

The complaint

Mr A complains about MotoNovo Finance Limited's offer of settlement in relation to the rejection of a used car he acquired through a hire purchase agreement with MotoNovo.

What happened

On 13 January 2022 Mr A entered into a hire purchase agreement with MotoNovo to acquire a used car from a dealership. The car cost, including the warranty, was £16,733 and Mr A paid a £2,000 deposit. With interest the total amount payable under the agreement was £18,878.16, payable by 35 monthly payments of £468.81 and a final payment of £469.81. The car was supplied to Mr A with a mileage of 30,126.

On 14 April 2022 Mr A complained to MotoNovo about the noise coming from the car's engine, he wanted to reject the car. As part of the complaint assessment the car was inspected by a garage (which I'll refer to as garage E) and its report of 5 May 2022 confirmed the fault.

In May 2022 MotoNovo issued a final response letter to Mr A upholding his complaint. It told Mr A that, as he had complained after 30 days from when he acquired the car, under the Consumer Rights Act 2015 (CRA) it had the right to attempt a repair of the problem before considering rejection as an option. It asked Mr A to call the dealership to arrange the repair.

Mr A was unhappy with MotoNovo's response and complained to us. On 21 November 2022 we issued a view not upholding that complaint. We said in the circumstances the CRA gave MotoNovo the right to try to repair the car's fault before Mr A could reject the car.

In May 2023 Mr A made another complaint to MotoNovo saying the repair hadn't been completed and he still wanted to reject the car. MotoNovo told Mr A it had previously asked him to contact the dealership to arrange repairs, it only knew the repair hadn't been done when he contacted it in May 2023.

The dealership then tried to repair the fault but Mr A said the car still had the same problem. Garage E inspected the car again and its report of 8 August 2023 said the fault remained.

MotoNovo's second final response of 29 August 2023 upheld Mr A's second complaint. It told Mr A it would now accept rejection of the car because the attempt to repair the fault had failed. This final response letter said:

- In August 2023 it had paid Mr A £75 to re-imburse him for the costs of the garage inspection he'd arranged to confirm the fault remained.
- It offered Mr A £400 compensation in recognition of his distress and inconvenience caused by the situation.
- It set out how Mr A needed to return the car to the dealership and Mr A's deposit of £2,000 would then be returned.

- It would contact the credit reference agencies to request that they remove the history of the finance agreement from Mr A's credit profile.
- It would return the monthly payments Mr A had made under the finance agreement less the deductions for fair usage (its fair usage policy meant there was a deduction of one monthly payment for every 1,000 miles the car had travelled since acquired by Mr A).

Mr A complained to us about MotoNovo's offer. He initially complained through a solicitor whose complaint letter said that the fair usage policy should only apply up until April 2022, when Mr A first complained about the fault. Instead MotoNovo had applied the fair usage policy across the whole 17 months Mr A had the car so it only returned half the payments he made under the finance agreement. Mr A's solicitor said MotoNovo had 'forced' him to keep the car for that period and he'd had to drive the car while being concerned about the danger the fault posed.

Mr A's solicitor's letter asked that we respond to Mr A direct and he has since represented himself. He clarified that he wants to be refunded in full for the monthly payments he'd made, as MotoNovo kept eight months of the finance payments he paid. He'd returned the car and had the £2,000 deposit and £400 compensation paid to him but he'd been clear he didn't agree that was his final settlement.

Initially MotoNovo thought Mr A had complained to us later than six months after its final response letter of 29 August 2023. If he had done so the rules we operate under say we couldn't consider the complaint unless there were exceptional circumstances. But our Investigator told MotoNovo that Mr A had complained to us within six months of its 29 August 2023 final response letter so we could consider the complaint.

Our Investigator said MotoNovo had made a fair and reasonable offer.

