

The complaint

Miss C complains that a car she has been financing through an agreement with MotoNovo Finance Limited (“MotoNovo”) was misrepresented to her.

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 MotoNovo, but I agree with the investigator’s opinion. Please let me 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.

Miss C acquired her 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.

Section 56 of the Consumer Credit Act (1974) explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier before the consumer takes out the credit agreement.

If Miss C was given false information that led her to enter into an agreement she wouldn’t have otherwise entered into I would think the agreement had been misrepresented to her.

I think that’s been the case here. I think it’s likely the car Miss C was supplied with did have a salvage marker against it that wasn’t reported to Miss C. I say that because:

- The dealership Miss C tried to part exchange her car with refused and explained in an email to her that “... *we can’t offer you the original valuation for your current car as we are unable to sell your car with a salvage marker on the forecourt and it will have to go to auction instead.*”
- The investigator provided information from a search on uksalvage.info which shows the vehicle appears to have been sold at a salvage auction prior to being supplied to Miss C and as a category U car. I’ve read the definition of that category that the investigator has provided as “*damage that, for whatever reason, hasn’t been reported to the insurance...*”.

- Miss C has provided further evidence of the marker recorded on a couple of vehicle checking sites she has registered with and paid money for. Whilst these aren't the usual sites we'd use to check a vehicle's history I don't think there's evidence they are not reputable.
- Whilst MotoNovo have provided evidence from sites they use to show there isn't a salvage marker against the car I don't think that's reasonable. The dealership Miss C tried to part exchange her car through were clearly able to find that evidence and whilst the marker may not be universally applied it's clearly something that is preventing, and would prevent, an adequate resale valuation.

So, I'm persuaded the car does have a salvage marker against it and I'm also persuaded Miss C wouldn't have proceeded with the agreement had she known about that marker. I say that because:

- Miss C's consistent testimony to us and to MotoNovo (during calls) has been to that effect.
- The sales price of the car appears to have been slightly higher than market valuation at the time of the sale so I don't think Miss C benefitted from any discount that would have overridden concerns about the presence of the salvage marker.
- I don't think the average consumer would be likely to proceed with a deal for a car with a salvage marker if they were being asked to pay the same amount they would for a car without one.

So, I think there is evidence this car was misrepresented to Miss C.

Putting things right

In those circumstances I think we should try to put Miss C back in the position she would have been in had the misrepresentation not have happened.

So, MotoNovo should end the finance agreement and take the car back from Miss C. They'll need to refund any deposit that was paid, adding interest as Miss C has been deprived of that money.

Miss C had fair use of the car until December 2021 and it's fair she pays for that use. But MotoNovo should refund any finance instalments she paid after that as I think it's understandable Miss C stopped using the car when she became aware of its history. MotoNovo will need to add interest to that refund too.

Miss C has also had to pay £4.99 and £2.99 to obtain reports about the car's salvage condition. She wouldn't have had to have done that if the car hadn't been misrepresented to her so MotoNovo should refund those costs with interest.

My final decision

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

- End the agreement and collect the car at no cost to Miss C.
- Refund any deposit paid and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund the monthly instalments paid since December 2021, adding 8% simple interest per year from the date of payment to the date of settlement.

- Refund the £4.99 and £2.99 Miss C paid to get salvage reports. Add 8% simple interest per year from the date of payment to the date of settlement.
- Remove the agreement from Miss C's credit file.

If HM Revenue & Customs requires MotoNovo to take off tax from the interest. It must give Miss C a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 July 2022.

Phillip McMahon
Ombudsman