

The complaint

Mr R is unhappy that MotoNovo Finance Limited provided misleading information in relation to a car supplied to him under a hire purchase agreement.

What happened

In February 2020, Mr R was supplied with a used car through a hire purchase agreement with MotoNovo. He paid a £2,300 deposit and the agreement was for £19,699 over 49 months, with 48 monthly payments of £301.85 and a final payment of £10,510.35.

After experiencing some issues with the car, in August 2023 Mr R discussed his options for exiting the agreement with MotoNovo.

Mr R made several complaints to MotoNovo, some of which have been dealt with separately by the Financial Ombudsman Service. However, this complaint is about the misleading information provided by MotoNovo about the termination/settlement of the agreement. All the other issues Mr R raised with us had already been dealt with by us previously and didn't form part of this investigation. As such, they will also not form part of this decision.

However, it was also agreed that the scope of the investigation would be expanded to include additional complaints that Mr R raised – that he was unhappy with the service he received on two calls with MotoNovo, and that MotoNovo failed to provide him with a copy of the car's full-service history when he asked for this under data protection legislation. After bringing the complaint to us, Mr R also raised a complaint about how the ownership of the car was registered with the DVLA.

Our investigator said the agreement Mr R signed was clear about his termination rights; and MotoNovo's case notes show they spoke to Mr R on multiple occasions around August 2023 where his exit options were discussed. Given this, the investigator was satisfied MotoNovo engaged with Mr R in a clear, fair, and not-misleading way.

The investigator also listened to the calls of 28 February and 5 March 2020 and thought MotoNovo also explained everything in a clear, fair, and not-misleading way. So, they didn't think MotoNovo had done anything wrong.

Finally, the investigator explained that the service history of the car wasn't something that MotoNovo were likely to have on their systems, as it didn't directly relate to the finance agreement itself. So, they thought it was reasonable that MotoNovo were unable to provide this to Mr R when he asked them to. The investigator also explained that the issue with how the ownership of the car was recorded by the DVLA was not something MotoNovo were responsible for, and this was something Mr R would need to raise directly with the DVLA.

Mr R didn't agree with the investigator's opinion. He said the cooling off period was never explained to him, that the ownership issue was linked to the missing service history and records being deliberately hidden; and that he believed this was fraud. As Mr R didn't agree, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 R was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've seen the agreement Mr R electronically signed on 20 February 2020. In signing this document, it's implied that Mr R also confirmed that he had read the agreement and agreed to be bound by the terms.

Under the heading "*Right of Withdrawal*" the agreement states "*you have the right to withdraw from this Agreement within 14 days without giving any reason ... if you exercise your right to withdraw, you must repay the credit ... and interest accrued from the date the credit was provided to the date of repaying it to us ... the daily interest rate is £4.23.*"

What's more, under the heading "*TERMINATION : YOUR RIGHTS*" the agreement states "*you have the right to end this agreement. To do so, you should write to the person you make your payment to. They will be entitled to the return of the Vehicle and to half the total amount payable under this agreement, that is £13,649.58.*" I've noted that this is the standard wording for a termination clause laid down by the Financial Conduct Authority.

Finally, I've noted the agreement also explains what would be payable if the car were to be repossessed, and there is an extensive clause explaining what would happen if Mr R were to repay part of the amount outstanding by way of a lump sum before the agreement ended.

Given this, I'm satisfied that the agreement clearly states Mr R's options for ending the agreement. And I don't think this information was provided in a misleading way, nor was it presented in such a way that it would not be immediately obvious i.e., in such a small print as to be practically unreadable.

I've also listened to the calls of 28 February and 5 March 2020. On the call of 28 February 2020, Mr R explained he was considering withdrawing from the agreement. MotoNovo explained this was separate from returning the car, and he would be required to repay the amount he'd borrowed, plus daily interest. I've noted this is the same information that is provided in the agreement Mr R had signed around a week earlier.

MotoNovo also explained that the cooling off period provided by the supplying dealership was separate to the right to withdraw from the agreement, and Mr R would need to speak to the dealership direct about returning the car to them. They also explained that, if the dealership were willing to accept the car back, the dealership would need to return the funds MotoNovo provided them and confirmed how much this would be. Mr R was also told that he could sell the car privately and repay the finance this way.

The call of 5 March 2020 was a welcome call, initiated by MotoNovo, where they confirmed the details of the agreement, including the payments and mileage allowance. On this call, Mr R explained that he was still waiting documentation from the dealership, but this related to the car and not the finance agreement. While Mr R didn't raise the issue of withdrawing from the agreement, MotoNovo did explain his options at the end of the agreement.

I've reviewed MotoNovo's contact notes and I've seen that Mr R asked about handing the car back, due to the faults he was experiencing, on 18 August 2023. MotoNovo fully explained his options, both verbally and in writing, over a series of communications between 18 August and 17 October 2023, which included Mr R's complaint about being provided with an incorrect settlement figure, which MotoNovo resolved.

So, based on what I've seen, I'm satisfied that MotoNovo provided Mr R with sufficient clear information about his options for exiting the agreement, both at the outset and when he raised the possibility part-way through the agreement. As such, I can't agree with Mr R's complaint that they provided misleading information or acted in a misleading way.

Turning to the service history of the car, Mr R asked MotoNovo to provide this as part of a Data Subject Access Request (DSAR). When dealing with a DSAR, a financial business is only able to provide personal information they hold about their customer, and this definition wouldn't necessarily include information just specific to the car. However, if MotoNovo held this information, it would be considered reasonable customer service to provide this.

Notwithstanding their obligations under a DSAR, I would not expect MotoNovo to have a copy of the service history – this is something that would either be physically kept with the car, in a service book, or electronically kept by whomever undertook the services. There's no legal obligation for this to be provided to MotoNovo, so, when MotoNovo said they didn't have this information to provide to Mr R, this is something that would highly likely be the case. As such, I can't ask MotoNovo to provide information they don't have. But, if Mr R believes this is something MotoNovo have, but are unreasonably withholding, this is a matter best raised with the Information Commissioners Office, as they are the organisation who oversee compliance with data protection legislation within the UK.

Finally, Mr R has raised the issue of how the ownership of the car is registered with the DVLA, and that he believes this is both related to the missing service history and is fraud. As explained by the investigator, if DVLA have the incorrect ownership information, and whether or not this is related to the service history, MotoNovo are unable to change what the DVLA have registered. And it's for Mr R to raise this matter directly with the DVLA. What's more, we are an alternative to the courts, and fraud is a criminal matter. As such, if Mr R believes that something fraudulent is taking place, this is not something we are able to determine, and he should take independent legal advice on this.

So, in conclusion, and while I appreciate this will come as a disappointment to Mr R; I'm satisfied that MotoNovo have acted reasonably, and I won't be asking them to do anything more.

My final decision

For the reasons explained, I don't uphold Mr R's complaint about MotoNovo Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 September 2024.

Andrew Burford
Ombudsman