

## **complaint**

Mr A complains that the vehicle he acquired through a hire purchase agreement financed by FirstRand Bank Limited trading as MotoNovo Finance was misrepresented. He wants compensation for the loss in value.

## **background**

Mr A is represented in this complaint by a family member but for ease of reading I'll refer mostly to him.

Mr A says he acquired the vehicle from a dealer I'll refer to as "S" in December 2018. He states that he purchased the vehicle believing it had one previous private keeper. And that he wasn't told it had previously been used as a taxi. Mr A says that when he came to sell it the company which had made an offer to purchase the vehicle reduced its offer price by £5,000 when it discovered its previous use as a taxi.

MotoNovo said that before agreeing to the finance it had checked the valuation of the vehicle via an HPI check. This hadn't shown the vehicle was previously used as a taxi. It said it found that there wasn't a huge discrepancy between the HPI valuation and the cash price charged to Mr A. It stated that valuation would typically depend upon age, mileage and condition of a vehicle. And that as taxi's are regularly serviced this wouldn't have a negative impact on the price.

I issued a provisional decision on this complaint on 26 May 2020. I indicated that I didn't intend to uphold the complaint. Since then I've had a reply from MotoNovo accepting the decision. Mr A has also replied, through his representative, stating that he doesn't agree with the provisional decision. And that he still feels that important information about the vehicle had been withheld at the time of supply. I thank the parties for their responses. I've not been provided with any new information so I see no need to alter my provisional decision. This is largely repeated in my final decision which is set out below.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry that Mr A had a disappointing experience regarding this vehicle. And I can understand he'd be concerned if he thought he'd been misled.

Mr A's complaint is about an alleged misrepresentation of the vehicle in the negotiations prior to the signing of the hire purchase agreement and his acquisition of the vehicle. I should explain that I don't apply the law - directly - but I do take it into account. And relevant law here includes section 56 of the Consumer Credit Act 1974 (CCA). I've also considered the Consumer Protection from Unfair Trading Regulations of 2008 (CPUTR).

In summary, the CRA says that where there's been a misrepresentation of goods by the retailer and/or credit broker (here that's S) the supplier of finance (MotoNovo) can also be held responsible.

A misrepresentation is a false statement of fact which induces a consumer into entering into an agreement and suffering a loss as a result of the misrepresentation. It's also possible in very limited situations for a misrepresentation to occur as a result of an omission. For example, that might occur in the case of a "*half truth*" where the statement made was correct - as far as it went. But it didn't reveal the true state of affairs.

Where information is unclear or incomplete or facts are in dispute - as is the case here - I reach my conclusions on the balance of probabilities. That is, what I think is most likely to have happened in light of the available evidence and the wider surrounding circumstances.

Put simply, Mr A's complaint is that S didn't tell him that the vehicle had previously been used as a taxi. And that as a consequence of this omission he paid more for the vehicle than would've been the case if he'd been aware of this fact. He said he suffered a corresponding loss when he re-sold the vehicle.

Mr A has made reference to the CPUTR. In brief, these regulations prohibit unfair trading practices. And they include a requirement that the supplier should provide the purchaser with sufficient information to enable an informed decision to be made about whether to proceed and acquire goods. Mr A suggests he wasn't given this information.

I've not been provided with information which conclusively shows this vehicle had been used as a taxi prior to supply to Mr A. Mr A's assertion is largely based on having been told by a third party dealer that this was the case. Our investigator also made an inference after viewing its MOT history that the vehicle probably had been used as a taxi. This history showed that the vehicle had been subject of an annual MOT following its first year of registration in 2016. Vehicles for personal use aren't usually required to pass an MOT for three years. But taxis and private hire vehicles must do so each year after registration.

The vehicle here had been subject to two MOT tests prior to supply to Mr A. And at that time it was about two and a half years old. The odometer reading was around 74,000 miles. This is approximately three times the figure we'd typically think was average for ordinary domestic use. On a balance of probabilities I conclude the vehicle had been used as a taxi prior to supply to Mr A.

In order for me to say that S had misrepresented the vehicle I'd have to find that it was under an obligation to disclose this information to Mr A. And that it hadn't done so either intentionally or negligently.

