

The complaint

Mr D is unhappy with the quality of a car supplied to him under a hire purchase agreement with Volkswagen Financial Services (UK) Limited trading as Porsche Financial Services (PFS).

He's also unhappy with how his request for assistance because of the Coronavirus (Covid-19) pandemic was dealt with; and about the end of contract charges applied after he'd voluntarily terminated (VT'd) the agreement.

What happened

On 25 October 2018, Mr D was supplied with a used car through a hire purchase agreement with PFS. He paid a £500 deposit and the agreement was for £49,433 over 49 months, with 48 monthly repayments of £730.33 and a final payment of 24,510. At the time the car was around 18 months old and had done 34,203 miles.

Mr D's income was affected by Covid-19 and he was unable to maintain his payments. So, on 17 April 2020, he contacted PFS for assistance. He completed an online assistance form and provided details of his income and expenditure. PFS replied on 1 May 2020, explaining what his options were, including a payment deferral (also known as a payment holiday).

On 18 May 2020, Mr D told PFS that he'd already asked for a payment deferral when he contacted them in April 2020, and said he was concerned that they'd now issued him with a default notice. PFS declined the payment deferral request because Mr D was in arrears. But they didn't tell Mr D this decision until he chased them for an update on 22 June 2020.

PFS provided Mr D with a period of breathing space and, on 29 July 2020, they suggested that he reapply for a payment deferral. He did, and PFS declined the second application, also because of the arrears.

Mr D agreed a payment plan in October 2020, where he would pay an additional £100 a month towards the arrears. At the same time, PFS agreed to remove any arrears from his credit file, as they accepted these were caused because of Covid-19. And they offered him £50 as a gesture of goodwill.

However, Mr D didn't think the agreement would be affordable in the long term. And he VT'd the agreement in early 2021. The car was collected and inspected, and PFS charged him £565.20 for damage that fell outside of normal fair wear and tear guidelines.

Mr D complained to PFS about how he'd been treated, that he'd experienced problems with the car, and that it'd spent time off the road for repair. PFS didn't think that there was any evidence the car had faults which were present or developing at the point of supply. But they did offer to reduce the outstanding VT liability by £1,000 because of the inconvenience Mr D had suffered. They also reviewed the damage charges and reduced them to £277.20.

Mr D wasn't happy with this and brought his complaint to us for investigation.

Our investigator said he'd seen evidence of an ongoing fault with the car which was investigated between August 2019 and November 2020. And successful repairs were carried out in December 2020. While he thought the fault meant the car wasn't sufficiently durable, he considered the repairs being successfully carried out, and the £1,000 offered by PFS, to be reasonable in the circumstances. And he didn't think Mr D had been treated unfairly.

The investigator also said he didn't think PFS had done enough to consider Mr D's financial circumstances. And the arrears on his account had only accrued because of Covid-19. So, he didn't think PFS should've refused the payment deferral requests. Given this, he thought PFS should pay Mr D £500 compensation for the impact of what'd happened; and also increase their offer of compensation from £50 to £150 for the trouble and upset caused by their incorrect reporting of arrears on Mr D's credit file.

However, the investigator thought Mr D had been treated fairly regarding the VT, as the minimum liability was clearly stated in the agreement. And Mr D hadn't paid this, meaning there was a shortfall to pay upon termination. Finally, the investigator said that the end of contract damage charges were fairly applied, and PFS were entitled to invoice Mr D for this.

PFS accepted the investigator's view, but Mr D didn't. He said that, because the repairs were completed in December 2020, and he handed the car back in January 2021, this shouldn't be held against him – he wasn't prepared to continue to keep the car. And the 30,000 miles he did while the car was in his possession *“were accumulated with repeated interruptions to a great amount of inconvenience.”*

Mr D also thought it was *“disproportionate to consider this mileage equating to a liability of over £17,000.”* And that the £1,000 reduction in the VT liability was *“a small gesture of goodwill [which was] disproportionate to the inconvenience I suffered.”* So, Mr D considered that PFS should waive the VT liability in full *“as any terms would be superseded by the quality or lack of enjoyment of this product.”*

Because Mr D didn't agree with the investigator, this matter has been passed to me to make a final decision.

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 D was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Having reviewed the file and the comments from both parties, the only remaining element of dispute is the quality of the car. PFS agreed with the investigator's comments about how they'd dealt with Mr D's request for Covid-19 assistance, and about the end of contract damage charges. They also accepted the recommendations for putting this right.

