

The complaint

Mr S complains about the way that MotoNovo Finance Limited has dealt with a hire purchase agreement under which a car was supplied to him.

What happened

I issued a provisional decision on this complaint in May 2022 in which I described what had happened as follows:

“A used car was supplied to Mr S under a hire purchase agreement with MotoNovo Finance that he electronically signed in March 2019. There were some issues with the car and Mr S paid for a diagnostic test in May 2019 which confirmed those issues. Mr S complained to the dealer and it agreed that he could reject the car. The dealer contacted MotoNovo Finance for a settlement figure and Mr S was given a collection note by the dealer which showed that the car had been rejected.

Mr S continued to make the monthly payments for the car to MotoNovo Finance but the dealer reimbursed him for those payments. The dealer stopped trading in about March 2020 and stopped making payments to Mr S. He complained to MotoNovo Finance in July 2020 that he was having to make payments for the car but he'd returned it to the dealer. He said that the dealer was looking to source an alternative car for him but hadn't provided anything suitable so had been covering the cost of the monthly instalments.

MotoNovo Finance said that the location of the car was unknown, that the dealer had contacted it after the date of the collection note to say that Mr S had decided to keep the car and that it hadn't heard from Mr S until he raised his complaint. It said that it was not in a position to unwind the agreement. Mr S then complained to this service.

Our investigator recommended that his complaint should be upheld. He was persuaded that Mr S had agreed with the dealer to reject the car and that he accepted the dealer's offer to find him a replacement car. He also said that MotoNovo Finance had been contacted twice by a third party asking about the finance on the car and said they had bought the car from the dealer.

He recommended that MotoNovo Finance should: refund all monthly payments (except the ones paid for by the dealer), refund the cost of the diagnostic report; unwind the hire purchase agreement and remove it from his credit file; pay interest on the refunds; and pay £200 compensation to Mr S.

MotoNovo Finance's solicitors, on its behalf, has asked for this complaint to be considered by an ombudsman. The solicitors say that, if Mr S considered that the car wasn't of satisfactory quality, he should have provided MotoNovo Finance with an opportunity to repair or replace the car – but he didn't do so, the car can't be rejected and it's not for the dealer to agree the return of the car or the unwind of any agreement. They say that Mr S had agreed to keep the car in his possession and to pay for the car but he hasn't kept it in his possession, hasn't rejected it and the car

belongs to MotoNovo Finance but can't be located. They say there's no evidence that the car isn't of satisfactory quality".

I set out my provisional findings in that provisional decision, which were as follows:

"MotoNovo Finance, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr S. Whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it. The car that was supplied to Mr S was about five years old, had been driven for 32,000 miles and had a price of £46,000. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors.

The hire purchase agreement shows that Mr S had part-exchanged a car which had a value of £63,000 but outstanding finance on that car of £50,000 was settled and the difference between those amounts of £13,000 was used as a deposit for the car. The amount of credit provided to Mr S under the agreement was £33,000 which he agreed to repay by 59 monthly payments of £708.01 and a final payment of £907.01.

The car was supplied to Mr S in March 2019 but there were issues with it so he took the car to a garage in May 2019 and paid it £48 for a diagnostic report. The report lists the following faults with the car: water leaking through a front window seal causing an electrical fault affecting the window and wing mirror motors resulting in a short in the wiring harness and the stereo and sat-nav not working as a result; an intermittent gearbox fault; a faulty shock absorber; perished left rear suspension; the A/C not working and showing an air pump fault; and an oil leak around the gearbox area.

That was less than two months after the car had been supplied to Mr S. The report records the car's mileage as being 31,988 (which is less than the mileage of 32,000 shown on the hire purchase agreement) so it's clear that Mr S had had limited use of the car. I consider it to be more likely than not that the faults listed on the diagnostic report were present when the car was supplied to Mr S and that the car wasn't of satisfactory quality at that time because of those faults.

Mr S complained to the dealer about the faults and the dealer said that he could reject the car – but the car belonged to MotoNovo Finance and it would be for it to decide how to respond to the issues with the car. Mr S signed the dealer's collection note in May 2019 which says that he had "... agreed rejection of this vehicle. The vehicle is not of satisfactory quality, fit for purpose and or as described with Faults not consummate with the age and mileage of the vehicle".

MotoNovo Finance says that it was contacted by Mr S the next day and that he said that the car was being returned to the dealer and that he wanted to stop paying his monthly instalments. It says that it was also contacted by the dealer and was told that the dealer was accepting the car back but was waiting for it to be returned to them. It also says that it was contacted by the dealer in July 2019 and it said that Mr S had decided to keep the car so there was no need for the agreement to be ended.

