

## **The complaint**

Ms R, who is represented by a professional representative (“PR”) complains that MotoNovo Finance Limited rejected her claim that a vehicle she acquired was misrepresented.

## **What happened**

In May 2019 Ms R acquired a second-hand car funded by a hire purchase contract provided by MotoNovo. The car was first registered on 12 September 2016. On 28 November 2023, diagnostic testing revealed the EV battery capacity to be at 63.9% rising to 67.9% following overnight charge.

The garage told Ms R she should replace the EV battery at a cost of £12,621. It also told her that the warranty had expired on 11 September 2023, seven years after the car was first registered.

Ms R says that when she acquired the vehicle she was told that it would be supplied with the balance of its seven-year manufacturer’s warranty and that cover started on the date of the first service. PR says this information was material and relied upon by Ms R when entering the contract. Ms R claims she wouldn’t have purchased the vehicle had this not been the case.

The manufacturer accepted that the information included in the vehicle documentation was wrong, apparently due to a translation error. The manufacturer offered to contribute 50% towards the cost of the replacement EV battery.

Ms R contacted MotoNovo seeking redress. It rejected her claim and said the seller wasn’t responsible for the manufacturer’s warranty terms. A complaint was brought to this service and it was considered by one of our investigators who didn’t recommend it be upheld. He considered that Ms R would have entered into the contract regardless of the error in the warranty booklet. PR didn’t agree and made a number of representations setting out where it thought our investigator had erred in law.

## **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 want to acknowledge that I’ve summarised the events of the complaint. I don’t intend any discourtesy by this – it just reflects the informal nature of our service. I also want to assure Ms R that I’ve reviewed everything on file. If I don’t comment on something, it’s not because I haven’t considered it. It’s because I’ve concentrated on what I think are the key issues. Our powers allow me to do this.

I should make it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them.

Under Section 56 of the Consumer Credit Act, finance providers can be held liable for what the credit broker and seller say about the goods (vehicle) before the regulated credit agreement is entered into by the consumer and before the purchase is made.

This refers to 'antecedent negotiations'. This means if Ms R entered a credit agreement for a vehicle and it turns out something she was told about the agreement by the credit broker, which induced her into entering the contract, was false, the broker can be held responsible for the actions of the broker under certain circumstances.

PR has argued that the car's warranty was misrepresented to Ms R because of a statement made in the warranty booklet. The manufacturer's warranty booklet states; "*Lithium-ion polymer battery (EV battery) capacity warranty coverage period is 84 months or 100,000 miles from the date of first service, whichever comes first for capacity loss below 70% of original battery capacity. This warranty covers repairs needed to return battery to capacity to 70% of original battery capacity.*"

It is accepted by all parties that this was wrong and the warranty commenced at the date of first registration. This meant it had expired when Ms R first became aware the battery had fallen below 70%. It is then argued that as a result of this error which amounted to a misrepresentation Ms R is entitled to redress. PR told MotoNovo it was required to pay £19,376.58 to cover the cost of 50% of the battery replacement and damages plus legal costs. This was because the warranty was misrepresented to Ms R.

### The Law on Misrepresentation

The law relating to misrepresentation is a combination of the common law, equity and statute – though, as I understand it, the Misrepresentation Act 1967 didn't alter the rules as to what constitutes an effective misrepresentation. It isn't practical to cover the law on misrepresentation in full in this decision – nor is it necessary. But, summarising the relevant pages in Chitty on Contracts (33rd Edition), a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation, acting within the scope of his authority) to another party that induced that party to enter into a contract.

The misrepresentation doesn't need to be the only matter that induced the representee to enter into the contract. But the representee must have been materially influenced by the misrepresentation and (unless the misrepresentation was fraudulent or was known to be likely to influence the person to whom it was made) the misrepresentation must be such that it would affect the judgement of a reasonable person when deciding whether to enter into the contract and on what terms.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it did not hold it or could not reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

Looking more closely at the issue of inducement for an actionable misrepresentation claim, the false statement must have been an inducement to the contract. The key principles are:

- **Material statement:** There will only be an inducement if the statement made is material. It must represent a fact upon which a party decides to enter into the contract. It does not have to be the sole inducement: it is enough if it is one of the inducements.

- Known to the Claimant: There can't be an inducement unless the misrepresentation made was known to the claimant.
- Intended to be acted upon by the defendant: The statement made must be intended by the making of it to be acted upon by the other party.
- Actually acted upon: If the claimant relies upon the misrepresentation when entering into the contract, this will amount to an inducement, even where the claimant did not take advantage of an offer to check the statement made.

There was an untrue statement made in the warranty booklet and so that was a misrepresentation. I am not aware of what other material was available to Ms R about the warranty. PR in its claim has said that "by documentation it was misrepresented" which I take to mean the warranty booklet. It has not suggested that any verbal misrepresentation was made by the seller nor has it been established that Ms R read and relied on the warranty document. I do note in recent exchanges PR has said Ms R knew about the warranty and the date it ended. And she would have had the car serviced early so she could make use of the warranty if required.

It may be that she would have had it serviced early, but the question I have to consider is whether the misrepresentation was such that it induced her to acquire the car. It was what happened at the time of acquisition and not what happened later that is relevant to complaint. There are many factors to consider when buying a car and the warranty is one of these, but I am not persuaded that Ms R has established that the time left on the warranty was a factor that induced her to acquire the car.

I believe from what MotoNovo has said the seller was unaware of the error in the warranty document and so I doubt it told Ms R the start date was a year later than it actually was. If there was discussion about the warranty I would think it reasonable to conclude the seller would have said it began on the date of first registration like most car warranties do. If it was a material issue that persuaded Miss R to proceed with the acquisition I would assume it was something she explored with the seller and if she did that would have brought up any discrepancy between what appears to have been widely known about the start date and the erroneous warranty document.

Quite simply I do not believe that I have seen sufficient evidence to show Ms R was induced to proceed with the acquisition by the warranty dates.

Nor do I think there was a breach of contract since there is no evidence that the seller was responsible for the warranty. If there is a breach it would be that of the manufacturer and it would be its responsibility.

I have every sympathy with Ms R, but I do not consider I can uphold her complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 27 November 2025.

Ivor Graham  
**Ombudsman**