

The complaint

Mr L is unhappy with a car he acquired using a hire purchase agreement provided by Motonovo Finance Limited. He says the car has had issues since he got it, mainly with the Diesel Particulate Filter ('DPF').

What happened

In October 2019 Mr L acquired a used car. The car was registered in April 2016 so it was around two and half years old and the documents from this point record the mileage as 25,000.

Mr L paid a deposit of £3,000 and the remaining funds of £13,294 were covered with a hire purchase agreement provided by Motonovo.

Mr L says a warning light appeared very soon after getting the car and he called the dealer within a day or two of picking it up. A DPF regeneration was carried out just under two weeks following Mr L getting the car. Mr L text the dealer a few days after this saying the warning light was back.

In December 2019 Mr L took the car to a manufacturer's garage who said the DPF needed to be replaced. A few days later the DPF was cleaned at the dealer, but Mr L says this didn't fix the problem.

In January 2020 a tyre pressure sensor was replaced along with a tyre.

In June 2020 Mr L complained to Motonovo and it arranged for an independent inspection to take place later in the month. This said, in summary, that there was an issue with the DPF that had likely been there since Mr L got the car.

In July 2020 Motonovo issued its final response. This said, in summary, that it was upholding Mr L's complaint about the car in relation to the DPF, but not in relation to the tyre sensor nor tyre. It said it would support the car being repaired and said it would ask the dealer if it would do this, or it asked Mr L to send it a quote for the work. It also said it would pay Mr L £125 for the inconvenience caused.

Mr L then sent Motonovo a quote for a new DPF for £2,587.56. Motonovo said it wouldn't pay this as the quote was from a main dealer. Mr L sent Motonovo further invoices for work to the car and then said he now wished to reject it.

Mr L referred his complaint to our service in October 2020 and then in November 2020 said he had stopped driving the car due to ongoing issues.

Our investigator issued an opinion explaining he thought the complaint should be upheld. He said, in summary, that he thought the car wasn't of satisfactory quality when Mr L acquired it.

He said given the dealer had an opportunity to repair that wasn't successful, Mr L should've been allowed to reject the car when he asked to. He also said he thought Motonovo should reimburse Mr L 10% of the payments under the agreement from when Mr L got the car until he stopped driving it in November 2020. And he said all repayments should be reimbursed from then on. Finally, he said Motonovo should pay Mr L another £125 to reflect what happened.

Mr L accepted what our investigator said. Motonovo raised some concerns. It said it had emailed Mr L in October 2020 asking for a quote from repairs but thought Mr L didn't respond. And it said it would need a condition report if the car was rejected as Mr L hadn't been driving it, so it could be in a state of disrepair.

Our investigator forwarded Motonovo an email from Mr L that he sent to it in early November 2020. This email said Motonovo hadn't been responding to any phone calls or emails and so now Mr L wanted to reject the car. And he explained what Motonovo said didn't change his opinion.

Motonovo didn't respond to this, so the complaint was passed to me to decide.

While I was initially looking into things, I asked Mr L to provide some further information on work that was done to the car and his usage of it. Mr L said the invoices he supplied were all paid by himself and had not been reimbursed. He also said he expected to drive the car around 9,000 miles a year if all was well, and had acquired it in order to do longer journeys to see a family member.

I sent Mr L and Motonovo a provisional decision on 21 April 2022. My findings from this decision were as follows:

Mr L complains about a car funded by a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr L's complaint about Motonovo.

When thinking about what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This explains that under a contract to supply goods, the supplier – Motonovo here – has a responsibility to make sure the goods are of 'satisfactory quality'. Satisfactory quality is what a 'reasonable person' would expect – taking into account any relevant factors.

In a case involving a car, it seems to me that relevant factors would be things like, but not limited to, the car's age, price, mileage and description. I'll consider that Mr L's car was used, so I don't think a reasonable person would expect it to be in the same condition as a new car. But, the car was from a premium manufacturer and cost over £16,000. So, I think a reasonable person would expect the car to have been in good condition and would've expected trouble free motoring for some time.

I don't think I need to spend much time commenting on whether the car was of satisfactory quality or not in relation to the DPF in this case as it seems to me all parties accept this – including Motonovo in its final response. But, to comment briefly on this, I'm satisfied the car had issues with the DPF that were present or developing at the point of supply. I say this as the independent report stated:

"the vehicle displayed DPF faults"

"The current faults appear to be ongoing since finance inception"

“The conditions have not occurred due to general in-service wear and deterioration”

I've also considered the issue with the tyre pressure sensor and tyre. I appreciate the report doesn't comment on this as the issues had been fixed. But, the tyre is mentioned when Mr L had the car for less than two months and had covered around 1,500 miles. And the issues with the sensor were ongoing despite attempts at repairs, so I think there was likely an underlying fault with the car here. So, on balance, I also think these issues were present or developing at the point of supply.

