

## **The complaint**

Mr B complains that a car supplied to him by MotoNovo Finance Limited under a hire-purchase agreement has a mileage discrepancy that wasn't disclosed when he got the car.

Mr B is assisted in bringing this complaint by a relative who shares his surname. For ease of reading, I'll refer to all submissions made by or on behalf of Mr B as being made by him.

## **Background to complaint**

I recently issued a provisional decision setting out the background to this complaint and how I was minded to propose matters were best resolved. I've reproduced my provisional decision below, which forms part of this final decision:

### ***“What happened***

*In 2021 Mr B got a car via a dealer “S” using a hire-purchase agreement with MotoNovo. The car was first registered in 2013. As I understand it, the mileage on the car’s odometer was a little over 61,000 miles.*

*More recently, Mr B has moved abroad and sought to sell the car. In the course of doing so, he became aware of a mileage discrepancy dating from before he acquired the vehicle. The MOT history indicated that the mileage in 2020 was recorded as significantly lower – by about 13,000 miles – than had been recorded in 2019.*

*Mr B had concerns that the car had been ‘clocked’ and complained to both S and MotoNovo. MotoNovo said that it had looked into the car’s service history but found no evidence to support mileage tampering. It thought it more likely the discrepancy was down to the wrong mileage being input on the 2019 MOT.*

*MotoNovo didn’t think the car had been misrepresented to Mr B, but acknowledged the discrepancy had led to inconvenience and distress. It said it would pay Mr B £125 in recognition of this. However, Mr B remained dissatisfied and referred matters to us.*

*Our investigator noted the invoice and warranty S gave Mr B included a statement that it had undertaken a hire-purchase investigation (“HPI”) check on the car with satisfactory results. However, MotoNovo had said it hadn’t conducted any HPI check.*

*The investigator felt that indicated there had been a false statement of fact. However, she didn’t think this in itself was sufficient to find that MotoNovo needed to do more than it had already proposed.*

*Mr B didn’t agree with the investigator’s conclusions and has asked for this review.*

### ***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 can understand Mr B's concerns over whether the car was clocked, but the available evidence isn't definitive that this is what happened. As has already been observed, it's quite plausible that the MOT centre simply entered the mileage incorrectly. If so, the mileage currently shown on the car's odometer wouldn't be inaccurate.*

*A car's service records sometimes provide evidence to demonstrate or to combat such action. However, in this case it doesn't appear service records are available for the key period. I'm satisfied MotoNovo made reasonable attempts to investigate this aspect, and left the way open for Mr B to provide further evidence to support the tampering assertion if he were to obtain it. To me, that feels fair.*

*Our investigator felt that the apparent conflict between S and MotoNovo's statements over whether an HPI check was carried out indicated that there had been a false statement of fact. I'm not sure that's quite the case; the two statements are both capable of being true. MotoNovo as finance provider could have elected not to do an HPI check, but that in itself doesn't mean S didn't do so.*

*It's also debatable whether S's statement is sufficient to amount to a misrepresentation. The wording on the invoice and warranty issued by S said:*

*"I/we warrant that the Vehicle is not currently and has not been at any time, the subject of an Insurance Claim for damages (or write off) of any Insurance Category.*

*I/we have undertaken a HPI check on the Vehicle and obtained satisfactory results."*

*The full paragraph here in my view makes clear that the satisfactory results in question are in the context of the warranty in respect of the car's insurance history, rather than a general assertion. If S had warranted the car's mileage in similar fashion, the position might be different. As it did not, the only representation relating to the car's mileage would appear to be the figure displayed on the odometer. As I've already noted, there's insufficient evidence to support a finding that this is inaccurate. So I don't think the case for misrepresentation is fully made out.*

*But what isn't in dispute is that the discrepancy wasn't brought to Mr B's attention during his dealings with S. I'm conscious of guidance issued by the Chartered Trading Standards Institute ("CTSI")<sup>1</sup>. That information ("the guidance") sets out to the motor trade steps to take in terms of compliance with relevant law<sup>2</sup>, such as avoiding misleading actions or omissions, and poor or unfair business practices.*

*In relation to pre-sale checks, the guidance includes the following:*

*"Generally, before exposing any vehicle for sale, it is best practice to take all reasonable steps to establish the accuracy of the stated mileage...In most circumstances, you would be expected in the first instance to at least conduct a mileage check on the vehicle with an independent and reliable company. Other checks may include:*

- checking the MOT history on the DVSA database...*

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<sup>1</sup> Car traders and consumer law: Guidance for dealerships – can be found at <https://www.businesscompanion.info/focus/car-traders-and-consumer-law>

<sup>2</sup> Among other things, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Contracts Regulations 2013, and the Consumer Rights Act 2015

*... It is best practice to carry out further investigations if a discrepancy is discovered in the mileage record through the basic checks you have carried out, or as a result of any other information suggesting that the mileage may be incorrect...*

and

*"Informing consumers about mileage discrepancies*

*As well as taking all reasonable steps to establish the vehicle's mileage, it is recommended that you inform the consumer, prior to sale, of:*