Mr S says that he agreed with the dealer that the dealer would look for an alternative car for him so he continued to make the monthly payments of £708.01 and he would be reimbursed by the dealer for those payments. He's provided evidence to show that the dealer made payments to him of £708.01 in May, July, August, September and November 2019 and March 2020 – but that evidence also shows that the dealer

paid him £1,093.02 in October 2019, £1,093.02 in December 2019, £1,094 in January 2020 and £1,123.02 in February 2020. It's not clear why the dealer paid Mr S more than £708.01 in some months, but the extra amounts total more than £1,500.

The dealer stopped trading in about March 2020 and made no further payments to Mr S but Mr S has continued to make monthly payments of £708.01 to MotoNovo Finance. MotoNovo Finance was contacted in September 2019 by a third party to check if there was any outstanding finance on the car and a third party contacted it in July 2020 and said that they'd bought the car in good faith in September 2019.

Mr S contacted MotoNovo Finance about the car in May 2019 but he then didn't make any further contact with it until he made his complaint to it in July 2020. I consider it to be more likely than not that Mr S did return the car to the dealer in May 2019 and that he reached an agreement with the dealer that the dealer would reimburse him for his monthly payments on the car while a replacement car was sourced for Mr S – but he never received a replacement car. I also consider it to be more likely than not that the dealer sold the car to a third party in September 2019 even though the car belonged to MotoNovo Finance.

Mr S had electronically signed the hire purchase agreement in March 2019 and he'd agreed, amongst other things, to make the monthly payments for the car and to keep the car in his possession as the registered keeper – but he hasn't kept the car in his possession. I consider that the car wasn't of satisfactory quality when it was supplied to Mr S and, if Mr S had complained to MotoNovo Finance, I would expect it to have taken action in response to his complaint – which might have included repairing the faults, paying him compensation or allowing him to reject the car – but he didn't complain to MotoNovo Finance and it wasn't able to take appropriate action in response to the car not being of satisfactory quality.

I consider that Mr S has been the victim of the dealer's actions – but MotoNovo Finance wasn't involved with those actions, I don't consider that it had enough information from Mr S or the dealer to know what was happening. As a result of those actions, Mr S no longer has the car so can't return it to MotoNovo Finance and continues to be contractually obliged to make the monthly payments under the agreement.

I sympathise with Mr S for the situation in which he now finds himself and the substantial liability that he's incurred as a result of the dealer's actions. But (other than supplying him with a car that wasn't of satisfactory quality) I'm not persuaded that there's enough evidence to show that MotoNovo Finance has acted incorrectly in these circumstances. Nor am I persuaded that it would be fair or reasonable for me to require it to end the hire purchase agreement. I suggest that Mr S contacts MotoNovo Finance to discuss his options under the agreement. If he hasn't already done so, I suggest that he also contacts the administrator or equivalent of the dealer's business, the police and the insurer of the car about these events as they may be able to help him in these circumstances.

I consider that Mr S's use and enjoyment of the car between March 2019, when it was supplied to him, and May 2019, when he returned it to the dealer, are likely to have been impacted by the issues with the car. Mr S has also been caused a very large amount of distress and inconvenience by these events which started as a result of the issues with the car. I would normally consider that it would be fair and reasonable for the supplier to pay some compensation in circumstances like these for the consumer's loss of use and enjoyment and the distress and inconvenience caused. But Mr S received more than £1,500 more from the dealer between May

2019 and March 2020 than the payments that he made to MotoNovo Finance during that period – and I'm not persuaded that it would be fair or reasonable for me to require MotoNovo Finance to pay him any compensation for those issues in these circumstances.

Because the car wasn't of satisfactory quality when it was supplied to Mr S, I find that it would be fair and reasonable for MotoNovo Finance to pay him £48 to reimburse him for the cost of the diagnostic report. I'm not persuaded that it would be fair or reasonable for me to require it to pay any other compensation to Mr S or to take any other action in response to his complaint".