I wouldn't expect these issues to have been present when Mr L acquired the car. So, I find it was not of satisfactory quality when it was supplied. I now need to consider what would be fair and reasonable to put things right.

I appreciate Motonovo offered to repair the car. But, I'm also satisfied that Mr L then made it clear he wanted to reject it. Given an attempt at repair had already been made by the dealer I'm satisfied Mr L had the right under the CRA to reject the car at this point. It follows, given the issues are still present, that I think Mr L still has this right.

I've thought about what Motonovo said about wanting a condition report on the car as it hasn't been driven for some time and it has missed two MOTs. But, I'm satisfied that any deterioration to the car from not being used is due to Motonovo not repairing the car in a reasonable time and not then allowing Mr L to reject the car when he had a right to. So, this doesn't change my opinion and I don't think this is fair and reasonable..

I agree with our investigator that it's reasonable for Mr L to get back all of the repayments from when he stopped using the car. Mr L says this was in November 2020.

In relation to the previous period, I also agree with our investigator that the car wasn't performing as it should when Mr L had it. I say this based on what Mr L told us, and the independent report noted:

“we noted the vehicle's performance was hesitant and the vehicle was lacking power”

Our investigator thought it was reasonable to reimburse Mr L 10% of his repayments back from this time. I asked Mr L for some more information here. He said he didn't drive the car as much as he expected to and didn't use the car at times because of the issues he had. He said he'd expected to cover around 9,000 miles a year, all being well.

Looking at the usage of the car, during this time Mr L's mileage was roughly 4,750 miles a year. So thinking about this along with the performance issues noted in the report, I think it's fair to say he had quite significant impaired usage of it. Thinking about what's fair and reasonable here, I think the amount the investigator recommended should be increased to 25%.

I also think Mr L should be reimbursed for attempts to sort out the DPF problem and for the cost of the tyre sensor repairs and new tyre. Mr L has provided some invoices for these – he will need to provide any other invoices or receipts for other expenses. He has also provided a receipt for a 'remap' of the car for fuel economy. I'm not sure if this was an attempt to repair the issues with the car as Mr L says or not, but, either way, I'm satisfied he hasn't had the benefit of this as he stopped using the car shortly after.

I also agree with our investigator that Mr L has been caused distress and inconvenience because of what's happened here. He's had to take the car for multiple repairs and had the car sat on his drive for some time. I agree £250 is reasonable to reflect this.

I have considered that Mr L has had to pay out for hire cars during the time he's not used the car. But, I'm satisfied the reimbursements of the monthly payments are reasonable to cover travel costs. So, I don't think Motonovo needs to reimburse these amounts.

I gave both parties two weeks to respond with any further evidence or information.

Motonovo responded and said it didn't have anything further to add.

Mr L came back and said he wanted things resolved as quickly as possible and so didn't require reimbursement for the tyre repair as he wasn't available to produce a receipt.

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 thought about all of the information on this case again, I still think this complaint should be upheld. This is for the same reasons I set out in my provisional decision and set out above.

Given what Mr L said about the reimbursement for the tyre issue, I have removed this from my instructions to Motonovo to put things right.

My final decision

My final decision is that I uphold this complaint.

I instruct MotoNovo Finance Limited to put things right by doing the following:

- Cancel the agreement with nothing further to pay
- Collect the car at a time and date suitable for Mr L
- Reimburse Mr L's deposit of £3,000*
- Reimburse 25% of repayments from the start of the agreement to the end of October 2020 *
- Reimburse all repayments towards the agreement from November 2020 until the point of settlement *
- Reimburse Mr L £168 for the cost of the diagnostic from 10 December 2019 *
- Reimburse Mr L £200 for repairs from 17 September 2020 *
- Reimburse Mr L £290 for the remap from 22 October 2020 *
- Pay Mr L £250 to reflect distress and inconvenience **
- Remove any adverse information from Mr L's credit file in relation to this agreement

* These amounts should have 8% simple annual interest added from the time of payment to the time of reimbursement. If Motonovo considers that it's required by HM Revenue and Customs to withhold income tax from the interest, it should tell Mr L how much it's taken off.

It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

** If Motonovo already paid Mr L the £125 offered in its final response, it only has to pay him £125 more

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 June 2022.

John Bower
Ombudsman