

## **The complaint**

Miss Y complains that she was unfairly charged following her decision to voluntarily terminate her hire purchase agreement with FirstRand Bank Limited trading as MotoNovo Finance (“MotoNovo”).

## **What happened**

Miss Y acquired a used vehicle in August 2020 with finance provided by MotoNovo in the form of a hire purchase agreement. The car was around nine years old with a mileage of around 88,440 at the point of purchase

Miss Y chose to terminate the agreement in December 2023. When the car was returned, MotoNovo inspected the vehicle and identified damage to it that it considered was beyond fair wear and tear. It charged Miss Y £180 for this damage. There were also arrears on the agreement repayments of £460.67. Miss Y was also charged £300 for missing a service on the car.

Miss Y disagreed with the charges, stating that the damage was present at the point she first acquired the vehicle and that the car had been serviced. She complained to MotoNovo about the charges but it did not uphold her complaint, so Miss Y brought her complaint to this service.

Our investigator partially upheld Miss Y’s complaint. The investigator considered that the charge for damage to the wheels was not fair, but that the charge for the missing service was fair.

Miss Y didn’t respond to the investigator’s view. MotoNovo did respond and said it did not agree that all the wheels displayed fair wear and tear. It said that it agreed to remove the charge for two of the four wheels.

As MotoNovo did not agree, Miss Y’s complaint has been referred to me to make a final 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.

In considering what’s fair and reasonable I have taken into account the relevant law and regulations, regulators’ rule, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. MotoNovo is also considered the supplier of the

goods under this type of agreement and so it is responsible for a complaint about their quality.

Having reviewed Miss Y's complaint I am satisfied that our investigator's assessment was correct, and I partially uphold this complaint. I will explain why I have reached this decision.

Our investigator previously explained to parties about how the Consumer Rights Act 2015 applies to this complaint and as neither party has raised any queries or objections about it, I do not consider I need to repeat this other than to say that the Act obligates the consumer to take '*reasonable care*' of the goods purchased using the credit agreement. In Miss Y's case I am satisfied that damaged caused to the car in excess of fair wear and tear and failing to keep the car serviced and maintained would constitute a failure to take reasonable care. Miss Y's hire agreement contained reference to her obligations under the agreement. This includes:

*"You will keep the Vehicle in good and substantial order and repair (and in the case of any motor vehicles in roadworthy condition) and in particular, at your own expense, repair all defective part and when necessary replace such part by parts of suitable quality."*

The agreement does not define '*good and substantial order and repair*'.

There are industry standards and guidance available concerning definitions of fair wear and tear, issued by the British Vehicle Rental and Leasing Association (BVRLA). However, they are intended for vehicles up to four years old. In Miss Y's case, the vehicle was over 12 years old and had mileage of over 105,000 miles. This means I don't consider those guidelines should be strictly applied and consideration should be given to the expected condition of a much older vehicle. Indeed, BRVLA guidelines support this approach to take into account age and mileage.

I turn first to the matter of the £300 charge for a missed service. The last service completed by Miss Y was in June 2022. Miss Y submitted that this was the '2022' service and the vehicle would have required a service at some point in 2023. I disagree. The service intervals for the vehicle are every 12 months or every 10,000 miles – whichever comes first. As it had been more than 12 months since the last service, I am satisfied MotoNovo fairly charged for this.

Turning now to damage to the alloy wheels, MotoNovo considers that the damage is in excess of that expected for a vehicle of that age. It states that the car sold for less than it was expecting and intimates this may have been the reason. I note that the value MotoNovo placed on the car was at the very top end of all the estimates it obtained. MotoNovo also set a reserve price for the vehicle at auction but chose to sell it for below the reserve price. Our investigator noted that it is not possible to understand why the vehicle may have obtained a lower sale price and I agree.

Miss Y states that the damage was present at the point at which she first acquired the car. MotoNovo states that there is no record of such damage present at the point of supply. I agree with our investigator that during the course of Miss Y's use of the vehicle (and nearly 17,000 additional miles) that it is likely some damage was caused. But without evidence of the state of the wheels at the point of supply, it is simply impossible to know how much damage.

Having reviewed the pictures of the wheels I recognise that the damage is in excess of that allowed under BVRLA guidelines. But again, this guidance is for much newer vehicles. MotoNovo says that the right front and rear left alloys are '*particularly scruffy*' with evidence of dents and gouging due to impact damage to one edge. It says the vehicle wouldn't have been supplied in that condition, but it provides no evidence to support this.

On balance, taking into account the age and the mileage of the vehicle and the absence of evidence of the condition of the wheels at the point of supply, I cannot fairly say that the condition of the wheels is in excess of that which would be considered fair wear and tear and I cannot fairly state that the condition of the wheels led to any reduction in the price obtained for the vehicle at auction.

### **Putting things right**

In light of my findings, I do not consider that it is fair for MotoNovo to charge for damage to the alloy wheels. I do, however, consider it fair for it to make a charge for the missed service.

I understand that Miss Y has some outstanding repayments on the agreement which MotoNovo is entitled to pursue. MotoNovo should arrange a suitable repayment plan with Miss Y to recover this sum and the charge for the missed service.

### **My final decision**

I partially uphold Miss Y's complaint and direct FirstRand Bank Limited trading as MotoNovo Finance to put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 13 September 2024.

Sally Allbeury  
**Ombudsman**