

The complaint

Ms L, who is represented by Mr W, complains that PSA Finance UK Limited refused to let her reject a faulty car.

What happened

In August 2018 Ms L acquired a new car costing £17,730 funded by a deposit of £4,000 and the balance by a finance agreement. Mr W says the car had issues from day one and these continue.

Mr W says the car was booked in for repair but says that after its returns those faults remained. In the time frame he submitted to this service he doesn't detail the actual faults. The complaint form refers to repeated and different faults.

The business has provided more detail. It says the apparently had damage on delivery which was repaired. It adds that a dealer saw the car in August 2018 and it repaired door seals. It was seen by another dealer in April 2019 and it says that it:

"diagnosed the vehicle under the summary given by the customer.

They advised the vehicle lost power and would not accelerate at times, they cleaned the valves and replaced the oil filters.

Another issue was with the DAB radio not working with the mobile, additionally the customer noted they can see the registration plate in the camera and may need adjusting. They installed a software update and looked at the camera, to align.

All work not charged to the customer as it was just an update and the oil filters were replaced under TSB.

Nothing else noted about the camera from the dealership and nothing else noted on the invoices."

It seems the car was seen again on 10 May when the screen wash, pollen filter and a washer were changed at a cost of £48.37.

The car was seen in June 2019 with a reported power loss, but the dealer says no fault could be found.

Mr W says the car was in an accident in July 2019 and Ms L wished to use the safety functionality of the vehicle, but discovered it was faulty. PSA say that Ms L wished to download footage from the dashcam and this couldn't be done. Mr W says that this is a fault that cannot be repaired despite the dealer's efforts.

PSA rejected Ms L's complaint and so she brought the matter to this service. Our investigator initially recommended the complaint be rejected. He noted Mr W had said that there had been other undocumented visits to dealer and that the power and acceleration issues were ongoing. However, he also noted there was no evidence to show there was a

fault with the car. He also noted that PSA had said that the car had not been serviced despite being due on the first anniversary or after 16,000 miles whichever came first.

Mr W didn't agree and the investigator suggested he obtain an independent report to identify if the faults were present at the point of sale. This was complicated by the pandemic, but Mr W submitted a diagnostic from a new dealer which showed there were recorded faults stored in the car's ECU. There were four intermittent faults and one current fault.

The original investigator had moved on and the case had been taken over by another one. He recommended that complaint be upheld on the basis of this report. PSA didn't agree and having identified the dealer which had done the work carried out its own investigations.

It had been in contact with the repairer which had repaired the car after an accident, replacing the bumper and a wing. It said that as part of their standard procedure, a pre-repair diagnostic was run on the vehicle. Once the necessary repairs had been carried out, a post-repair diagnostic was then run.

It says the diagnostic brought up several 'phantom' fault codes which they were unable to clear from the system - it's not unusual for these to appear when a vehicle has been disassembled for repair. The vehicle was therefore referred to the service department which cleared down the codes, enabling the Accident Repair Centre to confirm to the customer's insurance company that all repairs had been carried out and all faults cleared.

It went on to say that the repairer has confirmed that the diagnostic report does not relate to the satisfactory quality dispute raised by the customer and does not constitute evidence that the vehicle was faulty at the point of sale.

As PSA do not accept the investigator's recommendations the matter was referred to me for a decision. I issued a provisional decision as follows:

Firstly, I made clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them.

Mr W had raised a wide number of issues including the role of the FCA, the impact of Brexit and claims of fraud, but I explained my role is limited to deciding if the car was fit for purpose at the point of sale and if it wasn't what redress is merited. I trusted therefore he would understand that it would be wrong for me to stray beyond that remit in this decision.

I said that in considering what is fair and reasonable, I needed to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. PSA is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So, it seems likely that in a case

involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

I noted a great deal of information had been supplied and much of it did not have any direct bearing on the complaint. Regrettably, that had made it difficult to establish the simple facts of what went wrong, when and what was done to fix it. I endeavoured to set out the facts as they have been reported and if I had missed any relevant details, I said I would be happy to address those in due course.

