

The complaint

Mrs F complains that MotoNovo Finance Limited mishandled the voluntary termination of a hire purchase agreement she had with it for a car.

Mrs F has been assisted by her husband in bringing this complaint, but for ease of reference I shall only refer to Mrs F as the financial agreement is in her name.

What happened

In May 2019 Mrs F entered into a four-year hire purchase agreement with MotoNovo for a used car. The car was around eight years old at the point of supply and had a mileage of around 59,500. The car cost £4,500 and the monthly payments were £126.88 with one final payment of £325.88.

In September 2020 Mrs F called MotoNovo as there had been a change in her circumstances and the car was no longer required. She said she had tried to sell it privately, but this hadn't been successful, and she asked about the conditions of voluntary termination ("VT"). The agent told Mrs F that she would be liable for the halfway point of the finance that had been agreed which amounted to £1,141.42. The agent also said there would be potential charges for any damage to the car that was beyond fair wear and tear. Mrs F said that there was some damage to the car's bumper and the agent responded that might fall under wear and tear.

Mrs F then asked the agent if she would be able to pay the balance left after VT by monthly instalments. The agent said this was permissible and that an affordable monthly payment plan could be considered to reduce the size of the payments. Mrs F asked about the impact on her credit file and the agent said there was only an impact if she did not contact MotoNovo following the VT to arrange payments and the balance had to be passed to a debt collecting company. Mrs F said she was happy to go through the VT process.

The hire purchase agreement was terminated, and the car collected. The car was inspected and assessed as having sustained damage to the value of £403 which was found to be beyond fair wear and tear.

Mrs F was shocked to receive a request to pay the final liability of £1,544.42 within 30 days. She was also advised that failure to do so would lead to the account being passed to a third party for collection.

Mrs F complained to MotoNovo. MotoNovo upheld her complaint as it accepted she had been wrongly advised by its agent as to being able to clear the balance by instalments. It said it would keep the account in house and not pass it on.

However, MotoNovo said that having reviewed the car's inspection report it had found the damage charges fair and wouldn't be removing those and so the final liability would remain at £1,544.42.

MotoNovo said that it accepted that Mrs F would have been caused distress and inconvenience from being given the wrong information. It offered £250 compensation to address the impact this had had on her.

Mrs F was unhappy at MotoNovo's response and complained to this service. She said she thought it would be fair for the outstanding liability to be waived by MotoNovo. Mrs F said had she been given the correct information by the agent about VT she wouldn't have agreed to follow this process and would have instead kept the car.

Our investigator recommended Mrs F's complaint should be partially upheld. She said she thought MotoNovo could have done more to resolve the complaint. However, our investigator disagreed that the balance should be written off. This was because the liability of £1,141.42 was payable under the terms and conditions of the agreement when the agreement had been VT'd. And having reviewed the inspection report for the car she considered the damage that had been found was beyond fair wear and tear and so the invoice for £403 had also been fair. She thought the balance of £1,544.42 was payable in the circumstances.

Our investigator said a fair settlement would be for MotoNovo to pay a total amount of compensation of £400 for the distress and inconvenience caused and for it to agree an affordable repayment plan with Mrs F. She also said that MotoNovo should mark this account on Mrs F's credit file as settled by VT.

Mrs F disagreed with the view of our investigator. She said it was unfair for her to pay the full balance as she wouldn't have request to VT the agreement if she'd known what she had been told wasn't correct. Mrs F said if she had kept the car, then she wouldn't have faced additional charges of £403 for the damage. Mrs F offered to pay half of the £1,141.42 figure in full and final settlement.

MotoNovo also disagreed with our investigator and declined Mrs F's offer. It said an additional £150 as compensation was unreasonable and that it had to report accurate information about Mrs F's account to the credit reference agencies so couldn't record the account as settled.

As the parties were unable to reach an agreement the 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.

It isn't disputed that MotoNovo provided Mrs F with the wrong advice as to the conditions that applied when an agreement is VT'd. The issue for me is what would be a fair and reasonable settlement for Mrs F's complaint.

Mrs F says she would have kept the car if she had known she couldn't pay the final balance by instalments after she had VT'd the agreement. And as that would also mean she wouldn't have faced the additional invoice for the damage found with the car, it's unfair for her to have to pay the full liability. She has made an offer to pay £570.71.

Although I appreciate this will be of disappointment to Mrs F, I'm afraid I disagree with her view. This is because Mrs F, having considered the conditions of VT as originally set out by MotoNovo, chose to proceed. And I think it's reasonable to say that she was content to VT if she was able to pay off the liability by instalments. I've also seen that the agent advised her there was a possibility she would need to pay for any damage to the car if it was discovered

to be more than fair wear and tear. Mrs F had acknowledged in that call that there was some damage to the car as she raised the condition of the bumper. So, I think she was aware there may be extra costs incurred over the 50% liability when she requested to VT agreement and hand the car back.

