

## **The complaint**

Mr B complains that a used car he acquired with finance from PCF Bank Limited ("PCF") is of unsatisfactory quality.

## **What happened**

Mr B got this car under a conditional sale agreement (CSA) he took out with PCF in March 2021. In July 2021 (after the car had travelled 2,400 miles or so) Mr B noticed smoke coming from the exhaust and the car rattled and struggled to start and stalled. He contacted the supplying dealer but it said a three month warranty had expired and wouldn't help, so Mr B complained to PCF.

PCF arranged for an independent expert to inspect the car near the end of July 2021. The expert found faults present that he thought were unlikely to have been there at the point of supply. PCF didn't think it was responsible in the circumstances. PCF felt it was unlikely the car would have been able to travel the distance covered since supply if the current faults were there when Mr B got it and rejected his complaint.

Mr B referred the matter to our service and one of our investigators considered the evidence. He was satisfied there's something wrong with the car. He acknowledged the expert said the most likely explanation is low compression in multiple cylinders due to normal wear and tear and loss of compression is normally related to valve seat wear, head gasket defects or piston damage due to abnormal combustion. But, the investigator thought the expert's inspection was very limited and he wasn't satisfied that durability was considered.

The investigator accepted the car wouldn't have been in its current state exactly when it was supplied. But he considered Mr B was entitled to expect a reasonable period of use from this eight year old car with relatively low mileage - and a fair minded person would not expect to experience this sort of problem after only four months and around 2,400 miles of use. On balance, the investigator found the car wasn't reasonably durable and it was of unsatisfactory quality when it was supplied.

The investigator thought repairs would likely cost more than the value of the car so it wouldn't be fair to require PCF to pay for the car to be fixed. He recommended Mr B should be allowed to reject the car instead and have his £500 deposit back. He was satisfied Mr B hasn't used the car since 21 July 2021 - because of the faults present - and it's fair that PCF should refund any monthly payments made from that date for loss of use. He said PCF should also pay interest on the refunds, pay Mr B £100 compensation for distress and inconvenience - and remove any adverse information from his credit file.

Mr B accepted the investigator's recommendations but PCF didn't. PCF said (in summary) an expert can't always say what's wrong with a vehicle exactly but they can narrow down potential causes and - with the benefit of expertise and experience - determine if any of these are likely to have been developing or present at the point of sale in light of symptoms, the point of onset and use. PCF thinks the expert would therefore have taken into account the fact that Mr B noticed the issues here more than three months and some 2,000 miles after supply - when he concluded that current problems are unlikely to have been there at

the outset. PCF also suggested that repair might be a viable option and asked for time to look into things further with the supplying dealer.

The investigator wasn't persuaded to change his mind. He didn't think the expert's report was sufficient to show that the car was of satisfactory quality when it was supplied but he allowed PCF some more time to consider repairs - or arrange the further investigations the expert recommended - and provide additional evidence. PCF didn't supply anything else and the matter was passed to me for a decision.

### **My provisional decision**

Having considered the evidence available I was minded to uphold the complaint but my reasons weren't quite the same as the investigator's. I issued a provisional decision on 28 April 2022 to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. In my provisional decision I said :-

*Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*PCF supplied this car to Mr B under a CSA so it was required - under the Consumer Rights Act 2015 (CRA) - to ensure that the car was of satisfactory quality at the point of supply. What amounts to "satisfactory" quality will vary depending on individual circumstances. In the case of a used car, I think it's reasonable to take the age, cost and mileage into account.*

*Mr B's car was eight years old with around 40,000 miles on the clock when he got it and cost about £6,500. As such, I think a reasonable person would accept some parts would be worn and likely need to be repaired or replaced sooner or later – which is reflected in the lower price paid for a used car compared to the price of a brand new vehicle. But, that's not to say Mr B didn't have a reasonable expectation that this car would be reasonably durable – taking its age, cost and mileage into account.*

*There seems to be no dispute that the car had a fairly significant problem about four months after Mr B got it. Mr B describes trouble starting the car and smoke coming from the exhaust as well as a tendency to stall. PCF appointed an independent expert to inspect the vehicle in July 2021. I think that was fair and I have considered the expert's report carefully. I can see he found evidence of low compression in multiple cylinders and considered this is normally related to valve seat wear, head gasket defects or piston damage due to abnormal combustion. The expert considered possible causes of this issue - in general terms. He says it often suggests "a valve seating issue, piston or ring defect, or head gasket breaches...as a complete loss of compression often indicates a valve burnt out e.g. broad face burning, guttering or chordal failure".*