There was problem with the car on delivery to Ms L and I gathered whatever fault was identified was dealt with by the dealer and Ms L took the car away. I had seen no evidence to show that this initial problem reoccurred.

The next issue was to do with the door seals which were repaired by the dealer. Again, I said I had seen nothing to show that this repair failed.

It seemed that the fault which is allegedly the ongoing one is the loss of power and this was reported to a dealer in April 2019 which is past the six-month period in which the merchant is required to demonstrate it wasn't present at the point of sale. I said I needed to be satisfied that this fault was inherent. Both our investigators suggested Mr W obtain an independent report. In due course he submitted a diagnostic report which showed five ECU stored faults. Our investigator accepted that this was sufficient to allow him to recommend rejection.

However, PSA put that diagnostic into context and has told us that the garage which carried out the repairs to the bodywork had confirmed that it does not show the faults were inherent.

I found this persuasive and I didn't consider I could regard the report as demonstrating the car wasn't fit for purpose at the point of sale. As such I didn't believe Mr W had shown that the car wasn't fit for purpose at the point of sale.

I was also aware of what Mr W has described as the safety functionality issue, which I presumed to be the problem with downloading data from the dashcam. I have seen no supporting evidence concerning this issue, but I said I would consider any relevant material that was supplied.

It had been suggested that Ms L's use of the car had been curtailed due to the ongoing problems but I note that diagnostic reported dated 25 August 2020 showed the car had covered 40,462 kms. I assumed that this was not an error and it referred to kilometres rather than miles which means it has covered over 25,000 miles in some two years.

Having considered all the evidence and I could see no reason for me to require PSA to allow Ms L to reject the car.

Mr W didn't agree and queried the facts as reported in my provisional decision. He said that the car had been serviced and he submitted a copy of a repair order dated 18 April 2019. He also asked that the phantom codes be explained. He suggested the dealership had deleted these codes and had charged the insurance company for doing so and this may mean they had committed a fraud. He thought the codes had reappeared due to the continued faults.

He suggested that PSA should pay for an independent inspection. He also suggested that PSA had been acting fraudulently and had deleted the codes to avoid detection. He added

that this service should report it to the FSA. He also provided a photo of a diagnostic machine showing several error codes dated 2 January 2021.

I issued a second provisional decision as follows:

I appreciated Mr W's disappointment with my provisional decision, but as I pointed out I would be happy to address any additional information or clarification he provided before I issued a final decision. Although he disputed some of the background information set out in my initial provisional decision, I was not been persuaded that my summary was inaccurate. However, I didn't consider it necessary to comment any further.

I said I would like to reassure Mr W that I had read and considered the whole file, including the material which has no direct bearing on the complaint, but I would concentrate my comments on what I thought was relevant. I explained that if I didn't comment on any specific point raised by Mr W or PSA, it wasn't because I've failed to take it on board, but because I didn't think I needed to comment on it in order to reach what I thought was the right outcome.

The key issue for me to determine was whether the car was fit for purpose at the point of sale. In matters such as this I noted it was beneficial to have an independent inspection which looks into the faults and their causes and which would give an expert opinion as to whether the faults were likely to have been present at the point of sale. Diagnostic tests do not of themselves answer those key questions. They simply show that a fault is recorded, but nothing about the cause or if that fault was present at the point of sale.

In response to my provisional decision Mr W sent me a photo of the screen of diagnostic tool. That of itself is of limited value, but subsequently at my request he supplied additional information so we could seek more detail from the garage which had carried out the test.

I asked PSA for its response and it said it had asked for a comment from the manufacturer's technical team. This has not been received and I said I had no desire to delay matters further. However, PSA noted the diagnostic didn't report that any issues need to be fixed. It said that it had been given no notice and it hadn't agreed that the parties would be bound by it.

I was faced with a lack of detail and little clarity as to the faults and their likely origins with conflicting opinions given by way of explanation.

However, there was one issue which I believed had now been clarified. Mr W was concerned that PSA had suggested the car had not been serviced and that this had been accepted by this service. I can see that the 16,000 mile service the 'repair order' document submitted by Mr W to this service in April 2020 made no reference to a service. However, he recently submitted another copy of this document containing several manuscript amendments. These include the annotation '16 K service' and 'no service book'.

