

The complaint

Mr H complains that a car acquired with finance from MotoNovo Finance Limited wasn't of satisfactory quality.

What happened

In January 2021 Mr H was supplied with a car and entered into a finance agreement with MotoNovo. At the point of supply the car was around 5 years old and had covered around 30,000 miles.

In July 2023 Mr H experienced an issue with the car making a knocking noise whilst he was driving and then the engine stopped. He took the car to Kia who advised him that the engine was beyond repair and needed replacing. Kia also advised Mr H that the warranty was voided in 2019 due to the car having no service history.

Mr H complained to MotoNovo. He said he was unhappy because he'd been told that the Kia warranty won't cover the repairs. He said he was told by the dealer at the time he purchased the car that there was three years left on the warranty.

MotoNovo didn't uphold the complaint. It said there was no evidence of the manufacturers warranty being mis-sold, and that there was no evidence that the fault with the car was present or developing at the point of supply.

Mr H wasn't happy with the response and brought his complaint to this service. He said there was a sticker on the car which said Kia 7 year warranty and that there had been a poster on the car at the point of supply saying that there was a manufacturers warranty until October 2023. Mr H says he was also told by the dealership that the service history would be sent on to him when received, although this didn't happen.

Our investigator didn't uphold the complaint. She said there wasn't enough evidence to say that the car wasn't of satisfactory quality when it was supplied. In relation to the warranty, the investigator said that although a sticker was and remains on the car, its presence wasn't enough to mean that a warranty was in place. The investigator also said that although Mr H had recently mentioned a poster on the car when he spoke to this service, this wasn't something that he'd mentioned to MotoNovo or this service previously. The investigator said that on balance, the presence of the dealerships own 6 month warranty on the car and the absence of service history indicated that the manufacturer's warranty wasn't still in place. The investigator said it was more likely that Mr H had assumed that the manufacturer's warranty was in place rather than there having been a misrepresentation.

Mr H didn't agree. He said he had a photo of the car with the poster in it. He said if he'd known there was no warranty, he wouldn't have bought the car.

Mr H later contacted this service again and said he hadn't been able to find any photos of the car with the poster in it.

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.

Satisfactory Quality

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the car includes its general condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr H was around 5 years old and had covered 30,000 miles. So, it's reasonable to expect that parts of the car would already have a degree of wear and tear and that it was likely to require repairs sooner than, say, a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs with a car within the first six months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can ask to reject the car.

Where a fault occurs outside of the first six months of the point of supply, the burden of proof is reversed and it's up to the consumer to show that the fault was present or developing at the point of supply.

I've reviewed the available evidence about the issues which Mr H experienced with the car. Based on what I've seen, I'm satisfied that the car has a fault. I say this because the garage who looked at the car has advised that the car needs a new engine.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

At the point when the car broke down in July 2023, Mr H had been driving the car for around 2 ½ years and had covered around 25,000 miles.

There's no report identifying exactly what the fault is with the car. In response to Mr H's complaint, MotoNovo said it would need to see an independent inspection report identifying the fault and stating whether or not the fault was present or developing at the point of supply. Because the fault occurred outside of the first six months of the point of supply, it's up to Mr H to show that the car wasn't of satisfactory quality when it was supplied, so the onus of getting the report is on him. As it stands, Mr H hasn't arranged for the car to be independently inspected, so there's no engineering evidence for me to consider.

Given that Mr H has managed to cover 25,000 miles in the car since he purchased it, I think it's unlikely that there was a fault with the engine at the point of supply.

I've thought about durability, because durability is one aspect of satisfactory quality. It's reasonable to expect that a car should function as expected for a reasonable period of time, taking the car's age and mileage into account. In Mr H's case, it could be said that it's unusual for an engine to fail on a 7 year old car after only 25,000 miles. However, because there's no information about the cause of the engine failure, I can't say what other factors may have contributed to the engine failure. There isn't enough evidence for me to say that the car wasn't sufficiently durable.

Taking everything into account, there isn't enough evidence for me to say that the car wasn't of satisfactory quality when it was supplied.

Warranty

Mr H has said that the dealership told him that the car had three years left of the Kia manufacturer's warranty and that this induced him to purchase the car.

There's no record of the discussions which Mr H had with the dealership prior to purchasing the car. So, I can't be certain of what, if anything, was said about a warranty. In circumstances like this, I need to look at all the circumstances at the time in order to decide whether it's likely that a misrepresentation was made.

I've taken Mr H's verbal testimony into account. He's said that there was a poster on the car which indicated that there was three years left of the manufacturer's warranty. He's also said that there was a sticker on the car (which is still there) which says that there's a manufacturer's warranty of 7 years.

I've taken the dealership's testimony into account. It has said that it sold the car with its own six month warranty and that the car was sold with no service history so the manufacturer's warranty wouldn't apply. It said that in its opinion, Mr H had assumed (rather than been told) that the manufacturer's warranty would apply.

This service asked Mr H to provide a photo of the car showing the poster advertising the remaining warranty, because he said he thought he had a photo showing this. Mr H hasn't been able to provide the photo.

Mr H has provided a photo showing a sticker on the back of the car which says manufactures seven year warranty. However, I'm not persuaded that the presence of this sticker is enough to say that the dealer made representations about the warranty, or that it's enough to support a claim of misrepresentation in the absence of any other compelling evidence.

I appreciate that the manufacturer of this car offers a seven year warranty as standard (or did offer this at the relevant time). However, in this case, because the car had no service history, the warranty was voided.

On balance, I haven't seen enough evidence to persuade me that there's been a misrepresentation.

For the reasons I've explained above, I'm unable to uphold the complaint. I won't be asking MotoNovo to do anything further.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 April 2024.

Emma Davy
Ombudsman