- the steps you have taken*
- what you have found out or not been able to find out, or know, about the mileage or likely mileage. For example, if you know from checking the last MOT test record that the vehicle's current odometer reading is wrong and that the last recorded mileage was 'x miles' or that the vehicle has travelled 'in excess of x miles', provide consumers with this information"*

*I've not seen anything to suggest that S followed this guidance when dealing with Mr B. A basic check of the MOT database would have shown the mileage discrepancy. I don't understand S to have informed Mr B of any mileage checks carried out or the information such checks suggested of the possibility the mileage might be incorrect.*

*Under section 56 of the Consumer Credit Act 1974 ("CCA1974") a creditor may, in certain circumstances, be responsible for pre-contract negotiations conducted by the credit broker. Section 56 has the effect that in such circumstances as apply in this case, S is deemed to be acting as the agent of MotoNovo in negotiations with Mr B.*

*Section 56 also says that antecedent negotiations include any representations made by the negotiator (in this case S) to the debtor (Mr B) and any other dealings between them. In my view, that is sufficient to indicate that MotoNovo has responsibility for S's apparent failure to carry on best practice under the guidance issued by the CTSI. So even if the case for misrepresentation hasn't been fully made out in this case, I'm minded to think that MotoNovo needs to take some steps to address this shortcoming.*

### **Putting things right**

*I appreciate Mr B feels he's lost out financially even if the issue doesn't seem to have affected his use of the car. I don't doubt he might find it more difficult to sell the car to a dealer or similar due to the mileage discrepancy. But it doesn't necessarily follow that the same would be true of a private buyer. Given the current mileage of the vehicle is closer to 100,000, it seems to me quite possible that the value the car might command from a private buyer isn't going to be radically different from a car that had actually covered 113,000 miles.*

*Taking all of this into account, I'm currently minded to conclude that the right way to resolve the dispute would be for MotoNovo to recognise the failure to disclose the mileage discrepancy by increasing its settlement proposal from £125 to £500."*

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

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

Mr B didn't accept my provisional decision. He said he would require that the car was repurchased from him for full book value as at August 2023 when he made the complaint. He said in his hands the car was unsaleable either privately or to the trade, and that the £500 offer was not acceptable as it didn't reflect his loss.

In Mr B's response he referenced extracts from the CTSI guidance that he felt demonstrated failings by S – and by extension, MotoNovo. He noted that according to the Government's website, *"...it is only possible to correct a mileage record appearing on the MOT database by writing to the DVSA with e mailed proof of the correct mileage record such as an invoice for the MOT, an emissions print out, a service receipt, a vehicle job card from the MOT centre."*

Mr B said none of these were available to him and without being able to meet the requirements to change the MOT record, the mileage discrepancy would remain as a permanent adverse record affecting any future sale and value of the car.

He submitted that I was in error in saying the mileage discrepancy was only 13,000, and that this could not be known. Mr B said the MOT recorded mileage on 26 June 2020 was 13,000 lower than that of 5 July 2019; however the actual mileage as at 26 June 2020 could be any amount. For instance if the vehicle had travelled 13,000 miles between 5 July 2024<sup>3</sup> and 26 June 2020, which would be an average mileage, the correct reading at 26 June 2020 would have been 26,000 miles more than the recorded mileage at 26 June 2020.

We approached MotoNovo to see if it could obtain the HPI check S said it had carried out, but this doesn't appear to be forthcoming. MotoNovo said that S told it that it had tried to speak to the garage that carried out the MOT on the vehicle when the mileage discrepancy appeared to have arisen but that it was unable to provide any job cards or booking details. MotoNovo said in light of its inability to provide further evidence it accepted the resolution I had proposed.

### **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.

I've considered Mr B's further submissions, though I note that much of what he has said is founded in matters I set out in my provisional decision. Having already reached a provisional finding that there was an apparent failure on S's part to carry on best practice under the guidance issued by the CTSI, the fact Mr B shares that view doesn't really add anything or lead me to propose a higher award in settlement of his complaint.

I note Mr B's point about the mileage discrepancy. He is, of course, correct to say that the precise discrepancy cannot be known. But I've no more reason to find the difference between the stated and true mileage of the car is greater than the 13,000 mentioned than that it is not. As MotoNovo pointed out, it has yet to be demonstrated that the mileage on the car is in fact wrong at all. All that can be properly said is that the mileage cannot be stated with any degree of accuracy. I don't accept the contention that this makes the car unsaleable. Cars are commonly bought and sold, both privately and by traders, where the mileage records can't be verified. They still have a value.

In the absence of persuasive evidence that the intrinsic value of the car has been diminished by more than the £500 I suggested, I can't agree that Mr B has or will suffer a greater loss. With this in mind, I remain of the opinion that payment of this sum is a fair way for MotoNovo

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<sup>3</sup> I assume here Mr B means 5 July 2019

to resolve Mr B's complaint against it. That doesn't prevent Mr B from taking any other action he might consider appropriate against S in relation to its obligations under the regulations he's mentioned, though it might have an impact on any redress he might be entitled to claim from S.

### **My final decision**

For the reasons I've set out here and in my provisional decision, which as I've said forms part of this final decision, MotoNovo Finance Limited should pay Mr B £500 in settlement of his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 October 2024.

Niall Taylor  
**Ombudsman**