

The complaint

Mrs D complains about a car that she hired from MotoNovo Finance Limited under a hire purchase agreement.

What happened

In November 2021 Mrs D acquired a used car under a five year hire purchase agreement with MotoNovo. (This agreement also included a personal loan, and about ten percent of her monthly payments were in repayment of that loan.) The car was nearly seven years old, and the mileage was 56,151 miles. About three weeks later, she reported problems with the car. She said it would not accelerate, and there was a burning smell. About two weeks after that, MotoNovo closed that complaint because it said she had not provided any evidence.

In February 2022, Mrs D complained about the car again. She took the car to a local garage (not the dealer where she had got the car from); the mileage was 57,249. In March, a report was obtained from an independent expert, who said that there was probably a fault with the EGR cooler pipe, but that he had been unable to verify this due to the pipe's location. The expert said that assuming this was the case, the fault must have already been present when Mrs D acquired the car, and so MotoNovo was liable for it. In April the EGR cooler was replaced. Later that month, an oil leak having been discovered while the car was still in the garage, the transmission oil cooler was also replaced. There was a delay in completing the repairs and returning the car to Mrs D, but she got the car back in May.

However, a few days after the car was returned to Mrs D she reported that the problems had not gone away, and the engine management light (EML) was on; this was still in May 2022. She returned the car to the garage. In June, the garage told her that the current issues were not related to the earlier repair, and that there might be a problem with the turbo. It regenerated the diesel particulate filter (DPF), and tested the car. Then in August, the expert inspected the car again. It found that the engine was losing power, which it attributed to a fault with the DPF, which it said was due to the car not having been driven much. (Mrs D replied to say that this was only because the car had been in the garage for the best part of five months.)

This report by the expert, and his third report in September, both said that this was a new fault, not connected with the earlier faults, and that it had not been present at the point of hire. Therefore, it concluded that MotoNovo was not liable. Based on those reports, MotoNovo did not uphold Mrs D's complaint. (Significantly, the September report stated that the expert's first report in March had not mentioned the car lacking power.)

Being dissatisfied with that outcome, Mrs D brought this complaint to our service. She said that the expert had been wrong to make an assumption about the cause of the problems in its March report, without checking. This had led it to an erroneous conclusion in its August and September reports. She said the expert had been unaware of the fact that since first taking the car to the garage, it had been in the garage for most of the time, and so it was unfair of the expert to blame her for the DPF fault. She insisted that the faults later on were the same as the original faults that she had reported in December 2021 and February 2022, and that the repairs in April and May had not fixed them; they had recurred only a few days

later. She said that she had never been provided with a courtesy car, although MotoNovo had refunded some of her taxi costs, and had later refunded one of her monthly payments. She said she no longer trusted the car, as it had broken down on the motorway and endangered her and her children; she had had to call the police to rescue them.

Our investigator upheld Mrs D's complaint. She accepted that the DPF fault could not have been due to the manner of Mrs D's driving, since she had only had the car for a short time (about two weeks during the five month period prior to the second inspection). She concluded that the car had been faulty at the point of hire in November 2021, despite what the expert's reports said. She took into account the fact that the expert had apparently been unaware of the nature of the faults Mrs D had reported in 2021 and February 2022. She recommended that MotoNovo end the hire purchase agreement, collect the car at no cost to Mrs D, refund her monthly payments from March 2022 to date, refund her deposit (£100), deduct from the refunds the travel costs it had already paid her, and pay interest on the net total refunds at eight percent a year. She also recommended that MotoNovo pay Mrs D £250 for her trouble, and remove any adverse information relating to the agreement from her credit file.

Mrs D accepted the investigator's opinion. MotoNovo did not. It said there was no evidence in support of the alleged faults Mrs D had reported in December 2021 and February 2022. No issue with the DPF had been identified in March. The EGR cooler and the transmission oil cooler had been successfully replaced. The subsequent problem with the DPF had been found by the expert to have been caused by Mrs D's manner of driving, since DPFs can become clogged if a car is only used for short journeys. The garage had said that the later issues were not related to what had gone before. The only problem with the car since the repairs had been with the DPF, and the DPF had been fine when it had been checked before. It asked for an ombudsman to review this case.

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 uphold this complaint, for broadly the same reasons as the investigator gave.

