

## **The complaint**

Mr S complains that he was mis-sold a used car by MotoNovo Finance Limited because it had misrepresented the car's service history.

## **What happened**

On 30 December 2022 Mr S entered into a five-year regulated hire purchase agreement with MotoNovo in relation to a used car. The car was six years old, its cash price was £12,295, and its mileage was nearly 70,000 miles. He paid a deposit of £3,500.

Mr S says he was told at the point of sale that the car had last been serviced in September 2022. In September 2023, the car developed some problems, so he took it to a garage, where he was told that the car had a faulty exhaust gas recirculation (EGR) filter and that this was the result of the car not having been serviced in the past. Mr S hadn't had the car serviced yet because he had relied on what he had been told about the car having been serviced one year earlier. By this time the mileage was 89,000 miles, so he hadn't thought another service was due until now, believing the schedule to be either one year or 20,000 miles. He therefore complained to MotoNovo (and also to the dealership) that the car had been mis-sold. Meanwhile, the EGR filter was replaced at a cost of £421, and Mr S also had to hire another car for two weeks.

Mr S says that if he had known that the car had not been serviced in 2022, then he would either have bought a different car, or alternatively he would have negotiated a price reduction and then paid for a service himself. He wouldn't have driven the car for a year without servicing it, nor paid full price for it.

MotoNovo did not accept that its advert had been misleading. It interpreted Mr S's complaint as being that he had been promised a full service history, and so it told him it had advertised only a "detailed service history" but not a full one. On that basis, MotoNovo did not uphold that complaint as so framed.

Mr S then complained to our service. He pointed out that he had never said that the car had been advertised as having a full service history, just that the service history had not been accurate. At the point of sale he had been given a document which stated that a "service inspection + MOT" had been carried out in September 2022, but MotoNovo had now told him that this did not mean that a full service had been done on that occasion; it had only checked the oil level and lights, and carried out an MOT test. Mr S maintained that this had been misleading, because a reasonable and normal interpretation of that entry would be that the car had been fully serviced in September 2022.

Our investigator did not uphold this complaint. He thought that the car had not been mis-sold, because it had been advertised as having a "detailed" service history; if it had had a recent full service it would have been advertised as having a "complete" or "full" service record. So he concluded that there had not been a misrepresentation of fact. (He also didn't think that the car had been of unsatisfactory quality at the point of sale, because the expected lifespan of an EGR filter is 80,000 miles and it had failed at 89,000 miles.)

Mr S did not accept that opinion. He argued that the investigator and MotoNovo had missed his point, which was that the written service history provided had indicated that the car had been serviced in September 2022, three months before he acquired it, and that there had been nothing to say that this had been no more than an MOT and checking the oil levels and lights. But for that, he would not have bought the car. He asked to be allowed to return the car for a refund of his deposit and of the repair and car hire costs. He asked for an ombudsman to review his case.

I wrote a provisional decision which read as follows.

### **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.

In his complaint email to the dealership in October 2023, which he copied to MotoNovo, Mr S wrote:

"I was led to believe the car was in excellent condition and had a detailed service history."

He did not write that he had thought the car had been advertised as having a *full* service history. And in his reply to MotoNovo's final response letter, he emphasised that his complaint was that the service history document he had been given was misleading, because it described as a service something which he had since been told had actually been much more perfunctory.

The relevant document is titled "Service History Printout" and contains three entries. The first two entries are typed, and the third has been added in handwriting. They are as follows (I have omitted the names of the dealerships):

<b>Date</b>	<b>Service</b>	<b>Mileage</b>
10/02/18	21000 MILE SERVICE	21,744
14/08/18	OIL SERVICE + AIR FILTER + AA INSPECTION	32,557
29/09/22	SERVICE INSPECTION + MOT	69,796

Looking at those descriptions, it's hard to see how a consumer could read the third entry and be expected to understand that it is not describing a service. If all that happened on the third occasion was an oil level check, a lights check, and an MOT, then one might have expected the description to more closely resemble the second entry. On balance, I think that "service inspection + MOT" is misleading.

