

## **The complaint**

Mrs S complains that a used car she acquired via a hire purchase agreement with MotoNovo Finance Limited wasn't of satisfactory quality and she wishes to now reject it.

## **What happened**

In May 2021 Mrs S entered into a hire purchase agreement in the form of a personal contract plan ("PCP") for used car with MotoNovo. The credit agreement was for four years with 48 monthly payments of £521.42 and one optional final payment of £15,608.70 should Mrs S wish to keep the car. The car was around three years old and had a mileage of about 32,000. The annual mileage allowance under the agreement was 8,000.

In August 2022 Mrs S was away and left the car in a carpark, on her return she found it was damp and mouldy due to water having entered via a faulty seal to the windscreen. Mrs S made an insurance claim, but the insurer initially said they would not cover the cost of the repairs. The car was kept by the garage and Mrs S was unable to use it.

In October 2022 Mrs S complained to MotoNovo that she believed the fault with the windscreen had been present from the point the car had been supplied to her. MotoNovo didn't uphold her complaint at the time as it said there wasn't any evidence to support this was a manufacturing fault.

However, the manufacturer then accepted that the water ingress and subsequent damage was due to an inherent fault but only offered to cover 40% of the cost of the repairs. It later reviewed their decision and agreed to cover the full cost.

In February 2023 Mrs S was supplied with a courtesy car by the repairing garage as the repairs were still awaited, and she had no car.

MotoNovo re-opened Mrs S's complaint in April 2023 and in May 2023 she supplied an independent engineer's report on the condition of the car.

The car's repairs took time to undertake, and it wasn't returned to Mrs S until August 2023. Before the car's return and due to the length of time the repairs were taking, Mrs S asked MotoNovo if she could reject the car due to the faults. MotoNovo, although upholding Mrs S's complaint as to the quality of the car, declined to agree to end the agreement and collect the car. It said Mrs S had agreed to the repairs and that under the Consumer Rights Act 2015 there was a right of repair.

However, MotoNovo said that Mrs S should receive redress for what had happened. It offered Mrs S the following:

- £3,128.52 – being a refund of six normal monthly instalments. This took into consideration the months where Mrs S had been without the use of the vehicle and had had no courtesy car.
- £500 compensation in recognition of the distress and inconvenience caused to Mrs S dealing with the faulty car. This amount also was in recognition that MotoNovo had given Mrs S incorrect advice while dealing with her complaint.

- £240 reimbursement for the independent inspection report.

Mrs S was unhappy at MotoNovo's response and complained to this service. She said she wanted to reject the car as she had no faith in the repairs; that she should be reimbursed more for the period she hadn't had the car as the courtesy car hadn't been like for like and she had experienced problems with it; that she hadn't used the car at all since its return in light of advice received from MotoNovo; that she should be reimbursed her insurance and road tax costs for the whole period and that the compensation was inadequate to reflect the impact dealing with this has had on her.

Our investigator recommended that Mrs S's complaint should be upheld. He said that although Mrs S had agreed to the repairs initially, under the Consumer Rights Act 2015 these should have been carried out within a reasonable timeframe which was not the case here. He said MotoNovo had acted unfairly by not allowing Mrs S to reject the car when she had asked to.

Our investigator said that Mrs S should now be able to end the agreement and for the car to be returned. He said that while he agreed with the reimbursement of six months of payments under the agreement, he also thought that 20% of the monthly payments Mrs S had made during the period she had been provided with a courtesy car. He said this would reflect that the courtesy car wasn't like for like.

Our investigator said that as Mrs S had acted reasonably in not using the car following its return to her in August 2023, then from that point, she should be reimbursed all of the monthly payments made.

In respect of compensation, our investigator said that he agreed £500 was fair and reasonable for Mrs S having to deal with the faulty car.

MotoNovo hasn't raised any objections to our investigator's view, but Mrs S says she thinks it's unfair. Mrs S says that MotoNovo offered her all of her payments made under the agreement back save 10 months to cover her usage of the car. She says it also offered her reimbursement of insurance and road tax costs. Mrs S says £500 as compensation doesn't reflect the 15 months the matter has taken to resolve and the impact this has had including the loss of her job.

As the parties have been unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

It wasn't disputed that the car acquired by Mrs S in May 2021 hadn't been of satisfactory quality as it was accepted by the manufacturer that it had an inherent fault which had led to water ingress and consequent damage.

Mrs S had requested to reject the car due to the length of time the repairs had taken. Again, it was accepted that the car wasn't with Mrs S from August 2022 to August 2023. And I agreed with our investigator's view that the repairs hadn't been carried out in a reasonable period of time as expected under the Consumer Rights Act 2015. I thought Mrs S had a right to reject the car even though she had at first agreed to the repairs because of the significant delay in those then being undertaken. I could appreciate why Mrs S now said she didn't have faith in the repairs and didn't think all the water damage had been fixed.

