

The complaint

Mr F has complained MotoNovo Finance Limited has continued to ask him to pay a hire purchase agreement after he told them he'd not taken possession of the car.

What happened

Mr F contacted MotoNovo in November 2019 three months after taking out a hire purchase agreement with them. He told them he'd never taken possession of the car in August 2019 when he'd signed a hire purchase agreement. Whilst he'd been expecting some work to be done, he'd now realised the car had never had a valid MOT so believed the dealer was in breach of consumer legislation.

MotoNovo confirmed Mr F had signed the agreement and had made initial payments. In discussion with the dealer they understood Mr F had always known the car didn't have a valid MOT. If Mr F was unaware of the location of the car they advised him to contact the police. They were unwilling to offer Mr F any further assistance.

Mr F brought his complaint to our service. He explained he'd been in further contact with the dealership (who I'll call M) and they confirmed the agreement would be cancelled. However this didn't happen. M stopped operations. As Mr F realised MotoNovo still expected him to make payments, he wanted our service to confirm he'd never taken possession of the car.

We ensured that MotoNovo received an email from M confirming that the hire purchase agreement should be unwound and Mr F had never had the car.

After lengthy delays from MotoNovo, our investigator reviewed the evidence. He found there was no evidence to suggest Mr F had ever taken possession of the car. He also noted that the actual owner of the car disputed Mr F's testimony that he was able to view the car. As there was a breach of contract with Mr F taking out a hire purchase agreement without ever possessing the car, our investigator asked MotoNovo to cancel the hire purchase agreement, remove any reference to this from Mr F's credit record, repay all payments Mr F had made along with 8% simple interest.

MotoNovo didn't believe they should do this. They also made allegations about M and the potential for Mr F being involved in a fraud.

This complaint has been referred to an ombudsman as no agreement could be reached.

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.

Having done so, I've reached the same conclusion as our investigator. I'll explain why.

I confirm that prior to completing this final decision I asked Mr F to provide us with more information about the circumstances of his supposed purchase at M. He's been adamant that he viewed the car but noticed it was faulty immediately and exercised his right to get it

repaired.

I also asked MotoNovo to share evidence of what they believed was a wider fraud ring with M's involvement. They've had ample opportunity to provide us with this in confidence but nothing has been forthcoming. However I am aware from M's liquidator's annual report that police have progressed to charging M's director. This service also has other cases where it's been suggested M did show cars that resembled cars the customer thought they were buying. These cars were never at M's premises nor were they available for M to sell.

There's no dispute that Mr F took out the agreement. Initially Mr F wasn't concerned as he was expecting repairs to be carried out to the car he was purchasing. He was also not intending to use the car immediately as he was buying it as an investment. It was a few months later when he found out that M was unable to confirm where the car was. He'd also discovered that there was no valid MOT and there were some discrepancies with the record of the car's mileage.

In the end the resolution to this complaint is quite simple. As Mr F was never supplied with the car, even though he signed a related hire purchase agreement, I don't believe MotoNovo can expect him to pay the agreement. M was acting as their agent and it's clear they didn't provide Mr F with his car. It also appears from MotoNovo's own evidence that this car was never available for purchase as it always remained in someone else's ownership.

I understand MotoNovo has suggested Mr F has been collusive in the fraud that M seems to have been involved in. But I have no evidence this is the case.

I note there are some discrepancies in the evidence. Mr F has confirmed he took the car out for a test drive. However I can see nothing which would suggest this car – owned throughout by a third party – would have been available for M to allow customers to test drive. But I do know M, as noted above, showed cars to customers that resembled cars supposedly available for purchase.

Mr F did initially make payments under the hire purchase agreement but found himself unable to continue to do so when the pandemic hit. MotoNovo agreed he could pause repayments. Mr F then resumed payments in early 2021 with an agreement being sought that the cost of the missed payments would be spread out over the last year of the agreement.

Mr F has been upset that MotoNovo continued to mark his credit record that payments were due as opposed to being paused as agreed.

Putting things right

As I believe Mr F never purchased the car relating to this agreement, I am asking MotoNovo to put things right.

Mr F has also confirmed that no part-exchange ever proceeded as he kept his previous car but this hire purchase agreement did settle the outstanding costs of another hire purchase agreement. This was for £8,654 but the payments Mr F made towards this disputed agreement now more than exceed that amount.

MotoNovo will need to cancel the credit agreement, remove this from Mr F's credit record and refund all payments he'd made (minus £8,654) along with adding 8% simple interest a year.

My final decision

For the reasons I've given, my final decision is to instruct Motonovo Finance Limited to:

- Cancel the hire purchase agreement in Mr F's name;
- Remove this agreement from Mr F's credit record;
- Refund all payments Mr F has made under this agreement, except £8,654; and
- Add 8% simple interest a year from the date of the payments until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 20 April 2022.

Ombudsman