

The complaint

Mr B is unhappy that a car supplied to him under a hire purchase agreement with MotoNovo Finance Limited (MotoNovo) was mis sold and of unsatisfactory quality.

When I refer to what Mr B has said and what Motability have said, it should also be taken to include things said on their behalf.

What happened

On 5 January 2024 Mr B entered into a hire purchase agreement with MotoNovo for the supply of a car. The car was first registered in September 2022 and advertised as having travelled 10,153 miles. The cash price was £35,189 and Mr B paid a deposit of £1,545.32, followed by 47 monthly payments of £644.72 and a final payment of £16,214.75.

After using the car for a period of time Mr B noticed discrepancies in his mileage usage so he took the car into a main dealer and their inspection showed that a higher mileage was recorded in the electronic control unit (ECU). At the time the car was showing as having travelled around 25,000 miles but the ECU recorded around 42,000 miles having been travelled. Mr B raised a complaint with MotoNovo.

In early February 2025 MotoNovo issued their response. They noted that Mr B's finance agreement went live on 5 January 2024 and at the time the mileage was showing as 10,153. Mr B complained on 9 November 2024 when he was informed that the actual mileage was around 42,000 miles, when at the time the odometer showed 25,000. The dealer had stated that they were unaware of any issues at the time of supply and suggested that Mr B get the car checked over by the manufacturer to check whether there was a new gearbox fitted or the dash had been tampered with. They did not uphold Mr B's complaint as there was no evidence presented to show that the dealer was liable but they did suggest that Mr B get an expert inspection of the car, and they offered to pay £250 towards this. As Mr B was not happy with this response he complained to us.

On 17 April 2025 our investigator issued their view of the case. They did not uphold it. Whilst noting that there was a discrepancy between the mileage shown on the odometer and stored on the (ECU) there is no evidence to show what the cause of the discrepancy was. He suggested that Mr B obtain an independent expert report as set out in the MotorNovo reply.

Mr B responded that he would obtain an expert inspection, and one was carried out at the end of May 2025. It did conclude that there was a discrepancy, but this may have been to the module being replaced with a used unit and there was no evidence of tampering.

Our investigator, after raising the new information with MotorNovo, issued a new view on 20 August 2025 and they still did not uphold Mr B's complaint.

Mr B did not agree and as well as raising issues around misrepresentation he also flagged that the car had failed an MOT due to a cracked alloy wheel and a seized sump plug, which would require £4,510 to repair. He felt that this also made the car unroadworthy and potentially unsafe at the point of sale.

As Mr B did not agree it has been passed to me to consider.

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 this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time.

Mr B was supplied with a vehicle under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a vehicle, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the vehicle.

The CRA also states that where goods are sold by description there is a clause included in the contract that the goods must match the description. So, the description applied to the car is not just important in terms of deciding whether it is of satisfactory quality but also if it has been misdescribed.

The Misrepresentation Act 1967 also has relevance here. A misrepresentation can be a statement of fact (for example, misstating the technical capacities of a product or of law (such as misleading someone about the legal effect of a document)). In either case, if the statement provides misleading information which influences someone to enter into a contract they would not otherwise have agreed to, as a result of which they suffer loss, this will be classed as a misrepresentation. There are three types of misrepresentation negligent, fraudulent and innocent.

So, if I thought the vehicle was faulty or not fit for purpose when Mr B took possession of it and this made the vehicle not of a satisfactory quality, it'd be fair and reasonable to ask MotoNovo to put this right. Equally if I thought that the vehicle had been misdescribed then it would also be fair and reasonable to ask MotoNovo to put this right.

Firstly I want to deal with the issue of burden of proof. The CRA sets out some key dates post contract with regards the burden of proof in relation to the goods being of unsatisfactory quality. The CRA gives the consumer the automatic right to reject if the goods are not of satisfactory quality and that fault is discovered within 30 days. After that period but before six months the burden of proof is on the business to show that the faults were not present at supply and the goods are of satisfactory quality. After six months the burden of proof then resides with the consumer.

In terms of the car being misdescribed or misrepresented Mr B will need to produce evidence that shows that this is the case on the balance of probabilities.

The main crux of this case is the difference in mileage but Mr B in an email dated 22 August 2025 raised that the car had failed its MOT due to a cracked alloy wheel and a seized sump plug, which would require £4,510 to repair. He felt that this also made the car unroadworthy and potentially unsafe at the point of sale. For me to be able to fully consider this evidence as to whether the car was of satisfactory quality at the time of supply, Mr B would need to raise a separate case with MotoNovo to give them chance to respond. However, I would point out that it would be difficult to show that the car was unroadworthy or unsafe, and therefore of unsatisfactory, at the time of supply, given the length of time and mileage travelled since supply. Also, the expert inspection on 21 May 2025 stated that the car was of above average quality, thus making a claim of unsatisfactory quality unlikely to succeed.

As for any potential misdescription or misrepresentation this is a difficult case to assess, and I will need to base my judgment on the evidence presented. The starting point is that there is a discrepancy between the mileage as shown on the odometer and the ECU. This is accepted by both parties and confirmed by the independent inspection. To uphold this case and find that there was either a breach of the CRA or Misrepresentation Act I would need to conclude that, on the balance of probabilities, this difference meant that the car had been misdescribed/misrepresented.

Clearly the mileage as shown on an odometer and in adverts is a description/representation applied to the car and an inducement to enter into a contract. So, the car has been presented as having travelled 10,153 at the point of supply. The question I need to decide on is as to whether having a different mileage shown on the ECU is sufficient to show that the car itself had travelled the higher mileage, therefore rendering the description as false, or whether there is another reason for the discrepancy.

The key evidence that I have to help guide me in this respect is the independent inspection in May 2025. I will quote the relevant extracts from that report:

“O2 The mileage on the instrument cluster was found to be displaying 32,088 miles, where in the live data, the odometer reading was 51,642.9 kms, which equates to 32,089 miles which we would consider is consistent. The engine management control module showed a consistent and comparable figure with the odometer.

O3 However when reading the transmission live data, it was found that the mileage recorded was 79,546.1kms which equates to 49,427.65 miles. When performing calculations, it is considered there is a discrepancy of 17,339.65 miles between the odometer mileage and the transmission mileage.

At this stage, with the evidence currently available to ourselves and per the VW documentation provided, we can confirm that there is evidence of a discrepancy to the odometer reading and with the transmission mileage. However, we are unable to establish as to when this had occurred definitively via dates or mileage.....

O4and investigation will need to take place whether the transmission or transmission ECU are the original components for the vehicle or have been replaced with pre-owned units.....

O5 There was non evidence of any tampering to the instrument cluster or dashboard assembly, however if the defeat device had been fitted it could be anywhere in the odometer wiring loom.”

So, whilst confirming the discrepancy it is not clear cut as to how this discrepancy has occurred. As stated earlier I need to make a decision on the balance of probabilities. Whilst it is entirely possible that the transmission and transmission ECU's are the ones originally

fitted to the car there is no definitive evidence that they are, and the expert report clearly states that further investigation would be required to confirm. The report is also clear that on inspection there was no evidence of tampering to the instrument cluster or dashboard assembly but that does not mean that a defeat device hadn't been fitted elsewhere but there is no evidence to substantiate the use of such a device.

Unfortunately, I am unable to substantiate Mr B's claim based on the evidence presented to me that the discrepancy in mileage between the odometer and ECU means that the car itself had been misdescribed or misrepresented.

My final decision

My decision is that I do not uphold this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 December 2025.

Leon Livermore
Ombudsman