*I don't think there's any dispute however that the expert wasn't able to reach a definite conclusion about what went wrong with this car. It wasn't running when he saw and the expert makes it clear in the report that his inspection was very limited as a result. I accept the expert did go on to conclude that, in his opinion, the issues present were probably wear and tear related and wouldn't have been there when the car was supplied. I also acknowledge he seems to have appropriate experience and qualifications and it's reasonable to take what he says into account. But, I'm satisfied the expert also says (in his final conclusion) "the vehicle requires further stripping and more in depth diagnostics to be carried out under workshop conditions to confirm the exact condition of the internal components". And, taking all the evidence into account, I find it difficult to see why the expert considered the issues present were likely the result of wear and tear - with a reasonable degree of certainty. He doesn't explain, for example, why the head gasket would have failed as a result of normal wear and*

*tear in this situation – when this part is not a service item and it would usually be expected to last much longer than the 40,000 miles or so Mr B's car had covered.*

*The CRA says (broadly speaking) any fault that appears within six months of supply is deemed to have been present at the point of supply - unless there's evidence to the contrary. I don't think a reasonable person would expect to have the sort of issue that's appeared here after four months and some 2,000 miles in the usual course of events – given the car's age, price and mileage at the outset. And I'm minded to conclude, on balance, it's more likely than not this car was of unsatisfactory quality when Mr B got it.*

### **Putting things right**

*Under the CRA a supplier usually has one chance to fix things, in this situation - but that's only if repairs won't cause undue delay or significant inconvenience to a consumer like Mr B.*

*It looks as if Mr B contacted the supplying dealer when the issue first appeared - so the dealer had the chance to check the car and resolve things then but refused. I can see the investigator also gave PCF some additional time to consider his recommendations. So, PCF had the opportunity to refer back to the supplying dealer and/or arrange further checks and provide more evidence if it wanted to. PCF could have supplied further clarification from the expert, for example - or information about the likely cost of repairs - but it hasn't done so.*

*I haven't seen an estimate of the likely cost of fixing the car. I note the expert says even investigating this issue will require extensive dismantling. And Mr B told us his mechanic thinks the car probably needs a new engine – which will be costly. On the current evidence, I have no reason to doubt what Mr B says. And, taking everything I've seen so far into account, I can't safely conclude that whatever is wrong with this car is likely to be able to be fixed in a timely manner at a reasonable cost.*

*I'm satisfied that Mr B has probably experienced a good deal of inconvenience and upset already as a result of being supplied with this faulty car. I can see he's been without his own transport for some time. And he's explained how that's caused problems with his job (as an essential worker) and other difficulties for him and his family. I don't think it's fair to expect Mr B to wait any longer for repairs in these particular circumstances. I'm minded to find it is reasonable for PCF to end the CSA and arrange to take the car back and refund the deposit.*

*As far as I can see the car hasn't been in a driveable condition since 21 July 2021 because of the faults present. I consider it is reasonable for PCF to compensate Mr B for this loss of use. And I find it is fair that he should have any monthly payments made towards the finance refunded from that date. I'm satisfied that Mr B has likely been put to some trouble and experienced frustration and upset as a result of what happened. I think it is fair and reasonable for PCF to pay him £100 compensation to reflect that. And, if PCF has recorded any adverse information on Mr B's credit file, I think it is right that should be removed as well.*

### **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.*

*I invited the parties to consider my provisional findings and let me have any further comments or information by 19 May 2022. And I explained that I'd review all the evidence available after that and make my final decision.*

*Mr B accepted my provisional conclusions and PCF hasn't made any further submissions. I see no reasonable grounds to depart from my provisional decision in these circumstances.*

For the reasons I've given, I remain of the view it's more likely than not this car was of unsatisfactory quality when Mr B got it. And I find it is fair and reasonable that PCF should take the steps set out in order to put things right.

### **My final decision**

My decision is I uphold this complaint and I require PCF Bank Limited to:-

1. End the finance agreement and collect the car, at no additional cost to Mr B;
2. Refund the deposit paid along with monthly payments made from 21 July 2021;
3. Pay interest at 8% simple a year on any refunds from the date of payment to the date of settlement;
4. Pay Mr B £100 compensation for distress and inconvenience; and
5. Remove any adverse information from Mr B's credit file.

If PCF considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 June 2022.

Claire Jackson  
**Ombudsman**