

## **The complaint**

Miss J complains about the quality of a car she has been financing through an agreement with MotoNovo Finance Limited, who I'll call MotoNovo.

Miss J has been represented by her partner but as Miss J is named on the finance agreement, and for convenience, I'll refer only to Miss J in this decision. I mean no disrespect to her partner when doing so.

## **What happened**

I issued provisional decisions on this complaint earlier this year. An extract from my last provisional decision is set out below.

### ***What I've provisionally 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 think this car has been of unsatisfactory quality. I don't think the redress proposed by our investigator was sufficient to put things right for Miss J and I think a little more needs to be done.*

*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 J acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then MotoNovo, who are also the supplier of the car, are responsible.*

*It's not disputed that this car wasn't of satisfactory quality. MotoNovo accept that they were unaware, and Miss J hadn't been made aware, that it was listed as Category S under the Association of British Insurer's Salvage Code of Practice, and that meant it had structural damage.*

*MotoNovo agreed to allow Miss J to reject the car. They offered to take the car back, refund the £2,100 Miss J had paid as a deposit, and to pay Miss J £150 to compensate her for the distress and inconvenience caused.*

*Miss J didn't want to return the car. The call logs suggest she wanted to have it repaired*

*instead, but it's MotoNovo's policy not to finance Category S cars so I can't say it was unreasonable of them not to agree to a repair.*

*When we ask a business to reject a car we usually think it's fair to ask them to end the finance agreement, refund any deposit, refund any finance instalments less an amount for fair usage, refund any costs incurred by the consumer as a consequence of the failure, and pay an amount to compensate the consumer for the distress and inconvenience caused. I'll consider each point in turn.*

### **Ending the finance agreement**

*I'm expecting to tell MotoNovo to end the agreement and, as they mentioned in their final response letter of 20 January 2023, that will mean they'll need to remove any record of the agreement from Miss J's credit file. I understand that Miss J is upset MotoNovo have been reporting some missed payments to her credit file. She's made a separate complaint to MotoNovo about that action. As I'm expecting to ask MotoNovo to remove any record of the finance agreement from Miss J's credit file, that will go some way to resolving that complaint. It may be, however, that the complaint still needs to be considered by MotoNovo as it may be fair to pay some compensation to Miss J (although I make no finding on that).*

*The car belongs to MotoNovo so they'll need to collect it before they can action any order I make.*

### **Refund of the deposit and finance instalments**

*Mr J paid £2,100 as a deposit/part exchange. That will need to be refunded to her and, as she's been deprived of that money, MotoNovo should add interest to the refund.*

*The relevant legislation says that the business are entitled to retain a portion of any finance instalments paid by the consumer in respect of the fair use they have had from the car. Miss J took receipt of the vehicle on 8 August 2022, and it was returned briefly for repairs somewhere around 16 to 18 August 2023. It seems a courtesy car wasn't provided. Miss J has explained that the repairs were unsuccessful, and the car was booked in for further repairs between 8 and 26 October. Thereafter the car was inspected and left at a third party repairer. On balance, given the information that's available to me, it seems Miss J had impaired use of the car up until 8 October 2022 and no use thereafter. I'm therefore expecting to ask MotoNovo to refund, or waive if they were due but haven't been paid, any finance instalments due from 8 October 2022. I'm also expecting them to refund 10% of any instalments due before 8 October 2022 in respect of the impaired use Miss J had from the car as the evidence suggests she was having problems with it.*

### **Consequential costs**

*Miss J has explained that she has incurred costs for hire cars, repairs, and air conditioning re-gassing as a consequence of the problems she's had with the car. MotoNovo, and our investigator, have asked for evidence of those costs, but I can't see any has been provided and I'm not therefore expecting to authorise any refunds.*

*Miss J has suggested that the third party garage who are currently storing the car will want to charge storage fees of £15 per day. She's explained that the car can't be driven, and she can't afford to have it uplifted. I've not seen evidence that any charges have been incurred or billed, but if charges are levied I don't think it's fair to expect Miss J to pay them. The call logs suggest Miss J wouldn't tell MotoNovo where the car was, and I can understand they may therefore say that prevented them from collecting it and avoiding the storage charges. Whilst it's clear that MotoNovo did offer to end the agreement and collect the car as soon as*

*they heard of the car's insurance categorisation, the offer they made to settle the dispute was in my opinion, inadequate. So, I don't think Miss J was unreasonable to reject it and any storage charges incurred as a consequence should therefore be paid by MotoNovo.*

