

The complaint

Mr M is unhappy that a car supplied to him under a hire purchase agreement with MotoNovo Finance Limited was of an unsatisfactory quality.

What happened

In December 2021, Mr M was supplied with a used car through a hire purchase agreement with MotoNovo. The agreement was for £8,195 over 61 months; with monthly payments of £184.75. At the time of supply, the car was just over seven years old, and (according to the MOT record for 13 December 2021) had done 62,511 miles.

A few weeks after the car was supplied to Mr M, it went into limp mode, and the Diesel Particulate Filter ('DPF') light was illuminated. He took it back to the supplying dealership, and they carried out a DPF regeneration. The oil warning light then came on in February 2022, and it was found that the car had too much oil.

The DPF light came on again in April 2022, but the supplying dealership refused to carry out any more repairs. And they told Mr M it was now his responsibility. Mr M complained to MotoNovo, who arranged for an independent engineer to inspect the car. Mr M also needed to have the oil tested for possible fuel contamination. However, once these reports had been done, MotoNovo didn't think the car was faulty at the point of supply.

Mr M wasn't happy with MotoNovo's response, and he brought his complaint to the Financial Ombudsman Service for investigation. In September 2022, during the course of our investigation, Mr M had the car repaired at a third-party garage.

Our investigator said there was a fault with the car, and this made it not of a satisfactory quality when it was supplied. He said that, as the car had now been repaired, that MotoNovo should cover the cost of this, as well as refunding Mr M the payments he'd made when the car was off the road, plus statutory interest, and pay him an additional £100 for the distress and inconvenience he'd been caused.

MotoNovo didn't agree with the investigator. They said the dealership had resolved the initial problem with the DPF, and any fuel in the oil would've caused the car to fail "*rapidly*." And they thought the fault with the car was due to how Mr M was driving it. So, they believed the car was of a satisfactory quality when supplied, and that the repairs to the car in September 2022 were all needed due to in-service wear and tear.

Mr M provided details from the car's user manual, which confirmed the car would need to be driven "*for about 20 minutes at a speed of at least 40 km/h (25 mph)*" to burn away the excessive soot build up in the DPF. And he said that the car was driven this way at least twice a week. He also said that this wouldn't have addressed any issues with fuel contaminating the oil "*which can cause catastrophic engine failure*."

Mr M also said that, in November 2022, the oil had again become contaminated with fuel. He also raised this, as an ongoing issue, directly with MotoNovo. However, MotoNovo agreed that we could consider this as part of Mr M's complaint.

Mr M provided additional evidence of the ongoing faults with the car, that an ECU update in November 2022 had seemingly fixed the issue, and the costs of each repair and inspection that'd taken place. He also said that he'd been unable to use the car, due to the issues between:

- 31 December 2021 and 11 January 2022;
- 25 February and 10 March 2022;
- 26 April and 12 September 2022;
- 7 and 15 November 2022; and
- 13 and 15 December 2022.

He also said that, while the car was with the dealership for repair, between 2 and 10 March 2022, it did "*significant mileage*." And he thought this impacted the engineer's view.

A second investigator reviewed the case. He also said there was a fault with the car, which was caused by an inherent fault with the DPF, which could be linked back to when the car was supplied to Mr M. He also said that, as the supplying dealership had attempted to repair the car twice, and the evidence clearly showed the fault continued, Mr M should now be given the opportunity to reject the car.

The investigator also provided a schedule of payments and costs he thought MotoNovo should refund, as well as increasing the compensation to £250.

MotoNovo disagreed with the second investigator's view for the same reasons they'd previously given. And they thought the independent engineer's report contradicted all the other evidence provided. So, they've asked for an ombudsman to make a final decision.

While this matter has been waiting for a decision to be made, Mr M has advised us the problems with the car still exist, and the oil continues to overflow. He also said that he stopped using the car in February 2023, despite further attempts to fix this.

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.

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 M 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.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, MotoNovo are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless MotoNovo can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr M to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask MotoNovo to put this right.

Based on the evidence I've seen, it's not disputed that there is a fault with the car, or that this fault is ongoing. And the issue at hand is whether this fault was present or developing at the point the car was supplied to Mr M.

I've seen MotoNovo's case notes. Their note for 25 February 2022 shows that the car was returned to the dealership for a DPF issue on 9 January 2022, and that no courtesy car was provided. The note also says that the engine started smoking 'around two weeks ago', and that the oil was overfilled, and probably contaminated with fuel. It's also noted that Mr M has already changed the oil and that the mileage at the time was 65,226 – 3,115 miles more than when the car was supplied to Mr M.

Based on this note I'm satisfied there was a fault with contaminated oil in the car in mid-February 2022, around two months after the car was supplied to Mr M. While I've noted Mr M's concerns that the dealership had added miles to the car while it was in for repair, I haven't seen anything to show me that was the case. And I don't consider around 3,000 miles in two-months to be excessive use of the car. However, with that level of usage, I would reasonably expect the DPF to be regenerating normally, unless a fault with the car was stopping this from happening.