An FCA regulation says:

"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."

For the reasons I have given above, I think that the service history printout failed to meet that standard.

Under section 56 of the Consumer Credit Act 1974, MotoNovo is responsible for the actions of the broker which arranged the hire purchase agreement (*i.e.* the dealership). So I am minded to find that the agreement was mis-sold, and to uphold this complaint.

I have considered Mr S's request to return the car for a refund of his deposit and consequential losses. That would indeed be the usual remedy in a mis-selling case, but at the moment I am wondering if that is really proportionate in this case. He still has a working car, and now that it has been repaired there does not seem to be any reason why he can't go on driving it. So at the moment I think that a fair resolution would be to refund the cost of the repair and the car hire; to reduce the price of the car by an amount corresponding to the cost of a service (I request evidence of how much that is); and to pay Mr S some compensation for his inconvenience.

### **My provisional decision**

I am currently minded to uphold this complaint. Subject to any further representations I receive from the parties ... I intend to order MotoNovo Finance Limited to pay Mr S the following amounts:

- £421 for the cost of diagnosing and repairing the ERG filter;
- £668:74 for the cost of hiring another car during the repairs;
- simple interest on the above refunds at 8% a year from the dates of payment to the date of settlement;
- to reduce the price of the vehicle by a further amount (to be determined or agreed) corresponding to the cost of a full service of this vehicle at today's rates, and to amend the hire purchase agreement accordingly; and
- £250 for his inconvenience.

### **Responses to my provisional decision**

Mr S maintained that he had the right to unwind the agreement, and in support of this he relied on the Misrepresentation Act 1967. (However, I think that Part 1 of the Consumer Rights Act 2015 is more relevant here.) He also referred to an ombudsman's decision in another complaint, in which it had been held that the complainant was entitled to reject a car even though the car was still driveable.<sup>1</sup> He emphasized that he has lost confidence in the car. He argued that it appeared as though he was being forced to retain the car just because he has now had it for a long time since it was repaired, since if his complaint had been upheld back in 2023, then he would have been allowed to reject the car then. So he is effectively being penalised because of how long it has taken to give him a decision in this complaint. He referred to a Court of Appeal judgement<sup>2</sup> which said that the normal remedy for misrepresentation is rescission of the contract, and that this should not be denied merely because of passage of time.

Mr S pointed out that servicing the car in 2024 will not eliminate any wear and tear that has accumulated as a result of the car not being serviced since 2018. That damage will still be present. This might have reduced the car's roadworthiness by tens of thousands of miles, as a result of something that he was unaware of – but should have been told – at the point of sale. He added that this long gap in the service history will probably reduce the price for which he may sell the car one day (the option to purchase fee is only £1). The only way to address the above points is to let him reject the car.

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<sup>1</sup> I am not bound by the decisions of other ombudsmen, as they are not precedents like court decisions, but I have read it anyway in the interests of consistency in dealing with similar cases.

<sup>2</sup> *Salt v Stratstone Specialist Limited* [2015] EWCA Civ 745. At paragraph 24 Longmore LJ said: "The normal remedy for misrepresentation is rescission ... This remedy should be awarded if possible."

Mr S added that he no longer wishes to be a MotoNovo customer, but if he isn't allowed to reject the car then he will still be tied into a finance agreement with MotoNovo. (He later said that he might voluntarily terminate the agreement.)

MotoNovo accepted my provisional decision in principle, but proposed a couple of modifications to the redress. It proposed to pay £25 a day towards the cost of the hire car (which over two weeks comes to £350), because that is what it would normally offer. And instead of reducing the price of the car by the cost of a service, it offered to just pay Mr M the cost of a service, on receipt of a quote from a VAT-registered garage.

MotoNovo also provided a statement from the dealership's managing director, in which he said:

"A service inspection is not an oil and filter service it's an inspection which would occur pre-service and include a top up of oils, washer fluid and coolant to ensure safe passage post purchase.

It is not a Service; hence we call it Service Inspection. We don't do servicing nor offer it on our website. [Mr S] knew this."