I appreciate that had Mrs F known she had to pay off the liability within 30 days she wouldn't have opted to end the agreement and I've seen that MotoNovo agrees it misled her as to this point. So, I think it would be fair for MotoNovo to honour the conditions that it had originally set out and which Mrs F found agreeable. That is the liability can be paid via monthly instalments and that an affordable repayment plan is agreed. I don't think it's proportionate or fair in the circumstances for MotoNovo to waive the liability that remains due under this agreement.

Looking at the damage charges for the car, I've seen MotoNovo says these are in line with the British Vehicles Rental and Leasing Association ("BVRLA") guidelines. These guidelines set the industry standard as to what is and isn't considered to be fair wear and tear. However, these guidelines are also designed to apply when assessing a car at the end of its first credit agreement which isn't the case here. The car was around eight years and had a mileage of about 59,500 at the point of supply to Mrs F, so there would be an expected level of wear and tear to its parts and bodywork already.

I've seen the inspection report which includes photos of the car and the damage that was recorded. Mrs F doesn't appear to have disputed the damage found, she says it's unfair she pays it because it wouldn't have been incurred if she'd kept the car. I've considered the damage that was recorded, and I agree that it's fair MotoNovo charges for it as I think it is beyond fair wear and tear even when taking into account the age and use of the car.

There is a dent on the body quarter panel which is clearly visible in the photo and is greater than 15mm. I think it's more likely than not that this dent occurred while the car was in Mrs F's possession when looking at the cost of the car at the point of supply which indicated the car would have been in good condition. The repair cost for this is £35.

The rear bumper has peeling paint showing the base and so cannot be polished out and requires repainting. This is again beyond fair wear and tear for a car of this age and use. The repair cost is £130.

The front bumper corner has visible scratches over 25mm. The repair cost of £58 is reasonable as this damage is beyond fair wear and tear.

All four of the alloy wheels show significant scuffs marks that exceed 50mm and again I'm satisfied these are beyond fair wear and tear for the age of the car and are chargeable by MotoNovo. The cost of these repairs amounts to £180.

So, in assessing the evidence in respect of the damages found to the car, I'm satisfied that the charges of £403 are fair and reasonable. Under the agreement the responsibility is on Mrs F to keep the car in a good standard of condition and repair. It also states that it will be for Mrs F to pay the cost of putting the car back into the good condition it would have been in had she taken reasonable care if she terminates the agreement. As Mrs F has signed this agreement, then it's reasonable to expect she was aware and agreeable to its terms and conditions. I therefore think MotoNovo is entitled to raise these charges for the damage found.

Although I think Mrs F is liable for the £1,544.42 balance outstanding, I think she has been caused unnecessary distress and inconvenience for the way in which MotoNovo has handled her request for VT. I've seen it provided £250 to in compensation for the poor

customer service but I agree with our investigator that this amount doesn't recognise the full impact this matter has had on her. Mrs F was shocked to find that the advice and reassurance she'd been given as to how she could return the car and clear the outstanding liability was incorrect. This would have caused her considerable worry and has also had an impact on her credit file. I think an additional £150 compensation, making a total payment of £400, is fair and reasonable in the circumstances.

MotoNovo says that it is under an obligation to record accurate information about this account on Mrs F's credit file and that therefore it can't mark it as settled by VT as there is still an outstanding balance to pay but I disagree. The obligation on MotoNovo is to record accurate and fair information. And here, MotoNovo informed Mrs F there would be no adverse information recorded if she VT'd the agreement and paid the liability off by instalments. It said there would only be adverse information if she didn't make arrangements to pay the balance.

In light of MotoNovo's misleading advice I think it's fair that MotoNovo removes any adverse information in respect of this account having been VT'd and marks it as settled by VT. However, if Mrs F doesn't later co-operate with a payment plan then I think it would be fair for MotoNovo to report that.

So, for the reasons given I'm partially upholding Mrs F's complaint.

Putting things right

I'm asking MotoNovo to do the following:

- Manage Mrs F's account.
- Contact Mrs F and agree an affordable repayment plan for the amount Mrs F owes which totals £1,544.42. This amount comprises of £1,141.42 halfway point to VT and £403 damage charges.
- Pay Mrs F £150 in addition to the £250 (distress and inconvenience) already paid. This is to recognise the impact on her and the distress and inconvenience caused by its handling of the VT.
- Mark Mrs F's account on her credit file as settled via VT and remove any adverse information recorded relating to the VT.

My final decision

For the reasons set out above, I'm partially upholding Mrs F's complaint. I'm asking MotoNovo Finance Limited to do the following:

- Manage Mrs F's account.
- Contact Mrs F and agree an affordable repayment plan for the amount Mrs F owes which totals £1,544.42. This amount comprises of £1,141.42 halfway point to voluntary termination and £403 damage charges.
- Pay Mrs F £150 in addition to the £250 (distress and inconvenience) already paid. This is to recognise the impact on her and the distress and inconvenience caused by its handling of the voluntary termination.

- Mark Mrs F's account on her credit file as settled via voluntary termination and remove any adverse information recorded relating to the voluntary termination.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 18 July 2022.

Jocelyn Griffith
Ombudsman