

The complaint

Mr W complains that a car acquired with finance from Lendable Ltd trading as Autolend wasn't of satisfactory quality.

What happened

In October 2022 Mr W was supplied with a car and entered into a hire purchase agreement with Lendable. At the point of supply the car was around 8 years old and had covered around 75,407 miles.

Soon after getting the car, Mr W experienced issues with the aux function and the USB port not working. He raised a complaint with Autolend and said he was having difficulties getting the supplying dealer to communicate with him. Autolend contacted the broker so it could investigate the issues and liaise with the dealership.

Mr W experienced further issues with the car which he reported to Autolend. He said the door had become difficult to close, the window was difficult to open and close, and a message had appeared on the dashboard saying that there was a drivetrain problem.

Autolend received confirmation from the dealership that it was happy to carry out repairs. It issued a final response in which it upheld Mr W's complaint. It said the car would be collected and repaired and offered Mr W compensation of £50 for any distress and inconvenience caused.

The car was returned to the dealership for repairs in January 2023. A communication fault caused by a disconnected sensor was repaired and the window motor was repaired. The car was returned to Mr W in March 2023.

Mr W contacted Autolend in March 2023 and said there was still an issue with the car. He said that he'd only driven a short distance on the day the car was returned to him following the repairs and the drivetrain message had appeared on the dashboard again.

Autolend arranged an independent inspection of the car in April 2023. The report stated that the drive train message was illuminated and that there were fault codes which suggested that the diesel particulate filter (DPF) was blocked. The report concluded that the issues were due to Mr W's use of the car. It said the car might require a forced regeneration, a DPF flush or a DPF replacement.

Mr W brought his complaint to this service.

Our investigator upheld the complaint. He said he didn't think the car was of satisfactory quality when it was supplied because Mr W had reported the drivetrain message in December 2022 which was within the first 6 months of the point of supply. The investigator said that the garage who repaired the car in February 2023 stated that the issue had been caused by a disconnected sensor which had caused the DPF not to regenerate. The investigator said that although the sensor had been reconnected this hadn't resolved the issue. The investigator said that he disagreed with the conclusion in the independent report

that the blocked DPF had been caused by Mr W's use of the car and said it was more likely that the previous fault hadn't been successfully repaired. The investigator said that Mr W should be allowed to reject the car.

Autolend didn't agree. It said it accepted that the sensor wasn't connected and that this had caused the DPF not to regenerate which in turn had caused the drivetrain message to be displayed. Autolend said that Mr W had been made aware that in order for the DPF to regenerate, the car would need to be driven at the recommended speed and distance to start the regeneration process. Autolend said that the sensor had been successfully repaired and that the blocked DPF had occurred because Mr W hadn't driven the car on a long enough journey for a regeneration to happen.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid.

The legislation says that the quality of the goods includes their general state and condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr W was around 8 years old and had covered around 75,400 miles. So it's reasonable to assume that the car would already have a degree of wear and tear and that it might require repairs and maintenance sooner than say, a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs with a car within the first 6 months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful then the consumer can ask to reject the car.

Where a fault occurs outside of the first 6 months of the point of supply, the burden of proof is reversed and it's up to the consumer to show that the fault was present or developing at the point of supply.

I've reviewed the available evidence about the issues with the car. Based on what I've seen, I'm satisfied that there's a fault with the car. I say this because the independent inspection report found that the drive train message was illuminated and that there were fault codes which suggested that the DPF was blocked.

I've gone on to consider whether the car was of satisfactory quality when it was supplied, and/or whether the fault was as a result of an unsuccessful repair or driver style.

The communications between Autolend and the supplying dealer in February 2023 show that the drivetrain error message was due to the DPF not regenerating due to a sensor being disconnected.

The drivetrain message appeared in December 2022 which was within the first 6 months of the point of supply. So it's assumed (under the relevant legislation) that the fault was present or developing at the point of supply.

The supplying dealer had the car in for repairs from January 2023 – March 2023 and diagnosed the sensor fault and the resulting issues with the lack of regeneration of the DPF. The supplying dealer reconnected the sensor and (on Autolend's case) told Mr W that he would need to drive the car to start the regeneration process. I haven't seen any evidence to suggest that Mr W was told to drive the car in a certain way following the repairs. And this version of events also begs the question as to why the supplying dealership didn't regenerate the DPF when it carried out the repairs, because it must've been aware that the DPF needed regenerating.

I've read and considered the independent inspection report. This confirms that the DPF was blocked. The engineer stated that this was caused by Mr W's use of the car for short journeys which didn't allow regeneration to take place. It isn't clear how the engineer obtained information about Mr W's use of the car and whether it's correct that Mr W only uses the car for short journeys. But even if the engineer was correct about Mr W's use of the car, I don't think his conclusions about the cause of the DPF being blocked are reliable. I say this because the engineer doesn't comment on the previous disconnected sensor and consequent failure of the DPF to regenerate all the time the sensor was disconnected. The engineer hasn't addressed the issue of whether the DPF could've been blocked due to the failure to regenerate previously. It's not clear from the report whether the engineer was made aware of the previous issue with the sensor and the attempt at repair in February 2023.

Taking everything into account, I'm not persuaded that the fault identified by the independent report was due to driver style. I think it's more likely that the disconnected sensor caused an issue with the DPF due to a failure to regenerate and that the repairs addressed the issue with sensor but not the DPF. It's not disputed by Autolend that Mr W's car had not regenerated in some time as the sensor wasn't connected. There's no evidence that the repairing garage checked the DPF for blockages or made any attempt to regenerate the DPF themselves (even though the garage recognised the need to the DPF to regenerate as they say they gave Mr W this advice).

I'm of the view that this is a failed repair. Under the relevant legislation Mr W should be allowed to reject the car.

Putting things right

I've already explained why I don't think the car was of satisfactory quality and why Mr W should be allowed to reject the car.

Mr W was able to continue to use the car despite the issues. So I think it's fair that he should pay to reflect that, whilst at the same time recognising that there were periods of time when he was without the use of the car, and where he suffered impaired use.

It's clear that Mr W has been caused inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. He's felt unsafe in the car at times and had to arrange collection of the car following the repair attempt. I've considered the impact of this on Mr W and I think it's fair to ask Autolend to pay more compensation than the £50 which they have already paid.

My final decision

My final decision is that I uphold the complaint. Lendable Ltd trading as Autolend must:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mr W

Refund the deposit/part exchange contribution of £2000

Refund all payments made by Mr W for the period 30 January 2023 to 18 March 2023

Pay 8% simple interest per year on all amounts refunded calculated from the date of payment to the date of settlement

Pay a further £200 compensation to Mr W for distress and inconvenience

Remove any adverse information from Mr W's credit file in relation to this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 November 2023.

Emma Davy
Ombudsman