On 2 December 2021 Mrs D reported that the car was "not able to accelerate," and that there was a smell of burning. She said the same thing on 24 February 2022. MotoNovo logged this description of the fault in its Customer Notes on both dates, so there is contemporaneous evidence of exactly what Mrs D said was wrong with the car at both times.

No evidence was supplied in December 2021, and the car does not appear to have been taken to a garage then, and so I think it was reasonable of MotoNovo to close that complaint 15 days later.

When the same matter was raised again in 2022, the car was taken to a garage. I have seen an invoice from that garage for £90, which gives the repair date as 5 March 2022 (when the mileage was 52,249). It says:

"Check & Report – 3 weeks aft. purchase car lacking power and juddering started, car has cut out while driving at speeds over 40mph twice. customer has taken car two garages 1 who adv. dpf and other gar clarified not case but there code they cannot read" (*sic*).

So this is further evidence that Mrs D had reported in March that the car was lacking power, and it also says that another garage had diagnosed as problem with the DPF.

This garage didn't think it was the DPF. It replaced the ERG cooler pipe and the transmission oil cooler instead. That work was done in April and May.

Meanwhile, on 29 March, the expert wrote his first report. (The report does not say when he did the inspection.) This report is extremely brief, consisting of only three substantive paragraphs on one page. After giving the mileage, it said:

“...assuming the EGR cooler pipe has failed as reported, it is very likely that the condition will have been in an advanced state of development at the point of sale.

Clearly, at the time of our inspection, we were unable to confirm this is due to the location of the component.

The engine oil leak at the rear of the engine and the oil leak from the timing cover, due to the extent of the oil that has been dispersed, prevented the location from being identified fully. However, we would have to conclude taking into consideration the fresh evidence that this condition also would be considered to be a pre-existing fault.”

I think that this report has only very limited probative value, since the expert does not appear to have attempted to identify the fault himself, but just took the garage's word for it that the problem lay with the EGR cooler pipe. The report does not describe what steps – if any – the expert took to examine the car. In particular, it does not address whether the DPF was checked, or whether the car was taken for a test drive.

After the car was returned to Mrs D in May, she complained on 24 May about the same issues as before. This was also logged by MotoNovo in its internal notes. So I'm satisfied that she has been consistent in her description of what was the matter.

The expert's second report, in August 2022, is much more detailed. It says the car was inspected on 16 August, and the mileage was 57,583 (only 327 miles since his first inspection).

The expert noted that the car appeared to be in average condition. He started the engine from cold and found it started readily. There was no burning smell, which he attributed to the oil leaks having been repaired (which seems to me to be a fair assumption). A diagnostic test showed two fault codes, “Boost pressure control” and “Particulate filter problem.” The expert said “These codes would be related to the vehicle losing power.”

He went on to say “We were also advised by the dealership that the vehicle's DPF system will not regenerate normally *or on a forced regeneration.*” (Emphasis added.)

He concluded:

“the lack of power is consistent with a fault on the DPF system and is generally driver induced by only travelling short journeys and general lack of use of the vehicle...

In a previous report by ourselves ... there was no mention of the vehicle lacking power. All other faults on the instruction of that date have been rectified.

Due to the time that has elapsed since the previous report, we do not consider the reported fault to have been present or developing at the point of finance inception.”

Although there was no mention in the March report of the car lacking power, that is what Mrs D had consistently reported all along, and it is what the expert had found in this second report.

The expert's third report, in September, is as brief as the first. It does not mention that the expert inspected the car a third time, and so it appears to have just been based on a review of the existing paperwork. It says:

“The current condition under review is actually different to the original conditions reported and based on that and the mileage the vehicle has covered, we have seen no evidence from an engineering perspective that the condition could be considered to have been present at the point of sale.”

With respect to the expert (who works for a reputable firm whose reports I have accepted in many previous cases), I think there are a couple of shortcomings in the way in which he arrived at his conclusions.