### ***Distress and inconvenience***

*Miss J has experienced distress and inconvenience here and I don't think the £150 the business have currently offered is sufficient to address that. I can see that Miss J had to return the car to the dealership for repairs and that a courtesy car wasn't provided to keep her mobile. And the fact a Category S car was supplied to Miss J, that MotoNovo won't continue to finance, has further inconvenienced her as she has had to return a car she clearly wanted repairing. On balance, considering all of the circumstances, I think MotoNovo should provide a further £300 in compensation.*

### ***My provisional decision***

*For the reasons I've given above I'm expecting to uphold this complaint. That will mean that after Miss J tells MotoNovo Finance Limited the current location of the car they will need to:*

- End the finance agreement and collect the car at no cost to Miss J.*
- Refund, or waive if they were due and haven't been paid, any finance instalments from 8 October 2022. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.*
- Refund 10% of finance instalments paid before 8 October 2022 in respect of the impaired use Miss J had from the car. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.*
- Refund Miss J's deposit and add 8% simple interest per year to any refund from the date of payment to the date of settlement.*
- Pay Miss J a further £300 (£450 in total) to compensate her for the distress and inconvenience she's experienced.*
- Pay any storage costs that may become due to the business currently storing the vehicle and on provision of the bill. Costs not to exceed £15 per day as per the repairer's estimate.*
- Remove any record of the agreement from Miss J's credit file.*

### ***Further comments***

*MotoNovo didn't provide any further comments or evidence, but Miss J did. She said:*

*"I have not been able to agree to your decision as it leaves me financially at a huge loss.*

*1. The (car) I exchanged for the Nissan Juke had an asset value of £3000 and was sold by (the dealership) for over that amount. I received £1400 part exchange on the express deal of having a fully functioning road worthy Nissan Juke and I don't think it is unreasonable to expect to be reimbursed the difference seeing as the vehicle is now being returned so I will neither have my previous asset or the one it was exchanged for. This will cause me to suffer a total loss of £1600.*

*2. On 8th August 2022, I entered into a hire purchase agreement with Motonovo {...} the vehicle was unsafe to be driven on the road. I find it insulting to suggest that I had use of this vehicle. I do not agree that it is acceptable for me to be paying any amount for use of this vehicle that could have caused the injury or death of myself and family and will require full return of all deposits and monies paid totalling £2632.92.*

*3. I am entitled to loss of use payment for both pleasure use and loss of amenity and this*

has been legal precedent since *Birmingham Corporation v Sowsbery* 1970 the award being £4 11 Shillings around £90 in current terms. I have claimed at £77.31 based on hire value of same vehicle. I will accept that there are differing awards given per case for loss of use but the lowest I can find, based on purely loss of pleasurable use, is still at £15 per day. I do not think it is reasonable to not be compensated at all for my loss of use and would expect at the least to be awarded the lowest award of £15 per day in line with legal precedent in UK Law. That amounts to 236 days on the 20th June totalling £3510.

4. The storage costs are on the invoice attached to this email along with the inspection cost. It is clear on the invoice what the daily rate is, and this will be charged to me in full when the vehicle is removed. I appreciate that you have not been provided with a copy to date of the invoice. The total for the invoice will be the total storage days and inspection cost, being at on the 20th June 2023, 236 days totalling £3618.

5. I hired a vehicle to fulfil a prebooked trip with my Mum for her Birthday, at a cost of £186.64 invoice attached.

6. I had to re-gas the aircon, which didn't even work due to the substantial damage that the vehicle had. Invoice attached for £64.95.

I do not agree that £450 compensation is a reasonable amount given that this vehicle was not roadworthy on collection and could have caused serious injury or worse. I was fraudulently duped out of my asset that I had painstakingly paid for over five years. I was given zero help to rectify the issue. My payments were stopped by MotoNovo and then I was harassed and treated as a non-paying debtor. It has taken 10 months and is still unresolved. It has cost me considerably more than £45 per month to be without a reliable vehicle so this wouldn't even be compensation as it wouldn't even cover my many unquantifiable costs.

### **What I've provisionally 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 thank Miss J for her additional comments. I had explained in my initial provisional decision that I was expecting to ask MotoNovo to "Refund Miss J's deposit and add 8% simple interest per year to any refund from the date of payment to the date of settlement." For clarity the finance agreement explains that a £600 deposit was paid and that there was a part exchange contribution of £1,500. I'd expect to tell MotoNovo to refund the deposit and the part exchange, but I can't see the part exchange contributed any more than £1,500 towards the cost of the car.

