

The complaint

Mr D complains about the quality of a car he has been financing through an agreement with MotoNovo Finance Limited (who I'll call MotoNovo).

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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.

I know it will disappoint Mr D, but while I would agree that MotoNovo need to take more action to put things right for him, I don't think they currently need to take the car back and end the finance agreement. I'll 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.

Mr D acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then MotoNovo, who are also the supplier of the car, are responsible.

There's no longer a dispute that this car was supplied in an unsatisfactory condition. MotoNovo have accepted the independent inspector's suggestion that the timing chain has probably stretched prematurely. They've offered to repair that fault and they have also reminded Mr D of their previous offer to repair the cosmetic issues identified to them in an earlier complaint made in February 2022: issues that Mr D has yet to have repaired.

The relevant legislation gives a business one opportunity to repair faults that are present, or developing, when goods are supplied. I don't believe that MotoNovo have had that opportunity yet so they should arrange for the car to be collected and repaired at no cost to Mr D. It is for MotoNovo and not for Mr D to make those arrangements.

Mr D says that he should be allowed to reject the car because the relevant legislation says time pauses when a repair is being completed. It's not MotoNovo's fault there's been a delay getting the initial faults repaired. They made that offer many months before Mr D complained

about the timing chain problem and don't think it would, therefore, be fair to suggest Mr D is entitled to reject the car *at any point* without giving the business a chance to remedy the situation.

Mr D also says the car was misrepresented to him because the sales video he was shown didn't show some of the cosmetic issues with the car. I can't see that he has raised that particular issue with MotoNovo and this Service wouldn't usually consider a complaint before the business did. But even if I'm wrong about that, I don't think a claim for misrepresentation would be likely to succeed. Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influences the other party to enter into a contract they wouldn't otherwise enter into. While Mr D does appear to have complained that the car wasn't as advertised, he was later persuaded to keep the vehicle. So, it seems he was prepared to continue with the contract even when the extent of the cosmetic issues became apparent. In those circumstances, I think it would be unfair to suggest any failure to divulge the extent of the cosmetic issues had induced Mr D to enter into a contract *he wouldn't otherwise have entered into*.

Mr D has asked to be refunded for the costs he incurred having other problems fixed such as a new tyre, battery, and washer jets. But MotoNovo are only responsible for problems that are present or developing when the car is supplied, and I don't have sufficient evidence to suggest those repairs were developing at that point, or that they are not simply wear and tear issues. So, I don't think it would be fair to tell MotoNovo to reimburse Mr D for those expenses. But Mr D did have to pay £195 for the independent inspection report and he wouldn't have had to do that if the car he was financing had been of satisfactory quality. So that fee should be refunded to him with interest.

MotoNovo offered Mr D £300 compensation in respect of the distress and inconvenience caused. I was very sorry to hear about the problems Mr D has had with his parent's health and I can understand the need to take public transport during that period must have been distressing and inconvenient. Taking all of the circumstances into account, however, I think £300 is sufficient compensation.

The independent inspection was completed in March 2023 and Mr D has, understandably, not been able to use the car since. MotoNovo didn't offer to refund the payments he was making but they did say they would consider the costs he'd incurred as a result of the faults. Mr D has explained that he has incurred significant public transport costs but, instead of refunding them, I am telling MotoNovo to refund any instalments he has paid and waive any that were due and haven't been paid, since the independent inspection was completed. They'll need to add interest to that refund as Mr D has been deprived of the money.

Putting things right

MotoNovo should put things right in the way I've set out above and detailed below.

My final decision

For the reasons I've given above, I uphold this complaint in part and tell MotoNovo Finance Limited to:

- Collect the car at no cost to Mr D and arrange for it to be repaired and returned to him.
- Refund all finance payments that have been paid since the independent inspection of March 2023, waive any that were due and haven't been paid. Add 8% simple interest* per year from the date of payment to the date of settlement.

- Refund the cost of Mr D's independent report (£195) and add 8% simple interest* per year from the date of payment to the date of settlement.
- Pay Mr D £300 to compensate him for the distress and inconvenience he's experienced, unless they've already paid that.
- Remove any adverse reports they may have made to Mr D's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 April 2024.

Phillip McMahon
Ombudsman