There's nothing to show that S knew for what purpose the vehicle had previously been used. I've seen details of an HPI check carried out by MotoNovo at the time of the finance application. And I've seen a sales invoice relating to the price S paid for the vehicle. Neither document shows the vehicle was previously used as a taxi. The price paid by S was not inconsistent with recognised industry price guides. And the HPI check valuation was consistent with the price paid by Mr A.

I've seen no information that shows Mr A enquired about any aspect of the vehicle's previous history other than the record of previous ownership. In his original complaint he mentioned he believed it had one previous private keeper. It's my understanding that this is true. The mileage was also clearly on display. I accept that the MOT history may have provided further information which might've indicated the vehicle had probably been used as a taxi. But given the mileage and that Mr A could see the outward condition of the vehicle I'd have thought he had enough information on which to make an informed decision. And if he was concerned at how the mileage had been compiled the MOT history of a vehicle is publicly available and easily accessible. So I doubt if the additional information would've altered Mr A's decision to purchase the vehicle. On a balance of probabilities I'm not persuaded that the vehicle was misrepresented.

Usually that would be sufficient to resolve this complaint. But in order to cover all angles I've gone on to consider what my decision would've been if I'd have thought the vehicle had been misrepresented.

I've reached the conclusion that I wouldn't be awarding the compensation which Mr A seeks. This is the difference between what he says he would've been able to sell the vehicle for (if it hadn't been a taxi) and the actual price he obtained. I'll explain why.

Mr A obtained price valuations from two online businesses which purchase vehicles. Both initially gave quotes which seem to be based on the vehicle having been used solely for private purposes. But those businesses gave reduced quotes after they'd seemingly decided the vehicle had probably been used for commercial reasons. I don't consider either of the businesses provides a reliable basis for what might reasonably be viewed as a fair valuation. The initial valuations are provided without any sight or inspection of the vehicle. And rely on information provided by the vendor as to its general condition. So it's more probable than not that once a vehicle is inspected there will be a price adjustment. That's what happened here.

Of more importance, I've seen information which wasn't available to our investigator at the time he issued his view letter. MotoNovo has supplied an email from S stating that it (S) had made an offer to Mr A to buy back the vehicle. It said that it had offered £24,000. But that Mr A had told it that he'd already accepted a higher offer. S said it hadn't heard anything more about the matter until this complaint arose. Mr A explained that he'd sold the vehicle before the phone call with S. But he hasn't explained why, if he'd been made a higher offer, he apparently sold it for much less.

I've been giving conflicting information about the price received when Mr A sold the vehicle. In the original complaint Mr A stated the value of the vehicle was reduced - due to its previous use as a taxi - by around £5,000. Yet in the response to the provisional decision it's mentioned by Mr A's representative that the vehicle was sold for less than half the original purchase price (£29,995) paid by Mr A. This would impute a much greater loss. As I've not seen documentation confirming the actual price received when Mr A sold the vehicle I'm unable to say which, if either, of these figures is accurate.

Where a consumer is claiming a loss has been caused by a misrepresentation or breach of contract there's a duty on the consumer to make reasonable efforts to mitigate any loss he incurs.

Mr A first complained to MotoNovo on 27 March 2019. MotoNovo was entitled to up to eight weeks to respond to the complaint. But before it could issue its final response letter (this was issued on 13 May 2019) Mr A had sold the vehicle. Mr A's representative has suggested this was done to prevent any further devaluation. But I don't think that a few weeks extra delay was likely to have any material effect on the valuation.

The sale meant that MotoNovo was deprived of the opportunity to see if it could resolve the complaint to Mr A's satisfaction. No doubt this would have included making enquires of S to see if it was able to obtain a better price offer for the vehicle. Had this occurred it's more probable than not that a price in the region of S' offer would have been obtained.

There was no reasonable attempt made by Mr A to mitigate any loss that might arise from the sale of the vehicle. He went ahead with the sale whilst his complaint with MotoNovo was still being investigated within the usual time period for replies reasonable attempts to mitigate loss.

In summary, I'm not satisfied there was any misrepresentation of the vehicle. In my opinion, it also wouldn't be fair and reasonable to expect MotoNovo to make good any price difference which might've arisen as a consequence of the vehicle being sold before it reasonably had time to respond to the complaint. And that opinion is confirmed by the absence of any reasonable effort to mitigate any loss.

I understand that Mr A will be disappointed by my final decision but I'm not upholding this complaint.

### **my final decision**

For the reasons given above my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 July 2020.

Stephen D. Ross  
**ombudsman**