Whilst I understand Miss J's concerns about paying anything towards a car that has proven to be unsatisfactory, the relevant legislation allows the business to retain some of the finance instalments in respect of any use the consumer may have had from the car. For the reasons I've already given I think Miss J had some impaired use prior to 8 October 2022. I'm not therefore minded to change that view.

Miss J says she is entitled to a "loss of use payment for both pleasure use and loss of amenity". I've suggested a refund in respect of loss of use (amenity) and impaired use (pleasure) and I've set out, I think fairly, what those refunds should be.

The invoice Miss J has provided explains that storage costs will be calculated at £15 per day and that's what I'm expecting to order. I see no reason to change that.

Miss J has provided a receipt for car hire when she had to make alternative arrangements to

*take a trip with her mother. That was only a few days after the car had been taken to the garage and I don't think Miss J could have reasonably been expected to mitigate that cost e.g. by funding another car. No courtesy car was provided, and I therefore think the cost was incurred as a consequence of her leased vehicle failing. The invoice cost of £186.64 should therefore be refunded by MotoNovo and they will need to add interest to that refund as Miss J has been deprived of that money.*

*Miss J has also provided a receipt for re-gassing of the air conditioning. That is dated 18 August 2022 before the car's rejection was approved. I think it was likely to be a fault present when the car was supplied and one MotoNovo should therefore refund to Miss J, with interest.*

*Miss J has understandably found these events distressing and she's been inconvenienced by them. But having considered our published guidance on distress and inconvenience payments I am not persuaded to increase the compensation I set out in my original provisional decision.*

### **My provisional decision**

*For the reasons I've given above I'm expecting to uphold this complaint. That will mean that after Miss J tells MotoNovo Finance Limited the current location of the car they will need to:*

- *End the finance agreement and collect the car at no cost to Miss J.*
- *Refund, or waive if they were due and haven't been paid, any finance instalments from 8 October 2022. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.*
- *Refund 10% of finance instalments paid before 8 October 2022 in respect of the impaired use Miss J had from the car. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.*
- *Refund Miss J's deposit and any part exchange and add 8% simple interest per year to any refund from the date of payment to the date of settlement.*
- *Pay Miss J a further £300 (£450 in total) to compensate her for the distress and inconvenience she's experienced.*
- *Pay any storage costs that may become due to the business currently storing the vehicle and on provision of the bill. Costs not to exceed £15 per day as per the repairer's estimate.*
- *Refund the £64.95 Miss J spent re-gassing the car. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.*
- *Refund the £186.64 Miss J paid for a hire car as a consequence of the car she was renting failing. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.*
- *Remove any record of the agreement from Miss J's credit file.*

### **Further comments on my second provisional decision.**

MotoNovo accepted my provisional decision but explained that they wouldn't be able to provide the redress I'd set out until the car was back in their possession. Miss J didn't agree with the provisional decision and her representative called to say they believed it was unlawful.

### **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.

While I understand Miss J's disappointment I don't think I've been provided with any information that would demonstrate I have the law wrong in this case. I'm therefore not persuaded to change my most recent provisional decision.

### **Putting things right**

My most recent provisional decision therefore becomes my final decision on this complaint. For clarity it is usual, and I'd expect, the business to provide the redress I'm ordering only after they have collected the car.

### **My final decision**

For the reasons I've given above I uphold this complaint. That will mean that after Miss J tells MotoNovo Finance Limited the current location of the car they will need to:

- End the finance agreement and collect the car at no cost to Miss J.
- Refund, or waive if they were due and haven't been paid, any finance instalments from 8 October 2022. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Refund 10% of finance instalments paid before 8 October 2022 in respect of the impaired use Miss J had from the car. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Refund Miss J's deposit and any part exchange and add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Pay Miss J a further £300 (£450 in total) to compensate her for the distress and inconvenience she's experienced.
- Pay any storage costs that may become due to the business currently storing the vehicle and on provision of the bill. Costs not to exceed £15 per day as per the repairer's estimate.
- Refund the £64.95 Miss J spent re-gassing the car. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Refund the £186.64 Miss J paid for a hire car as a consequence of the car she was renting failing. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.
- Remove any record of the agreement from Miss J's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 24 August 2023.

Phillip McMahon  
**Ombudsman**