

## The complaint

Mr S complains that the car he acquired financed through a hire purchase agreement with MotoNovo was misrepresented to him.

## What happened

In May 2022 Mr S acquired a car financed through a hire purchase agreement with MotoNovo. The car failed its MOT in 2023 and 2024 due to exhaust emissions exceeding specified limits. Mr S attempted a repair in 2023 which failed and further investigation with a manufacturer's garage in 2024 confirmed the engine had been re-mapped. He has since had to have a catalytic converter fitted and back box replaced. Mr S complained to MotoNovo. He said he'd been mis-sold the car.

In its final response MotoNovo responded to Mr S's complaint on the basis that he claimed the vehicle wasn't of satisfactory quality. It said it had no evidence the fault was present or developing at the point of sale. Mr S didn't agree. He said if he'd known the car had been re-mapped, he would not have purchased it.

Our investigator concluded the car had been misrepresented to Mr S when it wasn't disclosed the engine had been re-mapped. MotoNovo challenged this view and asked for a decision from an ombudsman. It felt more evidence was needed that the re-map occurred prior to sale. Mr S arranged with MotoNovo for the car to be inspected by a specialist, but the software check couldn't confirm the date or mileage of when the re-map occurred. I issued a provisional decision on 24 March 2025. I said:

*Generally speaking, a misrepresentation is when a false statement of fact has been made; and this false statement induces a customer to buy the goods. Mr S hasn't argued he was told something he's later found to be untrue. However, there are some more limited circumstances where an omission to disclose a material fact can constitute a misrepresentation – that is by what a supplier doesn't make clear when it ought to, either deliberately or otherwise.*

*Any misrepresentation in these circumstances would have been made by the dealer and not MotoNovo, but because MotoNovo provided the credit it is also liable for any misrepresentation made by the dealer.*

*It's not disputed by either party that the car has been re-mapped. If I am to decide the car has been misrepresented, I must be satisfied the car was re-mapped prior to sale and had Mr S been told this at the time he signed the agreement he would not have continued with the purchase.*

*I recognise that both parties have tried to ascertain whether the re-mapping occurred before or after sale. And unfortunately, the software check by the specialist was unable to confirm either the date of the re-map or at what mileage it occurred.*

*Mr S's car passed the MOT just prior to sale in 2022. The car failed the following two MOTs due to emissions exceeding limits. Mr S has said that subsequent*

*investigations uncovered the re-mapping, and he was unaware of this. MotoNovo has said that as the car passed the 2022 MOT without any advisories regarding emissions this indicates the re-map occurred after sale.*

*It is possible for a re-mapped vehicle to pass the MOT, and this is likely to do with how the re-mapping was done. So, the fact that it passed in 2022 just before sale and failed after doesn't necessarily mean the car was re-mapped after sale. It could be the car deteriorated causing increased emissions though I don't know.*

*Where the evidence is incomplete inconclusive or contradictory, as it is here, I reach my decision on the balance of probabilities - in other words what I consider is most likely to be the case considering the available evidence and the wider circumstances. Having thought about this carefully and considered Mr S's testimony and actions I think it more likely than not the car was re-mapped prior to sale.*

*I've listened to Mr S's complaint calls to this service and I've looked at the actions he's taken before bringing a complaint and after. In the call he outlined the repair steps he had tried in order to fix the emissions problem. Our investigator asked a series of questions. Mr S confirmed he had absolutely no understanding of mapping or re-mapping prior to purchase. He said he hadn't arranged for re-mapping after it was supplied. Mr S said there were absolutely no discussions with the dealer about mapping or re-mapping when the car was sold.*

*When they discussed a possible remedy in the event of an uphold decision Mr S requested the car be repaired - although he was made aware this may not be an option. Mr S also liaised with MotoNovo to get the car inspected by a specialist.*

*MotoNovo said it doesn't believe weight should be placed on the customers testimony that he didn't arrange the re-map after the purchase of the vehicle. While Mr S's actions and testimony are not direct evidence that he hasn't re-mapped the car himself I did find Mr S's testimony reliable and credible. And I don't think he would have asked for the car to be repaired or arrange the inspection had he been the one to do the re-map.*

*Our investigator asked Mr S what he would have done had he been told the car had been re-mapped and Mr S said he more than likely would've taken advice. When asked if being told about the remap would have potentially delayed or stopped the purchase of the car Mr S responded that it would have. Again, I understand MotoNovo's concern about taking Mr S's word that he wouldn't have gone ahead, but in looking also at what he's said and done I do think it likely he wouldn't have gone ahead with the agreement had he been told the car had been re-mapped. I say this because Mr S said he had no knowledge of what re-mapping was and would take advice. Had he taken advice it's likely he would've uncovered the possibility of the problems he subsequently went on to have, including the difficulty in removing the map.*

*Subject to any further information I might receive, on the balance of probability I'm persuaded it's likely the car was misrepresented to Mr S. And MotoNovo should put Mr S back into the position he would have been had the misrepresentation not taken place.*

*In its final response MotoNovo responded on the basis that the car was of satisfactory quality at the point of sale. So, I have also considered Mr S's complaint with this in mind. MotorNovo, as the supplier of the car, was responsible for ensuring it was of satisfactory quality when it was supplied to Mr H. If I am to decide the car*

*wasn't of satisfactory quality, I must be persuaded faults were present at the point of supply and that these weren't as a result of wear and tear. It's not disputed the car has been re-mapped and this has gone on to cause problems with emission levels. So, I think it likely there was a fault. But there isn't any technical evidence for me to rely on to establish conclusively the fault was present at the point of sale. So, in this instance I must again consider the reliability and credibility of Mr S's testimony and actions. As I said above having thought about this carefully and considered Mr S's testimony and actions, I think it more likely than not the car was re-mapped prior to sale. So, it seems likely that problems relating to the re-map were either present or would be developing at the point of sale.*

*Although Mr S has had impaired use of the car, he has been able to drive it and the current mileage is 72,521. The car's mileage at the start of the agreement was 56,668. In order to reflect this our investigator recommended MotoNovo retain 12 repayments to reflect fair use, and return all other repayments made. I think this is fair and reasonable.*

*MotoNovo should also refund to Mr S the cost of the repairs, including the catalytic converter.*

*Mr S has told this service he's recently discovered his car hasn't been insured as he's now aware his existing policy doesn't cover re-mapped cars. Mr S said he wasn't able to make a change related to the re-map on his current policy. He said he's had to take out a new, more expensive policy, the difference being approximately £150. Insurance companies consider many variables when supplying quotations so it's difficult to assess what, if any, money should be refunded because of this modification to the car. Other variables relating to Mr S may have changed. But it's clear this situation has caused Mr S distress and inconvenience as well as the more recent worry that he may not have been insured and has had to act to remedy that. So I do think MotoNovo should pay him £250 in compensation.*

Both parties accepted my provisional 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.

As both parties accepted my provisional decision, I see no reason to depart from its conclusions.

### **Putting things right**

To put things right MotoNovo Finance Limited must:

- Collect the car at no cost to Mr S.
- Return Mr S's deposit of £1,662.34.
- Refund payments: MotoNovo should retain the first 12 monthly payments made and refund the 13<sup>th</sup> and all subsequent payments made to the date of settlement.
- Refund costs for repairs completed in relation to the emissions failures and catalytic converter on production of receipts.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay Mr S £250 compensation for the distress and inconvenience this situation has caused him.

**My final decision**

My final decision is I uphold this complaint and MotoNovo Finance Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 May 2025.

Maxine Sutton  
**Ombudsman**