

The complaint

Mr C complains that a vehicle he acquired under a hire purchase agreement with Motonovo Finance Limited (“Motonovo”) wasn’t of satisfactory quality.

What happened

In July 2022, Mr C acquired a vehicle and financed this using a hire purchase agreement with Motonovo. The vehicle was over four years old when Mr C acquired it, had a cash price of £16,200 and had covered 80,000 miles.

Mr C complained to Motonovo in May 2023. He said the vehicle was using an excessive amount of oil and was losing power. Motonovo arranged for an independent inspection of the vehicle to determine if there were any faults that would have been there at the point of sale or were related to previous failed repairs.

Motonovo sent Mr C their final response to his complaint in August 2023. They referred to the conclusion in the report from the engineer who inspected the car and said that they wouldn’t be upholding the complaint as there was no evidence of the current fault being there at the point of supply.

Mr C wasn’t happy with Motonovo’s response and referred his complaint to us. Our investigator didn’t recommend that it should be upheld. She said, in summary, that although there was an issue with the vehicle, she wasn’t satisfied this was present at the time Mr C acquired the vehicle.

Mr C asked for an ombudsman’s decision, so his complaint has been passed to me.

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 want to acknowledge that I’ve summarised the events of the complaint. I don’t intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr C and Motonovo that I’ve reviewed everything on file. And if I don’t comment on something, it’s not because I haven’t considered it. It’s because I’ve concentrated on what I think are the key issues. Our powers allow me to do this.

I’m able to consider a complaint about the quality of the vehicle against Motonovo because it is the supplier of the vehicle under the hire purchase agreement.

Our investigator said the Consumer Rights Act 2015 (“CRA”), and the parts of that relating to consumer rights around satisfactory quality of goods, is relevant to Mr C’s complaint. That though isn’t the case. The CRA relates to those acting outside of their ‘trade, business, craft or profession’. Mr C confirmed that he acquired the vehicle purely for business purposes. So, the CRA isn’t the relevant law for this dispute.

However, that doesn’t mean that Mr C has no rights around satisfactory quality. Hire

purchase agreements such as these are covered by the Supply of Goods (Implied Terms) Act 1973. This says that, in a hire purchase agreement, there are implied conditions including a condition that the goods will be of satisfactory quality (s.10).

The concept of 'satisfactory quality' is expanded by the Sale and Supply of Goods Act 1994 and includes: fitness for purpose; appearance and finish; freedom from minor defects; safety; and durability. These are the requirements of quality in the hire purchase contract agreed between Mr C and Motonovo.

When deciding whether goods are of 'satisfactory quality' it is necessary to consider all the circumstances – including age and the price paid. Here, Mr C acquired a used car that was over four years old and had travelled 80,000 miles, so in my view it would be unreasonable to expect it to be in the same condition as it was when first manufactured. It should however still have been free from defects when supplied to Mr C.

Having reviewed the evidence and the submissions from Mr C and Motonovo, I don't have a particularly clear picture of what's happened with the vehicle since Mr C acquired it.

Mr C says he contacted the dealership a couple of months after he took possession of the vehicle as he was having problems with it. I've seen Motonovo's notes relating to Mr C's complaint which shows that they contacted the dealer about the issues with the vehicle. The notes show that the dealer confirmed that the EGR valve was replaced shortly after Mr C acquired the vehicle. I note though that the dealer separately said to Motonovo that the only work they undertook was a software update in September 2022 and when they replaced the turbo in April 2023.

However, Mr C also says that the dealer removed the Diesel Particulate Filter. This might actually have been the EGR valve, bearing in mind the dealer told Motonovo it replaced this. But that isn't clear.

If, as the dealership said to Motonovo, the EGR valve was replaced, then this did happen quite soon after Mr C acquired the vehicle. However, this was replaced without significant inconvenience to Mr C from what I can see. I'm not satisfied though that the current issues with the vehicle are related to the EGR valve (so not, for example, an indication of a failed repair). I think it more likely that the current issues are down to wear and tear expected of such a vehicle.

I say this noting that the independent inspection was carried out nearly a year after Mr C acquired the vehicle and after it had travelled 101,000 miles. So, Mr C had covered 21,000 miles in the vehicle by that point. The inspector noted that 'when accelerating there was an excessive amount of visible smoke emitting from the exhaust system', and that 'at 70 mph...the vehicle started to lose power and when accelerating there was an obvious lack of performance'. However, the inspector couldn't identify the root cause of this issue and said that it was unlikely the fault was there from the point of supply.

Had the faults been present when Mr C acquired the vehicle, I think they would have been apparent at that time or very shortly after he took possession. I've not though seen sufficient evidence that this happened. And, as I've noted, Mr C had travelled 21,000 miles before the faults occurred and it's unlikely the vehicle would have travelled this far if the problems identified within the report had been present or developing at the point of supply.

Having carefully considered the circumstances of this complaint I think it more likely than not that the faults identified within the independent inspection weren't present or developing when the vehicle was supplied to Mr C, or materialised following failed repairs. I've not seen sufficient evidence to persuade me that the vehicle was of unsatisfactory quality when it was supplied to Mr C.

I appreciate Mr C will be unhappy with my decision here and although I have some sympathy for the position he is in, there are no grounds for me to instruct Motonovo to take any action.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 August 2024.

Daniel Picken
Ombudsman