Mr M has supplied a report from an independent engineer dated 9 May 2022, which said "*on inspection found oil to be overfilled and dilluted [sic] with diesel ... this is due to failed regeneration of the dpf ... On inspection found DPF temperature sensor to have failed.*"

MotoNovo also arranged for the car to be inspected by an independent engineer, and this inspection took place on 23 May 2022. The engineer said, "*the engine oil was checked and noted to be severely above maximum, approximately 3-4litres above maximum.*" The engineer said this could be caused by a number of reasons, which included "*a [DPF] regeneration fault.*"

However, the engineer said the fault with the car wouldn't have been present when the car was supplied, there was no evidence of previous unsuccessful repairs, and that "*the fault may have occurred since purchase due to general in service wear and deterioration.*" [**my emphasis**]. And the engineer asked for a specialist to analyse the oil in the car.

The oil analysis took place on 28 May 2022, and found the oil was contaminated with fuel. This report was sent back to the second independent engineer. In their follow-up report dated 6 July 2022, the engineer said that the car had covered 5,328 miles in the 137 days it was in Mr M's possession. So, while the fuel dilution exceeded 10% (where more than 1% is considered to be significant and requiring attention), the engineer thought "*the condition has developed more recently and not considered a point of sale issue.*"

While the contents of this report are noted, there's nothing to show me that the engineer was aware that (a) Mr M had changed the oil on at least one occasion since the car was supplied to him, (b) that the first instance of oil contamination was in February 2022 (the engineer

referred to a failure date of 27 April 2022), or (c) that the supplying dealership had attempted a repair on the DPF in January 2022.

I find (c) particularly pertinent as both the independent report of 9 May 2022 and the independent report of 28 May 2022 both point to a DPF regeneration issue as the/a potential cause of the oil contamination. As such, and while I appreciate that MotoNovo may not agree with this point, I don't consider it reasonable to rely solely on the second independent engineer's report in this instance.

As well as the evidence I've already referred to, I've seen that the car was recovered and an oil flush took place in August 2022, that the oil was changed and the DPF forcibly regenerated in September 2022, and that the oil was changed and the ECU updated in December 2022. Mr M has also said the car has continued to suffer with oil contamination and overflow issues during 2023.

As I've also said above, given the mileage Mr M has done on the car, I'd expect the DPF to be regenerating. But the evidence indicates this isn't the case, and I'm satisfied the regeneration fault is the cause of the oil issues with the car.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. And I'm satisfied the dealership had this single chance of repair in January 2022. Because of this, and because the car has an ongoing fault, I'm satisfied that Mr M should now be given the opportunity to reject the car.

Putting things right

Mr M has said the car was off the road and undrivable for a number of periods while it's been in his possession. Which includes during 2023. During these periods, Mr M wasn't supplied with a courtesy car. As such, he was paying for goods he was unable to use. And, for the reasons already stated I'm satisfied the reason the car was off the road was due to it being of an unsatisfactory quality when it was supplied. As MotoNovo failed to keep Mr M mobile; I'm also satisfied they should refund the payments he made during these periods.

The evidence supports some of these periods, and there's no evidence to support others. While I'm not doubting Mr M's testimony, I think it's only fair to ask MotoNovo to refund the payments for the periods I'm able to see the car was undrivable. So, as part of my directions below, they should refund:

- 50% of the January 2022 payment
- 50% of the March 2022 payment
- 100% of the June, July, and August 2022 payments
- 50% of the September 2022 payment
- 25% of the November 2022 payment.

Mr M has provided evidence of the costs he's incurred in having the car inspected and repaired. And I've seen that MotoNovo have already been provided with copies of these invoices. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that MotoNovo reimburse these costs.:

- Independent engineer's report, 9 May 2022 - £89.63
- Oil analysis report, 28 May 2022 - £59.99
- Recovery and engine oil flush costs, 18 August 2022 – £236.71

- Oil change and DPF regeneration costs, 12 September 2022 - £90.00
- Oil change and ECU update costs, 15 November 2022 - £99.00
- Inspection costs, 15 December 2022 - £45

Finally, it's clear that Mr M has been significantly inconvenienced by what has happened. So, I think MotoNovo should compensate him for this. The investigator had recommended MotoNovo pay him £250, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, MotoNovo should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr M;
- remove any adverse entries relating to this agreement from Mr M's credit file;
- refund the payments Mr M made as per my schedule above;
- reimburse Mr M his inspection and repair costs, as per my schedule above;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr M made the payment to the date of the refund[†]; and
- pay Mr M an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]HM Revenue & Customs requires MotoNovo to take off tax from this interest. MotoNovo must give Mr M a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr M's complaint about MotoNovo Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 October 2023.

Andrew Burford
Ombudsman