

## **The complaint**

Ms H complains that a car acquired under a hire purchase (HP) agreement with MotoNovo Finance Limited (“MotoNovo”) wasn’t of satisfactory quality when it was supplied to her. Ms H also complains that information about the car was mis-represented to her during the sales process.

Ms H has been represented in this complaint. But for ease of reading I will refer to Ms H only within this decision.

## **What happened**

The parties are familiar with the background of this complaint so I will only summarise what happened briefly here.

In July 2023, Ms H acquired a used car online from a motor trader. She paid a deposit of £3,000 for the car, with the balance of the purchase price being provided by MotoNovo under a HP agreement. The car was ten years old and had covered approximately 93,500 miles when the agreement started. The agreement was for 48 months, and the cash price of the car was £10,490.

In September 2023, the engine management light (EML) illuminated so Ms H got in touch with the warranty company. They asked for a diagnostic report. Ms H arranged this, and it highlighted a number of faults with the car and a quote of approximately £1,000 was given for the repairs.

Ms H got in touch with MotoNovo. They agreed to arrange for an independent inspection of the car to take place. The inspection took place in October 2023. The car had covered approximately 5,900 miles since Ms H had taken delivery of it. The inspection highlighted corrosion to the rear suspension arms and shock absorbers but concluded that, although the corrosion would have been present when the car was supplied, it was to be expected of a car of its age and mileage and wouldn’t make the car of unsatisfactory quality.

Ms H then explained to MotoNovo that she was told the car had a full-service history, and the advert for the car confirmed this, but upon looking into this further it transpired the car hadn’t been serviced since March 2020.

Knowing this, MotoNovo agreed that Ms H could reject the car. This was confirmed to Ms H in December 2023. The car had covered approximately 10,000 miles under Ms H’s care at this point. MotoNovo explained they would keep the five monthly repayments made, along with £500 from Ms H’s initial £3,000 deposit, to reflect the use of the car up to that point. MotoNovo also advised Ms H against continued use of the car now that rejection had been agreed.

Ms H didn’t proceed with the rejection at this point as she wanted to bring her complaint to our service. While we were considering it, Ms H had additional work carried out to the car, including a new oil sensor. This didn’t fix the issues Ms H was experiencing with the EML. MotoNovo issued their final response to Ms H in May 2024 and said they couldn’t support

her comments that the car was of unsatisfactory quality when it was supplied to her, but rejection of the car because of the mis-represented service history was still available. MotoNovo paid Ms H £300 to recognise the level of inconvenience she'd experienced.

Our investigator considered everything. He initially said that he thought it was fair for MotoNovo to return all of Ms H's deposit and keep all the monthly repayments she'd made. However, MotoNovo contested this as the car had covered approximately 25,000 miles since being supplied to Ms H. Our investigator reviewed things again and decided that MotoNovo could retain 50% of Ms H's initial deposit as well as all the monthly repayments made to reflect the use of the car. He also asked MotoNovo to refund Ms H's repair costs from September 2023 and March 2024, and to pay 8% simple interest on those refunds. Finally, he asked for any adverse information related to the agreement to be removed from Ms H's credit file.

MotoNovo accepted this. But Ms H didn't. Amongst other things, she felt the investigator should stick to his original assessment and ask MotoNovo to refund her entire deposit.

As Ms H didn't agree, it's been 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.

Ms H and MotoNovo have provided a lot of information here. I'd like to reassure them that I've read and considered everything that's been sent, although I haven't commented on it all within this decision. I will be focussing on what I consider to be the key points of the complaint.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

As the HP agreement entered by Ms H is a regulated consumer credit agreement this service is able to consider complaints relating to it. MotoNovo are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

However, in this case, both parties have accepted that rejection of the car is the most suitable way to resolve the complaint. So, I don't need to make a decision on that. All I need to decide on is how much MotoNovo can charge for Ms H's use of the car up to this point, and how much she should receive back following rejection.

The Consumer Rights Act 2015 explains that, where rejection is exercised, any refund to Ms H can be reduced by a deduction for use to take into account the use she had of the car from when it was acquired until now.

Ms H has confirmed the current mileage at just over 127,000 – meaning 32,000 miles have been covered in the car since it was acquired in July 2023. I'm satisfied this can be considered as above average use. I also have to consider that MotoNovo agreed to the rejection of the car in December 2023, at which point they were willing to keep the five monthly payments Ms H had made along with £500 of her initial £3,000 deposit. If rejection is the chosen option, and agreed by both sides, I'm satisfied it's fair to say the rejection should be treated seriously – continued use of the car being one of the considerations. MotoNovo stressed this to Ms H in December 2023 and asked her to curtail her use if the car was going to be rejected.

In this case I understand why Ms H continued to use the car. She didn't have an alternative and the car was needed to help her family members get around. She needed to continue to meet the monthly repayments to avoid any adverse effect on her credit file, and possibly didn't have the money to source a new car. She was also concerned that MotoNovo might try and apply additional charges once the car had been returned, and she wanted confirmation that wouldn't be the case before allowing it to be collected. But I'm more satisfied than not that Ms H had the opportunity to mitigate any additional losses from her deposit in December 2023. At that time she stood to lose five monthly repayments and £500 from her deposit. But the continued use of the car, and the mileage accrued in the time that has followed, persuades me that more needs to be kept now.

MotoNovo have suggested they keep one monthly payment for every 1,000 miles covered in the car, along with some of the deposit to cover any shortfall. I have to say that MotoNovo's suggestion isn't industry standard, but also doesn't feel unreasonable in the circumstances of this complaint. There isn't an exact science to calculate fair usage of a car under this type of agreement, but it's my role to decide complaints informally and consider what I think is fair and reasonable.

Ms H has made 18 payments towards the agreement. Our investigator has explained why he feels MotoNovo can also keep 50% (£1,500) of Ms H's deposit to reflect the use Ms H more accurately has had of the car. The total of the monthly payments and the retention of 50% of the deposit would be in the region of £5,200, which is approximately 50% of the total cash price of the car at the beginning of the agreement. When I take into account the agreement has been in place since July 2023, and the above average mileage that's been covered in this time, I'm satisfied that MotoNovo retaining 50% of Ms H's deposit along with the monthly payments already made is a reasonable way to bring the agreement to a close.

I know this decision will come as a disappointment to Ms H. She has explained in some detail why she doesn't agree with our investigator's opinion. But MotoNovo have accepted the car was mis-represented to her when she was acquiring it and have agreed to take the car back. That is what I would expect them to do, but I also think it's fair that Ms H pays for the above average use she's had of the car. It's also worth pointing out that I am only deciding on how MotoNovo have dealt with Ms H's concerns as the finance provider and the supplier of the car under the agreement. MotoNovo have paid Ms H £300 compensation previously to reflect the inconvenience this matter has caused to her, and I'm satisfied that's a reasonable amount in this case.

I won't be asking MotoNovo to do anything more than explained below.

### **My final decision**

For the reasons above, I uphold this complaint. MotoNovo Finance Limited must:

- end the agreement with nothing further for Ms H to pay;
- collect the car at no further cost to Ms H;
- refund £1,500 from Ms H's initial deposit;
- refund Ms H £583.44 for the repairs and service she paid for in September 2023;
- refund Ms H £1,120.86 for the repairs she paid for in March 2024;
- pay 8% simple interest on all repair refunds, from the date of payment until the date of settlement;\*
- remove any adverse information from Ms H's credit file, in relation to this agreement.

\*If MotoNovo Finance Limited consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Ms H how much they've taken off. They

should also give Ms H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 3 February 2025.

Kevin Parmenter  
**Ombudsman**