Firstly, it is impossible to determine from reading the March report how the expert was able to rule out that the car was lacking power at that time. Indeed, it is not evident that he was even told in March that Mrs D had reported that the car was lacking power. I think it is likely that he would have mentioned that this is what Mrs D had reported, if anyone had told him. So its absence from the March report leads me to think that nobody told him that this was the issue he was supposed to be looking into. Indeed, the report reads as though he had taken for granted that the faults were with the EGR cooler pipe (which was reported to him by the garage) and two oil leaks, and that he was only considering whether these faults would have been present when Mrs D hired the car. As I've said, the report doesn't even state whether he test drove the car, which I'm certain he would have done if he had known that the acceleration was a reported issue.

For all of these reasons, I do not think that the March report is persuasive evidence that there was no problem with the DPF in March or earlier, or that the car was not lacking power at the time, or that the only fault lay with the EGR cooler pipe and the two oil leaks. Those issues may well have been genuine faults, but I do not accept that they were the only faults, and I think their discovery by the garage obscured the fact that there was also a fault with the DPF as well. Consequently, that was missed at the time.

Secondly, Mrs D first reported that the car wouldn't accelerate properly only three weeks after she acquired the car. That seems very soon for the DPF to stop working properly if the only thing wrong with it was that the car was not being driven very much from the point at which Mrs D hired it. There was an even shorter period – eight days – between Mrs D getting the car back from the garage in May 2022, and reporting that the same problem was happening again. That suggests that the DPF may have been genuinely faulty, rather than just becoming clogged because the car was not being driven fast enough or for long enough to clear the DPF.

Thirdly, as I've said, in August the garage said that the DPF would not even regenerate after a forced regeneration. That can happen for a number of reasons, some of which are because of other faults, and some of which are not (such as driving with your foot on the clutch, or if there is not enough fuel). But I would expect the garage and the expert to be aware of the non-fault reasons why that might happen, and to take steps to avoid them. So that just leaves another fault. Consequently, I do not think that the expert was justified in concluding in August that the manner of driving was the cause of the problem. The evidence suggests that something else was in play – either a defect in the DPF itself, or a defect in something else that was affecting the DPF.

For all of these reasons, I am satisfied on the balance of probabilities that the car was faulty at the point of hire, and that one of the faults – the one concerning the DPF – was missed in the period February to May 2022, and was not repaired.

(I find some support for that conclusion in the reference in the garage's invoice to another garage having earlier concluded that there was a DPF issue. But I attach limited weight to that evidence because it is hearsay, and so I have based my decision primarily on the other points I have made above.)

The garage carried out the repair work on behalf of MotoNovo, and so I find that MotoNovo has had the opportunity to repair the car to which it is entitled under section 24 of the Consumer Rights Act 2015. Accordingly, it is not entitled to another attempt, and Mrs D is entitled to reject the car under that section.

Putting things right

I think the investigator's proposed remedy was broadly fair, and I would have followed it, except that it did not take into account the personal loan element of the credit agreement. The personal loan, with interest, was £1,519.80, or slightly more than ten percent of the total, and that still needs to be repaid. Out of each monthly payment of £251.61, £226.28 was in respect of the hire purchase, and £25.33 was for the personal loan. So rather than ending the whole agreement, I will require MotoNovo to adjust the agreement by ending the hire purchase part of it, and reducing Mrs D's future monthly payments to £25.33. When I order MotoNovo to refund some of the payments she has already made, this will only mean refunding £226.28 of each payment. (This should be easy to do as I can see that on her statement of account the hire purchase agreement and the personal loan have been administered separately.)

My final decision

My decision is that I uphold this complaint. I order MotoNovo Finance Limited to:

- End the hire purchase agreement with nothing further to pay;
- Arrange to collect the car at no cost to Mrs D at a time which is mutually convenient;
- Refund the £100 deposit;
- Refund £226.28 of each monthly payment Mrs D has made since 7 March 2022 to date (except for the April 2022 payment which MotoNovo has already refunded), but MotoNovo may reduce the total amount so refunded by the total amount it has paid her for her taxi journeys;
- Pay Mrs D simple interest on the net amount refunded at the rate of 8% a year from the dates the individual payments were made to the date of settlement;
- Reduce Mrs D's future monthly payments to £25.33 (to pay off her personal loan);
- Pay Mrs D £250 for her distress and inconvenience (this is to be paid directly to her and not just off-set against her loan); and
- Arrange for the credit reference agencies to remove from Mrs D's credit file any adverse information about her hire purchase agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 28 April 2023.

Richard Wood
Ombudsman