I presumed the original document was the one given to Ms L when the car was delivered to the garage and the second was the one after the work had been carried out. The former document and the lack of a service book may have contributed to the confusion, but I believed this area of uncertainty has now been clarified.

Although there have been a number of other issues, I believed the key fault which has continued throughout the ownership of the car has been the lack of power and sluggishness of the engine. That is what was reported to the garage on 18 April 2019 and Mr W told this service in March 2020 that it remained unresolved.

The diagnostic provided by the garage which repaired the car after it had been in an accident showed four intermittent faults. These were:

- No communication with telematic ECU
- Absence of brightness with the rain/brightness sensor
- Fault in the unlocking of the immobiliser by the engine management ECU
- Fault in the status of the of the seat belt fastening information for determining the presence of the driver.

The one other issue which was recorded as 'present' was an oil level fault.

As noted above PSA say that this data arose as a result of the car undergoing repairs to the damage caused by the accident and it doesn't show an accurate reflection of the state of the car.

The recent diagnostic records the following:

System Overview

- Central Electronics - 1 error
- Parking aid 2: Parking distance control - 5 errors
- Driver assistance system 1: Driver assistance systems Front driver assistance camera – 1 error.

Diagnosis

Central Electronics 2 / Central Electronics CE 7.0 Error Memory

- Immobilizer release signal. No communication
- Video camera view area Faulty

The only apparent overlap is with the ECU/Central Electronics. The accompanying note from the garage states:

"P0361 KNOCKK SENSOR SUPER KNOCK – KNOCK FROM ENGINE POSSIBLE SPARK PLUG ISSUE OR COIL PACK FAILING FROM COLD." It recommends that the fault can be fixed with a sensor at a cost of £81.60. That would imply that the issue is minor one, but we sought more information.

I explained that our investigator spoke to the mechanic who carried out the diagnostic to better understand his very brief report. He confirmed the noise was very severe and was due to a misfire on the engine. He said there were multiple factors that could affect this such as injectors or lack of air and he said that he thought that this was likely to have been there since point of sale.

Although this diagnostic test is not definitive and we do not have an independent report I believe it tips the balance in terms of evidence as to the state of the car. My decision was finely balanced, but I concluded that the ongoing issue with a lack of power was most likely to have been either present at the point of sale or inherent. I said that would lead to the

conclusion that the car wasn't fit for purpose and Ms L should be allowed to reject it.

I asked Mr W for the car's current mileage and he confirmed it was 31,230 which means it has covered approximately 12,500 miles a year. Ms L's agreement allowed for an annual mileage of 20,000.

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.

Mr W accepted my second provisional decision on behalf of Ms L. PSA said the manufacturer couldn't comment on the findings of a third party as it wasn't supported or endorsed by the manufacturer. It went on to say that the car was still under warranty and if there was any fault it could be addressed by an authorised dealer.

As I explained in my second provisional decision this is a finely balanced decision and I have some sympathy with the arguments put forward by PSA. However, the independent report, although not conclusive, tips the balance of evidence in favour of this complaint being upheld. There appears to have been an ongoing issue which remains and the car has been seen by an authorised dealer and the issue remains. That leads me to conclude that Ms L should be allowed to reject the car.

Putting things right

Ms L should be allowed to reject the car

My final decision

My final decision is that I uphold the complaint and I direct PSA Finance UK Limited to:

- End the hire purchase agreement with no further liability for Ms L and ensure her credit file is updated to show the agreement as settled or remove the record from her credit file
- Refund Ms L's deposit and pay 8% annual simple interest from the date of payment until the date of settlement
- Collect the car from Ms L at no cost to her
- Ms L has been able to use the car and it is right that she pays for that use. However, I note that her agreement allowed for an annual mileage of 20,000. On that basis I consider PSA should refund a sum equivalent to a third of the monthly payments she has made.
- Pay Ms L £200 for the trouble and upset suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 11 May 2021.

Ivor Graham
Ombudsman