

The complaint

Mr P complains about the service he received when he purchased his car, and that the agreement financed by MotoNovo Finance Limited (MotoNovo) was misrepresented to him.

What happened

In July 2023 Mr P acquired a used car through a hire purchase agreement financed by MotoNovo.

Mr P complained to MotoNovo. He said there was a mileage discrepancy where the mileage recorded with the DVLA is different to the one he was told when the car was sold to him. Mr P said he'd purchased additional products and become part of an owners club to get free MOTs for life, but this hadn't been provided, and he was unhappy that the dealership tried to make a claim under his warranty without his authorisation.

Mr P didn't receive a response to his complaint from MotoNovo and so he brought it to this service in September 2023.

In November 2023 MotoNovo sent Mr P their final response to his complaint. They said there was no claim made under the warranty, and the service plan products and MOT offer were no longer available, but the dealership had agreed to honour half price MOT's. MotoNovo said the dealership recorded the mileage incorrectly at the MOT, and it couldn't now be changed. But they offered to pay Mr P £500 to resolve this aspect of his complaint or said he could return his car to the dealership and receive a refund minus a charge for fair usage whilst he'd had the car. They said fair usage would be equal to one monthly payment for every 1,000 miles Mr P had driven the car, his deposit would be refunded, and he could either cancel the additional products he'd purchased for warranty and GAP insurance or may be able to transfer these to a new car. MotoNovo said they'd conduct a review after cancellation to ensure Mr P wasn't out of pocket, and they paid him £250 for the distress and inconvenience caused.

Mr P wasn't happy with the offer made by MotoNovo. He said they hadn't properly broken down what he'd be refunded and who by if he returned the car, so he didn't feel that he could accept this offer.

Our investigator gave his view that the mileage was correct on the advert and Mr P hadn't faced any financial consequences for the incorrectly recorded mileage at the MOT. He said we wouldn't consider an award for potential future impact, but he thought the offers MotoNovo had made to pay him £500 or return the car were fair in the circumstances. Our investigator said there was no claim made on the warranty, so this was resolved, and there was no evidence that the car was misrepresented to Mr P, he didn't think Mr P had been induced to buy the car or enter the agreement because of the owners club benefits, as he thought Mr P would've taken the warranty and GAP insurance products for their own benefits regardless of any other offer. Our investigator said these products weren't included under the finance agreement and so he couldn't ask MotoNovo to refund them in any event.

Mr P didn't agree. He said he'd provided evidence of the false statement of fact, and he'd

paid to join the owners club under false advertising. Mr P said there was no evidence that the mileage recorded on the MOT was a mistake, and he felt this would affect him financially in the future. He said he didn't pay separately for any of the products, and they were all included in the lending from MotoNovo.

I issued a provisional decision on this complaint in July 2024 recommending that it was not upheld. I made the following provisional findings:

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Mileage

I've seen evidence that the mileage recorded at the MOT test in March 2023 was 34,400. I've also seen evidence that Mr P was told the mileage on the car was 19,593, and this is what the odometer showed when Mr P acquired the car and what is shown on the agreement.

The dealership that sold the car to Mr P said they incorrectly recorded the mileage when they did the MOT at their preparation centre, and they tried to have it corrected, but it can't now be changed. MotoNovo said they'd offered to pay Mr P £500 to reflect the mistake, or he could return the car to the dealership for a refund, with a deduction for the use he'd had of the car.

Mr P said he can't be sure that the record on the MOT is a mistake, it's possible that the car has been clocked or there has been fraudulent activity, and this will cause him a financial loss in the future should he want to sell the car.

I haven't seen any evidence which suggests that Mr P's car has been tampered with, and I've no reason to doubt the supplying dealership's testimony that the MOT log in March 2023 was completed incorrectly. They've tried to correct this error and offered options to Mr P when this wasn't possible. So, I'm persuaded that the mileage on Mr P's car was correct when it was supplied to him, and he hasn't been affected financially as a result.

I can appreciate that Mr P is concerned about what might happen in the future should he try to sell the car. I can't make an award for something that hasn't happened yet. But I recognise that MotoNovo have given Mr P options if he remains unhappy about this aspect of his complaint. Should Mr P wish to accept one of these offers, he may wish to ask MotoNovo if they're still available.

Warranty

Mr P said he returned his car to the supplying dealership shortly after he acquired it, as the engine management light had come on. The dealership replaced a rear oxygen sensor, and Mr P was surprised to hear from his warranty company that the dealership had made a claim for the cost of these repairs.

MotoNovo told Mr P that the claim had been stopped when he expressed his dissatisfaction to the dealership, and no funds had been received.

I haven't seen the terms and conditions of the warranty that Mr P purchased, but as there was no claim made, I'm satisfied there was no detriment to Mr P in the circumstances.

Misrepresentation

Mr P had said that the sale was misrepresented to him, because the dealership's website set out how he could receive free MOTs for life if he purchased the warranty, GAP insurance and service plan products. So, he purchased the warranty and GAP insurance products, but when he called to set up a service plan, he was told these were no longer being offered.