I also agreed that a fair settlement would require MotoNovo reimbursing Mrs S for some of her monthly payments made under the agreement. I'd seen Mrs S said that MotoNovo had said it would reimburse her all of the payments save 10 months to cover her use, but I wasn't bound by this as the business hadn't then agreed to her rejecting it. I was entitled to

reach my own decision as to what I thought would be fair in reasonable in these circumstances. And I'd seen that under the agreement Mrs S had an annual mileage limit of 8000 meaning she would have been able to drive around 10,000 in the 15 months she was able to use the car and keep within that agreed limit. I hadn't seen any evidence that Mrs S wasn't able to make use of the car as she wished from the point of its supply until it broke down in August 2022. So, if she had done under 8,000 per year in that period that would have been her choice.

In accordance with Consumer Rights Act 2015, Mrs S is expected to pay for use of the vehicle while it was in her possession. Looking at her use, I wasn't intending to ask MotoNovo to reimburse any of Mrs S's monthly payments up until the point when the car was found to have sustained water ingress and damage in August 2022.

It wasn't disputed that until February 2023 Mrs S was without a car as no courtesy car had been provided. I agreed that Mrs S should be reimbursed her monthly payments for the time she had been without any car. I also agreed that Mrs S should be reimbursed all of any monthly payments made after the car was returned to her following the repairs. I thought Mrs S had been acting reasonably by not driving it as she had been advised using the car could affect her request to reject it and I'd seen she had lost confidence in it being safe.

In respect of the period of time Mrs S had a courtesy car, I'd seen this wasn't like for like as her car had seven seats and the replacement five, which had caused inconvenience. I'd also seen that Mrs S had said the courtesy car had an issue with its brakes which led to it skidding and resulted in her using this less. However, in light of the view I had taken below regarding the insurance and car road tax, I thought a 20% reduction from the monthly payments would be fair in all the circumstances.

When considering a settlement of costs incurred following a breach of a contract, as was the case here, care should usually be taken not to put a consumer in a better position than they would have been had they not entered into the contract. That meant if certain travel costs would always have been incurred then it may be unfair to reimburse them. However, I thought it would be fair for Mrs S to be reimbursed her insurance costs and road tax costs from August 2022 (when the car was taken in for repairs) to date. While I accepted there were times Mrs S had had a car and these were usual expenses when running one, there were also several months when Mrs S hadn't had a car at all. I'd also seen that due to concerns about the safety of the courtesy car, Mrs S felt unable to use it as much as she had wanted and made other travel arrangements. Mrs S would need to provide documentary proof of the insurance and road tax costs to MotoNovo before reimbursement.

Mrs S said she was unhappy at the amount of compensation considered fair by both MotoNovo and our investigator. She had raised the additional costs of taxis, other insurance on other family cars and the impact it had had on her including loss of income.

I hadn't seen any itemised expenditures for taxis, additional insurance etc and I would need proof of these costs with receipts and invoices which I accepted after this period of time would be difficult to provide. I also didn't think I could reasonably hold MotoNovo responsible for any loss of income suffered by Mrs S. The car was for social and domestic use, so I didn't think losing a contract of employment would be something that was foreseeable in these circumstances. I would also need to see proof that dealing with the faulty car was the sole reason Mrs S had lost her job. Loss of earning wasn't something that's usually awarded in these circumstances.

I appreciated Mrs S had suffered distress and inconvenience over this matter, but I didn't think I could say this was all due to MotoNovo, I'd seen that Mrs S's insurance company's refusal to cover the claim had also caused her upset. I thought that when reflecting on the

impact this has had on Mrs S, that £500 compensation was fair and reasonable.

For the reasons given above, I intended to uphold Mrs S's complaint. I asked MotoNovo to do the following:

- End the agreement with nothing further to pay.
- Arrange for the collection of the car at no cost to Mrs S.
- Refund any deposit made by Mrs S.
- Refund Mrs S the amount of £3,128.52 to reflect the time she was without the vehicle from August 2022 – February 2023.
- Refund Mrs S £240 to cover the cost of the independent report.
- Refund Mrs S 20% of the monthly payments for the period she was provided a courtesy car.
- Refund Mrs S all the monthly payments paid by her after the vehicle was returned in August 2023 as Mrs S had reasonably stopped using the car at this point.
- Refund Mrs S the cost of the car insurance for this car from August 2022 to date once documentary proof has been provided by Mrs S.
- Refund Mrs S the cost of the road tax for this car from August 2022 to date once documentary proof has been provided.
- Pay 8% simple yearly interest on all the above refunded amounts from the date of payment until the date of settlement.
- Pay Mrs S £500 compensation for the distress and inconvenience caused dealing with the faulty car.
- Remove any adverse information from Mrs S's credit file in relation to this agreement.

MotoNovo has accepted my provisional decision, but Mrs S has disagreed with some of my suggested settlement. In particular, she has disagreed that MotoNovo isn't responsible for her loss of earnings and has provided an email from her ex-employer. She says the proposed settlement doesn't take into the bigger picture. Mrs S has also provided a number of documents relating to taxi fares, car insurance, car tax and car hire.