In his extensive comments, Mr D didn't refer to the Covid-19 assistance or the damage charges, only the fault with the car. So, it's fair to assume that he also agreed with the investigator's comments about these areas, and with the recommendations. As such, my decision will focus on the quality of the car itself.

The Consumer Rights Act 2015 (CRA) implies, 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, PFS 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 PFS can show otherwise. But, where a fault is identified after this, the CRA implies it's for Mr D to show it was present when the car was supplied. So, if I thought the car was faulty when Mr D took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask PFS to put this right.

Mr D bought a used car, so I wouldn't expect the same quality as I'd expect in a brand-new car. But I would expect the car to be free from major defects and for it to be safe and durable. And I also need to consider the price he paid for the car - almost £50,000. The more expensive the car, the fewer minor issues I'd expect to be present.

It's not disputed there was an ongoing fault with the car relating to the engine warning light. This first occurred in August 2019 and at 53,005 miles - 10 months and 18,802 miles after the car was supplied to Mr D. And it's also not disputed that Mr D took the car back to the dealership on multiple occasions to have the fault checked and/or a repair attempted.

While Mr D first raised this fault with the dealership in August 2019, he didn't raise it with PFS until November 2020, after he'd agreed with them to VT the car. The final repair took place in December 2020. And, as there's no evidence to show that this repair was unsuccessful, it's reasonable for me to conclude that it was.

Given the above, I'm satisfied that the car wasn't sufficiently durable, and this made it of an unsatisfactory quality when it was supplied to Mr D. The CRA allows goods to be rejected after one unsuccessful repair attempt. But Mr D didn't ask to reject the car, instead he continued to let the dealership attempt to repair it until a repair was successful. And, given that a successful repair was carried out, I don't think it's now reasonable for Mr D to also be allowed to have the agreement restructured as if he had rejected the car instead of VT.

But this doesn't mean that Mr D wasn't inconvenienced because of what happened. And PFS should do something to put this right.

The agreement Mr D signed on 25 October 2018 states *"the maximum annual mileage is 15000 and the maximum total mileage is 95453."* And he'd done more than 15,000 miles in the less than 12-months before the fault first occurred in August 2019. Between this date and November 2020, when the fault last occurred, Mr D covered another 12,831 miles. And, given that this also included periods of national lockdown when movement was restricted by the government, I'm satisfied that Mr D had fair usage of the car.

As I understand it, whenever the car was in for repair, Mr D was also provided with a courtesy car. So, he remained mobile throughout the entire time he was in possession of the car. Given all of this, I don't think it's fair for Mr D to be refunded any payments he made to PFS, as these payments reflect his usage.

Taking all the above into consideration, I'm satisfied that the most appropriate remedy would be for PFS to compensate Mr D for the inconvenience and upset he'd been caused by being supplied with a car that wasn't of a satisfactory quality. They've already offered him £1,000 for this, which I consider to be reasonable in the circumstances. So, I won't be asking them to increase it.

Under the heading ***"Termination: Your Rights"*** the agreement Mr D signed said *"You have a right to end this agreement. To do so you should write to the person you make your payments to. They will then be entitled to the return of the goods and half the total amount payable under this agreement, that is £30,037.92. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more."*

As such, I'm satisfied that Mr D would've been reasonably aware that, unless he'd paid at least 50% under the agreement (which he hadn't), then there would be a VT shortfall that would need to be paid. In addition to the payments he'd missed and the charge for any damage to the car that fell outside normal wear and rear guidelines. So, I'm satisfied that PFS acted reasonably by charging him for this.

Putting things right

PFS should:

- reduce the outstanding liability by £1,000 to compensate Mr D for the inconvenience and upset he'd been caused by being supplied with a car that wasn't of a satisfactory quality (unless this reduction has already been applied);
- pay Mr D £500 for the trouble and upset he's been caused by PFS not treating him fairly when he reported his financial difficulties;
- pay Mr D a total £150 compensation for recording adverse information on his credit file, when his arrears were caused as a result of Covid-19; and
- ensure all adverse markers are removed from Mr D's credit file for the five payments he missed because of Covid-19.

My final decision

For the reasons explained, I uphold Mr D's complaint. And Volkswagen Financial Services (UK) Limited trading as Porsche Financial Services must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 August 2022.

Andrew Burford
Ombudsman