The dealership said this was an old offer, but they would agree to honour 50% off MOTs for Mr P.

Our investigator said he hadn't seen any evidence of a false statement of fact made to Mr P, he thought Mr P would've taken the additional products regardless of the MOT offer, and the products weren't included on the agreement with MotoNovo, so he couldn't ask them to refund Mr P in any event.

Mr P said he had agreed to become part of the owners club, and paid £230 for this, on the provision that he'd be able to get free MOTs for life, so he remained of the opinion that this was mis sold to him.

I've considered the agreement and the invoice from the purchase of Mr P's car. The invoice includes the price of the car at £9,888, a paint/fabric protection product at £349, a warranty at £1,449 and 'other extras' at £229. The full sum of all of these products was used to calculate what was being borrowed under the hire purchase agreement with MotoNovo, and so, I'm satisfied that all of the products on the invoice were subject to the agreement and so MotoNovo are responsible for them.

Mr P said he purchased a warranty and a GAP Insurance policy. The warranty is included on the invoice, and I've seen evidence of a GAP Insurance schedule with a price of £294 was sold to Mr P, but this doesn't appear to be included on the invoice.

I've thought about the 'other extra' charged at £229, and I think this is more likely to be for the owners club that Mr P said he joined, rather than for the GAP Insurance, as it doesn't match the price of the insurance policy that Mr P was given.

So, I'm satisfied that Mr P did pay to join the owners club, and that this payment was included on the invoice for his car and therefore is included in the agreement financed by MotoNovo.

Having made that finding, I've gone on to consider whether the product was misrepresented to Mr P.

In order to be satisfied that the product was misrepresented, I'd need to be persuaded that there was a false statement of fact, and that false statement induced Mr P into entering into a product that he wouldn't otherwise have taken.

The supplying dealership said the offer relating to MOTs was an old one, and so they offered to provide Mr P with 50% off MOTs for the duration of his ownership of the car. This appears to match current offerings for joining the owners club.

Mr P has provided an old screen shot of the owners club website which says if the three products are taken, free MOTs for life will be provided, alongside a number of other owners club benefits.

It's not clear when the screen shot of the website was taken, but as the dealership haven't disputed that an old offer was in place that now no longer exists, I'm persuaded that a false statement of fact about the owners club was provided to Mr P.

So, I've considered whether this induced him to take a product that he wouldn't otherwise have taken.

Both the warranty and GAP Insurance policies provide their own benefits to Mr P outside of the owners club benefits. Mr P also had an opportunity to cancel these policies if he no longer wanted them after finding out that the MOT offer wasn't available, but he hasn't done so. So, all things considered, I'm persuaded that Mr P would likely have taken these products regardless of the MOT offer.

The owners club provides a number of other benefits to those who join, and Mr P is able to continue to take advantage of these, including half price MOTs for the duration of his ownership of the car. I can appreciate that having the MOT covered was of particular interest to Mr P, and he attempted to benefit from this offer by trying to meet the conditions of it being provided. But I'm not persuaded that the reduction of this benefit alone would've prevented him from choosing to join the owners club.

It follows that I'm not persuaded that he was induced to take a product that he wouldn't otherwise have taken and so I find that there was no misrepresentation of the products, vehicle, or agreement.

Mr P responded to my provisional decision. He said the advert in respect of the free MOT benefit is not old and is currently live on the owners club website. Mr P provided evidence of the current advert, and that service plans were currently being advertised.

MotoNovo didn't respond to 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.

Neither party has raised any new arguments or sent me new information to consider about the mileage or warranty, and so for the same reasoning as set out in my provisional decision, I haven't upheld these aspects of Mr P's complaint.

Mr P has provided evidence that the advert for free MOT's is live on the website currently and is not an old advert. I've thought about this carefully, but I'm not persuaded that it alters the reasoning set out in my provisional decision.

I am concerned with the information that Mr P was given at the time that he acquired the car, and whether there was a misrepresentation at that time. Whether or not the advert is still live, if the offer had been reinstated, or if the advert is a mistake, is of no relevance to the false statement of fact that was provided to Mr P at the time that the agreement was entered.

So, I remain satisfied for the reasons previously stated that Mr P did join the owners club, and that a false statement of fact was provided to Mr P about the MOT benefit he could receive at the time the agreement was entered.

As I set out in my provisional decision, a false statement of fact is not sufficient to say that the agreement was misrepresented to Mr P. I'd also need to be satisfied that this false statement of fact induced Mr P into doing something he wouldn't otherwise have done.

Mr P has said the advert induces to buy but hasn't provided any additional evidence or arguments for me to consider that persuades me that he wouldn't have joined the owners club but for the MOT benefit. And so, for the reasoning I set out in my provisional decision, I'm not persuaded that Mr P was induced to take a product that he wouldn't otherwise have taken, and so I find that there was no misrepresentation of the products, vehicle, or agreement.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 1 August 2024.

Zoe Merriman
Ombudsman