and what happened here.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – in this case Motonovo – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors.

I consider relevant factors here, amongst others, to include the car's age, price, and mileage. The cash price of the car was £10,598. It was less than four years old and had 67,286 on the odometer. I don't think a reasonable person would expect this car to be in as good condition as a newer car with a lower mileage. But I do still think they'd expect it to be in reasonable condition - and would expect trouble free motoring for a reasonable period.

It isn't in dispute here that the car had issues with the gearbox around February 2020 and it seems all parties accept these were present or developing at the point of supply. I say this as the gearbox was replaced without cost to Mrs O, and Motonovo have confirmed their final response upheld the complaint in relation to this issue. So, what I need to consider is whether the later issues with the gearbox were linked to the earlier ones - or to the earlier repair.

Mrs O has told us that she wasn't able to use the car that much in 2020 due to COVID restrictions in force at the time. She's provided a copy of the report she got from her breakdown service the second time the gearbox failed. This shows that, on 13 September 2021, the odometer reading was 88,314. It follows that Mrs O had travelled less than 13,000 miles in the 14 months since the dealer fitted the reconditioned gearbox. She feels the gearbox failed because the dealer's repair wasn't adequate.

Motonovo say gearbox failure can be caused by a number of different factors, the most common being crunching of the gears, failure to activate the clutch properly, hard driving, bearing failure, input/output shaft failure, lack of oil, oil of incorrect type and grade, and synchromesh failure. I've given careful thought to the point they've made here.

Where the evidence isn't conclusive, or the parties disagree about what it shows, I have to consider what's most likely to have happened. I've reviewed the information Mrs O obtained from the gearbox specialist, dated 26 September 2021. This said:

*"Box was full of oil. No signs of level being too low"*

So I consider it unlikely that the second gearbox failure was due to insufficient oil, and I haven't seen anything to suggest the incorrect type of oil was used.

It also said:

*"All shafts appear to be re-usable"*

*"The housing shows no signs of cracks"*

*"Bearings were all intact"*

*"6<sup>th</sup> gear had suffered broken teeth in several places with loose fragments causing further damage to other gears"*

The repair that specialist carried out resolved the problem. So I'm satisfied their diagnosis was likely to be correct.

I've carefully thought about what happened here. After the gearbox was replaced, Ms O's car lasted around 14 months and under 13,000 miles before the gearbox failed again and required a major repair. I think it's fair that Mrs O could've expected the repairs to have lasted a reasonable amount of time, given all parties seem to accept the original issue was present or developing at the point of supply.

I appreciate there is something of a lack of evidence here. But, on balance, I don't think this repair lasted as long as Mrs O could've expected. It follows I don't think the car, and gearbox, were reasonably durable. And, it also follows I'm satisfied this means the car supplied to Mrs O was not of satisfactory quality.

Motonovo have highlighted the fact that driving style can cause gearbox failure. But I've seen nothing in the evidence that leads me to think that was the case here. So, this doesn't change my opinion.

Motonovo don't think Mrs O's complaint should be upheld, because she denied them the opportunity to investigate whether they were liable for this second gearbox failure. I've considered if I think Mrs O acted reasonably here.

Both parties agree that Motonovo wrote to Mrs O on 29 September 2021, acknowledging her complaint and advising her not to go ahead with any diagnostic or repair work. But Mrs O says she didn't receive this until 4 October 2021 – after she'd authorised the repair.

The evidence I've seen shows Mrs O made Motonovo aware of the second gearbox issue on 10 September 2021. I note they responded the same day, saying she'd almost certainly need to provide an independent inspection report to prove the current issue was related to the previous repair. So I'm satisfied that Mrs O acted in good faith when she instructed a gearbox specialist to diagnose the fault.

I've then seen evidence showing Mrs O asked Motonovo for advice as to the next steps when she raised the formal complaint on 22 September 2021 - and again when she chased them for a response on 28 September 2021.

I've taken into account the fact that, by the time Mrs O authorised the repairs, she'd been without a car for around three weeks. And although her breakdown company gave her a car for seven days, after this she didn't have one. Mrs O has told us she used the car both for work and for transporting her children. So, I can understand why she wanted to get the car repaired as quickly as possible. And, I think Motonovo had the opportunity to ask her not to

do so if it thought this was important, which it initially didn't. Thinking about things in the round, I don't think Mrs O acted unreasonably when she authorised the repairs. So, this also doesn't change my opinion.

### **Putting things right**

The problem has now been put right. Mrs O has provided a copy of the invoice for this work. Discounting work to the clutch that was carried out at the same time, I've seen that the repair to the gearbox cost £1,835.18. I'm satisfied Mrs O had a right to repair under the CRA. So, I think it would be fair for Motonovo to reimburse Mrs O this amount.

I note that Mrs O had to pay for the repair when she collected the car on 9 October 2021. So I think she should also receive 8% simple interest on the amount, calculated from that date.

Mrs O has told us that being without a car increased the amount of time and inconvenience it took her to get to work and collect her children from school. She says she had a courtesy car for the first seven days, free of charge. So I can see that she was without a car for just over three weeks while the fault was diagnosed and repaired. I think she should receive a refund of the payments she's made under the hire purchase agreement during that period.

### **My final decision**

For the reasons I've explained here, I uphold this complaint and direct FirstRand Bank Limited to:

- Pay Mrs O £1,835.18 for the gearbox repair she paid for on 9 October 2021\*;
- Refund the amount Mrs O has paid under the agreement for the period between 17 September 2021 and 9 October 2021\*.

\*These amounts should have 8% simple yearly interest added, calculated from the date of payment to the date of settlement. If Motonovo considers that they're required by HM Revenue & Customs to withhold income tax from the interest, they should tell Mrs O how much they've taken off. They should also give Mrs O a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 19 July 2022.

Corinne Brown  
**Ombudsman**