

The complaint

Mr S complains that MotoNovo Finance Limited (“MotoNovo”) gave him incorrect advice about his options when he fell into arrears on an agreement he took out with them.

What happened

In November 2019, Mr S acquired a used car using a hire purchase agreement with MotoNovo. The cash price of the car listed on the agreement was £16,689; the deposit listed on the agreement was £3,605.30; and the duration of the agreement was 61 months.

Mr S fell into arrears with the agreement. He made a partial payment in April 2021. Mr S then didn’t make regular repayments due under the agreement until September 2021. Mr S made MotoNovo aware of his financial circumstances when he fell into financial difficulty and MotoNovo provided support to him such as agreeing reduced payments for certain months. MotoNovo also provided support through a specific welfare support team to discuss Mr S’s financial circumstances.

Two further partial payments had been made to MotoNovo in April and May 2022. And in August 2022, MotoNovo reached out to Mr S for an update to his financial circumstances.

In June 2023, MotoNovo got in touch with Mr S and explained that after several attempts of getting in touch with him with no success, they were transferring his agreement back to their normal collections department as they hadn’t been able to assess his circumstances fully.

In July 2023, Mr S contacted MotoNovo to discuss his options. He said, following the advice he received from MotoNovo, he decided to voluntarily terminate the agreement. Mr S said he was told the car would be sold at auction and the value it was sold at would be offset against the arrears that he owed. However, Mr S said that the proceeds from the auction were rather offset against the total outstanding amount that he owed under the agreement, which was a higher amount.

Mr S was unhappy with the advice he believed he received from MotoNovo and so complained to them. After eight weeks, Mr S referred his complaint to our service as he hadn’t received a final response from MotoNovo.

MotoNovo did eventually send Mr S their final response, where they explained they upheld his complaint. In summary, they confirmed they did provide incorrect information during a call Mr S held with MotoNovo in which they told him that the proceeds from the sale of the car at auction would be offset against arrears owing only.

To put things right, MotoNovo said they would reduce the liability Mr S owed from £12,267, which was the amount of arrears that had accrued, to the balance on the agreement after the sale of the car – which was £8,837.83. They said they would do this as this was the lower amount of the two.

MotoNovo also paid Mr S £200 for the inconvenience their mistake had made.

Mr S was also unhappy with how MotoNovo allowed his arrears to increase in the manner it had, and believed they should have been in touch much sooner to offer assistance.

In November 2023, MotoNovo sent Mr S a letter confirming that his agreement had now ended and confirmed the amount which was left to pay.

Our investigator looked into things and thought MotoNovo needed to do more in this instance. In summary, he found that it was fair what MotoNovo put forward as it reduced the amount Mr S had to pay them. He felt MotoNovo had reduced Mr S's liabilities by around a third – which he thought was a significant recompense for their error. Our investigator also explained that Mr S had full use of the car he acquired during the approximate two years where regular payments were not made under the agreement. But, he thought MotoNovo needed to backdate a default they had applied to Mr S's account to the earliest reasonable time that they should have done so. Our investigator thought the default should have been applied as early as October 2021, rather than in 2023, as it would now be on Mr S's credit file longer than it should be. So, our investigator asked MotoNovo to:

- Ensure the payment of £200 was made to Mr S for the inconvenience caused, if they had not already done so.
- End the agreement and collect the car from Mr S, at no cost to him.
- Apply any default that should be registered to Mr S's account at the earliest possible date so as to minimise the impact on his credit file.
- Continue to support Mr S and put in place a suitable repayment plan for any remaining arrears owed, if required.

Mr S disagreed with the investigator's findings. Among other things, Mr S didn't believe he would have chosen to voluntarily terminate the agreement and give the car back, had MotoNovo not made an error in the information they gave him. Mr S believed he would have sought help from family members to pay off the arrears and continue with the agreement, leading to ownership of the car.

Mr S also believed, following the incorrect information he received from MotoNovo, that the full debt should be written off, and any defaults removed from his credit file.

As Mr S disagreed with the investigator's outcome, the complaint was passed to me to decide.

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 upholding this complaint and I'll explain why below.

Firstly, I'm aware that I've summarised Mr S's complaint points. And I'm not going to respond to every single point made by him. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

It isn't in dispute that MotoNovo gave Mr S incorrect information during a call he made with them. Mr S believes the debt should be written off due to what was incorrectly confirmed to him during the call. Mr S believes a precedent should be set to ensure MotoNovo don't put their future customers in a similar position. On the other hand, to put things right, MotoNovo

say that as the balance after the sale was less than the voluntary termination arrears, they would accept the lesser amount from Mr S. So, they reduced Mr S's arrears from £12,267, to £8,837.83. They also explained that they wouldn't look to reduce the liability any further as they believed voluntary termination would have still most likely have been the best exit option for Mr S, given the balance that was outstanding.

I've carefully considered what has happened here. To be clear, my role is not to act as a regulator or to punish businesses for any wrongdoing. My role in this instance is to consider the specific circumstances to this complaint, and if I think the business has done something wrong, direct them to put things right in a fair and reasonable way for Mr S.