He said Mr S must have known that, because the dealership's premises are just a sales office and do not include a workshop. (However, I note that the service history gives the name of a different business as having carried out the August 2018 service inspection.)

He added that Mr S had had the car for 19,000 miles without trouble, before the EGR filter failed. A service should be carried out every 12,000 miles (not 20,000), or every 12 months, whichever happens sooner, and so Mr S should not have driven the car for 19,000 miles without having it serviced. This had voided his warranty. He has now driven it 49,000 miles, so it would not be fair to allow him to reject the car now; MotoNovo also made this last point.

Mr S says that he has only driven those extra 30,000 miles because he was not allowed to reject the car in 2023. He thought the car had to be serviced every 20,000 miles.

MotoNovo added that there was no evidence that the dealer had told Mr S that a service had been completed prior to the sale, and no evidence of intent to mislead him.

## **My findings**

I remain of the view that the service history printout was misleading, and that it caused Mr S to believe, wrongly, that the car had been serviced in September 2022 when it had not. The fact that the dealership does not offer services is irrelevant, because the printout named the third party garage where the service inspection was carried out; Mr S didn't think the dealership had done it.

I looked at the main dealer's website, and it seems to suggest that a service should be carried out every 21,000 miles. A drop-down menu for booking a service describes different services by references to multiples of 21,000 miles. (I won't identify the make of car in this decision, but I will arrange for a link to the website to be included in the covering letters which accompany this decision.) So I am not persuaded that Mr S neglected the car by not servicing it after 19,000 miles. He reasonably thought he still had 2,000 miles to go.

I've seen evidence on the same website that Mr S had the car serviced on 1 December 2023, or 14 months after the service inspection. Its mileage on that occasion was 94,592 miles, or about 24,500 miles after he acquired the car. That is slightly late, so I thought about whether the service might have been less important to him than he suggested, but I don't

think it is very late, so I remain of the view that I should uphold this complaint. The website indicates on another page that the kind of service Mr S booked costs £553:04.

I have considered Mr S's arguments about why I should let him return the car. I agree that that should be my starting point, but I still think that I can fairly depart from that in this case. That is not because he has had the car for 49,000 miles – I agree with him entirely that it wouldn't be fair to hold against him the fact that MotoNovo did not uphold his complaint in 2023 so he's had to keep using the car ever since. It is just that I think that a more proportionate remedy would be to pay him the cost of the 2023 service, since he told us that if he had known the true position at the point of sale, then he would have negotiated a price reduction equal to the cost of a service (as a possible alternative to not buying it at all). Although I appreciate his argument about the risk that the car might have become less roadworthy as a result of not having been serviced in 2022, I think (1) that is a bit too speculative, and (2) he knew that the car had not been serviced for the four years between 2018 and 2022.

Both parties have said that they would rather that MotoNovo just pays Mr S the cost of a service, rather than interfering with the terms of the agreement, so I will go along with that. That will be the cost of the 2023 service, rather than his next one, because he would have had to service the car in 2024 anyway.<sup>3</sup>

I think that Mr S should be refunded what he actually paid for the hire car, rather than what MotoNovo would usually pay for one. Perhaps he could have got a cheaper hire car than he did, but I'm not going to penalise him for not having done that.

### **My final decision**

My decision is that I uphold this complaint. I order MotoNovo Finance Limited to pay Mr S:

- £421 for the cost of diagnosing and repairing the ERG filter;
- £668:74 for the cost of hiring another car during the repairs;
- £553:04 for the cost of the 2023 service;
- simple interest on each of the above refunds at 8% a year from the dates of payment<sup>4</sup> to the date of settlement; and
- £250 for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 December 2024.

Richard Wood  
**Ombudsman**

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<sup>3</sup> Of course, he would also have had to pay for a service in 2023 anyway, but I think that the cost of the 2023 service is a fair proxy for what he would have paid in 2022, had he known.

<sup>4</sup> These are 22 September 2023 for the £421, 28 September 2023 for the £668:74, and 1 December 2023 for the £553:04.