### **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've looked again at the evidence together with the new documentation and comments provided by Mrs S, but I haven't changed my view.

Mrs S has queried the reimbursement for the period August 2022 until February 2023 amounting to £3,128.52 as she says this is seven months and not six. However, I am satisfied the period is six months when taking into account the dates involved and that the car had also been at the airport while Mrs S was away. So, I am not altering that amount.

In respect of the claim for loss of earnings, I still do not consider that this loss was reasonably foreseeable by MotoNovo. I accept the car could be used for work purposes (other than private hire) but I haven't seen any evidence that MotoNovo would have been aware that the car was essential for Mrs S to work. And although Mrs S has provided an email from her ex- employer, I can't reasonably say there weren't other things at play when Mrs S's job was brought to an end. So, I'm not asking MotoNovo to reimburse Mrs S for any loss of earnings.

In regard to the reimbursement of all of the monthly instalments from August 2022 to February 2023 which I had considered fair, Mrs S has raised that the fault with the car had

been present since its point of supply to her and so any reimbursement of the instalments should take that into account. However, while I accept what she says in respect of this being an inherent fault, looking at the evidence provided, it only became a real problem after August 2022 when the water ingress caused significant damage. The car's condition also further deteriorated due to the length of time it took for repairs to be arranged. I am therefore still satisfied that, prior to August 2022, Mrs S was able to make use of the car and the impact from the water ingress at that time did not really spoil or limit her use of it.

Mrs S has raised that replacing the car will now be more expensive due to an increase in the interest rates, she has also said there have been an increase to her car insurance policy. But I don't think I can reasonably hold MotoNovo responsible for these additional costs. Interest rates are due to market conditions, and I don't think MotoNovo would have foreseen that Mrs S would make an insurance claim for a fault with the car. So, I don't think it would be fair to ask MotoNovo to reflect these matters in the amount of compensation that's payable to Mrs S.

I appreciate Mrs S was disappointed with the courtesy car, but MotoNovo wasn't obliged to provide one, as this isn't part of the financial agreement's terms and conditions. The issue is, that as Mrs S was still paying for the car under the agreement and the courtesy car wasn't like for like then she should be compensated for that period. I still think a reimbursement of 20% of the instalments paid while she had the courtesy car is fair.

Mrs S has provided a number of invoices for taxi journeys and car hire. Looking at those, I am still satisfied that the compensation amount of £500 is fair and reflects the impact dealing with the faulty car has had on her.

So, for the reasons given above I'm upholding Mrs S's complaint, but I am not altering the settlement I had set out in my provisional decision

### **Putting things right**

I'm asking MotoNovo to do the following:

- End the agreement with nothing further to pay.
- Arrange for the collection of the car at no cost to Mrs S.
- Refund any deposit made by Mrs S.
- Refund Mrs S the amount of £3,128.52 to reflect the time she was without the vehicle from August 2022 – February 2023.
- Refund Mrs S £240 to cover the cost of the independent report.
- Refund Mrs S 20% of the monthly payments for the period she was provided a courtesy car.
- Refund Mrs S all the monthly payments paid by her after the vehicle was returned in August 2023 as Mrs S had reasonably stopped using the car at this point.
- Refund Mrs S the cost of the car insurance for this car from August 2022 to date once documentary proof has been provided by Mrs S.
- Refund Mrs S the cost of the road tax for this car from August 2022 to date once documentary proof has been provided.
- Pay 8% simple yearly interest on all the above refunded amounts from the date of payment until the date of settlement.
- Pay Mrs S £500 compensation for the distress and inconvenience caused dealing with the faulty car.
- Remove any adverse information from Mrs S's credit file in relation to this agreement.

## **My final decision**

As set out above, I'm upholding Mrs S's complaint, but I haven't altered the settlement I had set out in my provisional decision. I'm asking MotoNovo Finance Limited to do the following>

- End the agreement with nothing further to pay.
- Arrange for the collection of the car at no cost to Mrs S.
- Refund any deposit made by Mrs S.
- Refund Mrs S the amount of £3,128.52 to reflect the time she was without the vehicle from August 2022 – February 2023.
- Refund Mrs S £240 to cover the cost of the independent report.
- Refund Mrs S 20% of the monthly payments for the period she was provided a courtesy car.
- Refund Mrs S all the monthly payments paid by her after the vehicle was returned in August 2023 as Mrs S had reasonably stopped using the car at this point.
- Refund Mrs S the cost of the car insurance for this car from August 2022 to date once documentary proof has been provided by Mrs S.
- Refund Mrs S the cost of the road tax for this car from August 2022 to date once documentary proof has been provided.
- Pay 8% simple yearly interest on all the above refunded amounts from the date of payment until the date of settlement.
- Pay Mrs S £500 compensation for the distress and inconvenience caused dealing with the faulty car.
- Remove any adverse information from Mrs S's credit file in relation to this agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 January 2024.

Jocelyn Griffith  
**Ombudsman**