While MotoNovo has made a mistake, I'm mindful that this doesn't mean that Mr S should be absolved of his responsibilities that were set out with the agreement he signed with MotoNovo. Had the mistake not occurred, Mr S would have still been liable to repay the arrears accrued, as well as continue to make the ongoing repayments if he wished to keep the car. MotoNovo, due to their mistake, chose to reduce Mr S's arrears by around £3,430 – which is almost a third of what he owed.

Considering the mistake that MotoNovo made, I'm satisfied their offer here is fair and reasonable. So, it follows that I don't think MotoNovo needs to do anything further in relation to this.

I have noted Mr S's comments where he says, had he been given the correct information from the outset, he would not have chosen to voluntarily terminate the car and hand it back. He says he would have reached out to friends or family for support to make repayments and retain the car. I appreciate Mr S's comments here, and I accept I can't be sure with full certainty what Mr S would have done, had he been given correct information from the outset. But Mr S's arrears continued to increase as there were several months where repayments were not made by him. During this time, Mr S continued to have full use of the car. As I said above, if Mr S would have chosen to retain the car and keep the agreement active, Mr S would have needed to repay the arrears accrued, as well as continue the regular repayments due on the agreement until its term. Considering the amount that was owed, and the lack of repayments on the account up to the point where Mr S called to discuss his options, I think it is more likely than not that Mr S would have continued with the voluntary termination of the agreement.

From contact notes I have seen that MotoNovo supplied, I can see that Mr S was in financial difficulties from February 2021 – and as early as April 2021, Mr S struggled to meet his repayment obligations set in his agreement with MotoNovo. Mr S didn't make repayments between the partial payment in April 2021 until September 2021. And then repayments weren't made again until partial payments in April and May 2022.

Mr S and MotoNovo were in regular contact with each other for several months in 2021 – where MotoNovo gave support in some circumstances, and Mr S continued to keep MotoNovo updated with his financial situation. However, communication began to deteriorate. And Mr S believes MotoNovo should have done more to keep him informed of his arrears.

While I appreciate Mr S's comments, I'm also mindful that Mr S ought reasonably to have known that his account was in arrears, given that repayments hadn't been made to them for several months in instances and he had continued use of the car during this time. So, had Mr S been concerned with arrears accruing, I would have expected him to have also got in touch with MotoNovo much sooner than he had. On a further note, I have seen contact notes which show that MotoNovo did attempt to contact Mr S on occasions, but communication was not responded to.

MotoNovo confirmed that a default was registered to Mr S in November 2023, and they said this was after they sent him the necessary notifications informing him that a default would be applied to his account. I have seen a copy of a Notice of Default Sums addressed to Mr S, dated 5 July 2023; alongside a copy of a Default Notice addressed to Mr S, dated 25 July 2023; alongside two Notice of Sums in Arrears addressed to Mr S, dated 8 March 2023 and 8 August 2023. Having reviewed these, I'm satisfied MotoNovo fulfilled their obligations of informing Mr S of his arrears and notifying him of an upcoming default on his account, if he was unable to satisfy the requirements of the Notice.

Having said that, I'm also mindful of MotoNovo's obligations to record defaults on accounts accurately and I've considered whether the date of the default was fair for what happened here.

I've considered what the Information Commissioner's Office ("ICO") says about what should or shouldn't be reported to the credit reference agencies ("CRA's"). The ICO is the body created which deals with an individual's data, and it has released a document called, "*Principles for Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*". It is entirely reasonable to rely on this, because when determining a complaint, as amongst other things, my role requires me to take into account good industry practice and in my view, these principles constitute good industry practice in this area.

The principles state that a default would usually occur if a customer falls into arrears on their account, or they do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down. As a general guide, this may occur when somebody is three months in arrears, and normally by the time somebody is six months in arrears. This is because it would likely be clear that a consumer would be unable to make their contractual payments.

So I've considered whether I would have expected the default to be registered when it was.

MotoNovo recorded a default on Mr S's account in November 2023 – over two years later than I think it should have. I think it became apparent at around October 2021, six months after the partial payment made in April 2021, that Mr S would be unable to make his contractual payments. This is because no further payments were made to Mr S's account until September 2021, and this did not clear the arrears that had accrued. As the default had only been added in November 2023, it will remain on Mr S's account for longer than it should, which I don't think is fair.

I accept MotoNovo's comments that the reason for the delay in recording the default was because there was an open complaint. But I don't think this is a reasonable reason to not record a default on Mr S's account accurately and within a reasonable amount of time. So, it follows that I think the default recorded on Mr S's account should be backdated to October 2021.

Considering the above, and the impact MotoNovo's mistake of providing Mr S with incorrect information has had on him, I also think MotoNovo's offer of £200 for the distress and inconvenience caused is fair in the circumstances.

In addition, I have noted since our investigator's view and his instruction to MotoNovo to end the agreement and collect the car at no cost to Mr S, the agreement has ended. So, I will not need to make this direction to MotoNovo in my decision.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct MotoNovo Finance Limited to put things right by doing the following:

- To backdate the default on Mr S's account to October 2021.
- Pay Mr S £200 to reflect the distress and inconvenience caused, if MotoNovo hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 September 2024.

Ronesh Amin
Ombudsman