Mr S has responded to my provisional decision in detail. He says, in summary and amongst other things, that:

- the supplier of the car was the dealer and the finance company was MotoNovo Finance;
- he acted as the law states in rejecting the car and returned it to the dealer and informed MotoNovo Finance of the reasons - and it liaised with the dealer in closing the agreement;
- two months later the dealer contacted MotoNovo Finance and informed it that he was keeping the car and not terminating the agreement – but that this wasn't what he'd agreed and he didn't communicate with MotoNovo Finance about that;
- the investigator evaluated all the information provided and recommended that his complaint should be upheld;
- the collection note shows that the car was rejected and returned to the dealer;
- MotoNovo Finance didn't raise any issues or ask to inspect the car but accepted the rejection and didn't request it to be returned back to it;
- the agreement states the car's mileage as 32,000 miles which was rounded up by the dealer as the mileage was 31,988 and he had very limited use of the car and experienced faults with it from the outset;
- the car wasn't of satisfactory quality which was agreed by the dealer and was explained to MotoNovo Finance;
- MotoNovo Finance was contacted in September 2019 by a third party and it should have raised that with him at the time – it was aware that the car was being sold but didn't confirm that with him;
- he's of the strong opinion that MotoNovo Finance is aware of the location of the car and has had communication with the buyer which it didn't disclose to him;
- he did agree for the dealer to look for another car but not as a replacement for this car – and it was agreed that the agreement would be terminated;
- he was advised that whilst the agreement was being terminated any payments being taken out would be refunded and it was never agreed that the agreement wouldn't be terminated;
- he requests me to fully re-evaluate my decision, taking into consideration his comments, the timeline of events, call recordings from MotoNovo Finance, the evidence provided previously and the repairs report;
- he's been caused severe anxiety and distress knowing that there is an active agreement that is being defaulted and which is affecting his credit; and

- the agreement should be terminated and it would be helpful for his monthly payments to be returned but if that isn't possible he will seek legal advice.

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'm not persuaded that I should change my provisional decision. In these circumstances, the dealer sold the car to MotoNovo Finance and it supplied the car to Mr S – with an option for him to buy the car at the end of the hire purchase agreement – so it was MotoNovo Finance (and not the dealer) that supplied the car to Mr S.

I consider that the car wasn't of satisfactory quality when it was supplied to Mr S and he returned the car to the dealer in May 2019 - the dealer provided him with a collection note and sent an e-mail to MotoNovo Finance about unwinding the hire purchase agreement. MotoNovo Finance has provided evidence to show that the dealer then told it that the car hadn't yet been returned by Mr S and that it was told in July 2019 that Mr S had decided to keep the car so an unwind of the agreement wasn't required. Mr S had continued to make the monthly payments that were due under the agreement – and he continued to do so until July 2020 when he contacted MotoNovo Finance.

As Mr S continued to make those payments and it was told by the dealer that Mr S hadn't returned the car, I don't consider that it was reasonable to expect MotoNovo Finance to have ended the agreement. Mr S had reached an agreement with the dealer that the dealer would reimburse him for his monthly payments on the car and look for another car for him. I consider it to be clear that MotoNovo Finance didn't know about that arrangement.

MotoNovo Finance was contacted in September 2019 by a third party to check if there was any outstanding finance on the car and a third party contacted it in July 2020 and said that they'd bought the car in good faith in September 2019 – but I'm not persuaded that the September 2019 contact was enough to show that MotoNovo Finance ought to have known about the arrangements or that it should have contacted Mr S at that time. I've seen no evidence to show that MotoNovo Finance is aware of the location of the car or has had any contact with the buyer that it should have disclosed to Mr S.

As I said in my provisional decision, I consider that Mr S has been the victim of the dealer's actions – but MotoNovo Finance wasn't involved with those actions, I don't consider that it had enough information from Mr S or the dealer to know what was happening. I sympathise with him for the situation in which he now finds himself and the substantial liability that he's incurred as a result of the dealer's actions - but (other than supplying him with a car that wasn't of satisfactory quality) I'm not persuaded that there's enough evidence to show that MotoNovo Finance has acted incorrectly in these circumstances.

I set out in my provisional decision some actions that he could take and nothing in this decision prevents him from taking legal action about these events. But I'm not persuaded that it would be fair or reasonable for me to require MotoNovo Finance to end the hire purchase agreement or to pay him any compensation (other than to reimburse £48 to him for the cost of the diagnostic report).

Putting things right

I find that it would be fair and reasonable for MotoNovo Finance to pay £48 to Mr S to reimburse him for the cost of the diagnostic report but I'm not persuaded that it would be fair or reasonable in these circumstances for me to require it to pay any other compensation to Mr S or to take any other action in response to his complaint.

.My final decision

My decision is that I uphold this complaint in part and order MotoNovo Finance Limited to pay £48 to Mr S to reimburse him for the cost of the diagnostic report.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 August 2022.

Jarrold Hastings
Ombudsman