Mr A disagrees and wants an Ombudman's decision. In summary he added that:

- He'd had problems with the car within the first few days which he reported to the dealership and sought assistance from various mechanics but no one could fix the fault. He sent us an invoice from a garage dated 6 April 2022, invoiced to the dealership.
- The fault with the car caused significant disruption to his daily life. He didn't have full use of a reliable vehicle and when the car was being repaired he had courtesy cars, which weren't always comparable to the car he financed.
- The constant problems with the car caused him stress and hardship and MotoNovo not refunding him eight months of payments he made under the finance agreement was excessive.

Our Investigator explained why he still considered that MotoNovo's offer was fair and reasonable. As an agreement can't be reached Mr A's complaint has been referred to me for a decision.

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.

For the avoidance of doubt, we received Mr A's solicitor's letter about this complaint on 1 December 2023. That's within six months of MotoNovo's final response letter dated 29 August 2023 so we can consider his complaint.

Mr A's solicitor's letter says he was 'forced' to keep the car after April 2022. But as the evidence is that Mr A complained about the car's fault outside of the first 30 days he got the car MotoNovo had the right under the CRA to try to repair the car. When MotoNovo knew that the attempt at repair had failed it accepted rejection of the car and made the offer I've detailed above.

Both parties agree that Mr A could reject the car and I understand he has returned the car. I've seen written confirmation that in September 2023 the £2,000 deposit was refunded to him and he's received the £400 compensation for his distress and inconvenience. I've seen no evidence that MotoNovo hasn't contacted the credit reference agencies to request that they remove the history of the finance agreement from Mr A's credit profile, as it said it would do.

So the only issue I need to decide is whether MotoNovo acted fairly and reasonably in not refunding to Mr A all the payments he'd made under the finance agreement.

Section 24.8 of the CRA says:

"If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered".

So it's reasonable for MotoNovo to make a deduction for Mr A's use of the car in accordance with the CRA. I need to consider if the payments deducted were proportionate.

The car was supplied to Mr A with a mileage of 30,126. In April 2023 he raised the first complaint with MotoNovo who arranged for garage E to inspect the car. Garage E's report from 5 May 2022 shows the mileage had increased to 32,527 miles. Following Mr A's second complaint garage E did another report on 8 August 2023 which shows the mileage as 38,776 miles. So at that date the mileage had increased by 8,650 since Mr A had acquired the car.

MotoNovo says as the car travelled for about 8,000 miles while in Mr A's possession it deducted eight monthly payments from the refund to him to cover his fair use of the car. That's a deduction of one monthly payment for every 1,000 miles the car has travelled since Mr A acquired the car.

I haven't seen if MotoNovo has a written fair use policy. But we would generally only ask a business to refund any monthly instalments for the period a consumer wasn't kept mobile. Mr A had the use of the car throughout the time it had been in his possession apart from when it was in the garage for attempted repair and then he was supplied with a courtesy car. Mr A says the courtesy cars weren't always comparable to the car he financed but I've got no further evidence about that and anyway the key thing is he had use of a car throughout.

In these circumstances I think MotoNovo deducting one monthly payment for every 1,000 miles the car travelled since Mr A acquired the car, so eight months for the 8,000 miles, was reasonable.

I don't doubt Mr A suffered distress and inconvenience due to the fault with the car. He was understandably concerned about the car's reliability and had the inconvenience of taking his car for repairs to try and resolve the problem. I appreciate he had the car for about

17 months after he initially complained about the fault in April 2022. But I've seen no evidence that MotoNovo was responsible for any delay in the repair being attempted. When it knew the attempted repair had failed it quickly agreed to Mr A rejecting the car. I think MotoNovo did need to pay Mr A some compensation for his distress and inconvenience but I'm satisfied that its offer of £400 compensation, that's now been paid to him, was fair and reasonable.

Mr A sent us an invoice by a garage dated in April 2022 and addressed to the dealership. MotoNovo reimbursed £75 he paid a garage to diagnose the fault and I've seen no evidence that Mr A had to pay a garage any additional amount about the fault which MotoNovo hasn't reimbursed.

Overall I'm satisfied that MotoNovo's offer as I've detailed in the background above was fair and reasonable. So I don't uphold this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 November 2024.

Nicola Sisk
Ombudsman