

The complaint

Miss Y has complained that she is unhappy with the quality of a new car she acquired in September 2020, using a hire agreement with PSA Finance UK Limited ("PSA").

What happened

Miss Y acquired a new DS DS3 Crossback Prestige in September 2020, using a hire agreement. The term was 36 months and the monthly cost was £296.37. (The initial annual mileage allowance was 6,000, but this was increased to 12,000 in August 2021 at Miss Y's request because of a change in her circumstances.)

Miss Y told us that the first problem with the car occurred two months later. She said that, while driving at a speed of 70mph on a motorway, the car suddenly lost power and the speed decreased to 50mph. As a result, she took it back to the supplying dealership, but a fault couldn't be found.

Miss Y went on to say that, in February 2022, while driving at 30mph, the car wouldn't accelerate. After restarting the car, she was able to carry on with her journey. But on the following day, the car again lost power while she was driving on a busy road. She was able to restart the car and continue the short drive to her workplace. The hire agreement included roadside assistance, and the RAC attended. The RAC record shows an Engine Control Unit fault and the comment "*Suspect intermittent fault advise customer to book a service and have fault checked.*"

Miss Y again took the car to the dealership, but no fault was identified. However, she told us that the dealership also looked at faults with the door handles – which were repaired - and the driver's side window, which she said is still present. (She provided video evidence to confirm this).

Miss Y then complained to PSA. PSA arranged for an independent inspection report to be carried out, and this was completed on 1 March 2022. The examiner noted the mileage as 19,039. The report states that, as well as inspecting the car, the examiner carried out a road test over a distance of around 51 miles, at speeds of up to 60mph, for about two and a half hours. However, the examiner was unable to replicate or find fault with the vehicle's management systems or driving operation. There were two fault codes recorded but the examiner said that these did not relate to the engine operation.

PSA said it would not uphold Miss Y's complaint as neither the dealership nor the independent examiner could find a fault with the car.

Miss Y brought her complaint to this service, saying that she wanted to reject the car. She said that, because she didn't believe it was safe, she stopped using the car in February 2022 other than to make one journey which was necessary as she needed to move the car when she moved house in May 2022. Miss Y also said that during that journey fault codes appeared, but she was unable to get photographic evidence.

Our investigator looked into Miss Y's complaint and thought it should be upheld. PSA disagreed and asked for it to be reviewed by an ombudsman.

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've decided to uphold Miss Y's complaint. I'll explain why.

Because PSA supplied the car under a regulated consumer hire agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was new, and I think any reasonable person would expect it to be free of any faults or defects.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

I set out above the information that Miss Y provided about the car. None of the faults described occurred within the first 30 days after Miss Y took delivery of the car, so the short term right to reject under the CRA doesn't apply here.

PSA sent in copies of the independent report, the original hire agreement and notes of its contact with Miss Y. I also have a copy of the note from the RAC callout. Miss Y provided a detailed description of the sequence of events.

As I've explained, the independent report states that the examiner was unable to replicate or find fault with the vehicle's management systems or driving operation. There were two fault codes recorded but the examiner said that these did not relate to the engine operation.

PSA said there was no evidence of the fault Miss Y has complained about and that it didn't think our investigator had taken sufficient account of the independent report compared to other evidence in the case (such as the RAC report), bearing in mind the level of expert detail it provided about the condition of the car at that time. In summary, PSA said that the RAC report made clear that the diagnosis was provisional, and it drew attention to the qualifications of the forensic engineer who carried out the independent inspection, saying that his opinion would carry a substantial degree of evidential weight.

PSA also pointed out that the vehicle was noted as having a poor external appearance with 'substantial damage noted to various panels' and it was also noted that the vehicle was overdue a routine service. It also referred to the mileage covered, saying that in June 2021 it was asked to provide Miss Y with a quotation for a mileage increase to 12,000 per year, and no concerns were raised regarding the quality of the vehicle at that point. PSA said it was difficult to reconcile Miss Y exceeding her anticipated mileage to that extent with our investigator's recommendation that it should compensate her for loss of use.

I've thought carefully about the evidence provided by both parties. I accept that the independent report was carried out by a highly qualified engineer and I have given it due weight in reaching my decision.

However, the existence of the RAC report confirms that Miss Y had a problem with the car that was enough to require roadside assistance, and the report notes a potential intermittent fault, and a fault code related to the Engine Control Unit. As I noted above, Miss Y has provided a consistent and detailed account of events, and I've no reason to doubt what she said about the car losing power. Our investigator said in her assessment that she didn't think Miss Y would stop using the car (as evidenced by the mileage figures), but continue to pay instalments, if she didn't think there was a genuine safety concern, and I agree with this point – and I note that PSA's contact notes for February 2022 state "*Customer currently has vehicle but is too scared to drive it in case it breaks down again*". I can see from Miss Y's testimony that it's been difficult for her not to be able to use the car as she needed it for work. Indeed she has had to hire a car on two occasions, incurring costs of £378.22 in July 2022 and £591.40 in September 2022 (for which Miss Y has sent in copies of invoices).

This was a new car, and Miss Y has only driven just over 19,000 miles. I don't think Miss Y should reasonably expect to have had this kind of issue after so little time. Taking everything into account, I consider it most likely that there is an intermittent fault with the car, that has not been able to be replicated because of the limited period of time over which it's been investigated. And it doesn't seem to me that PSA has done enough to fully investigate what might be causing it.

PSA raised concerns about the external appearance of the car. However I note that the independent report stated that "*The vehicle exterior had a dull and flat appearance considered consistent with no paint protection agents being present to the substrate surface.*" PSA also raised the overdue service (by 450 miles) stated in the independent report. Miss Y told us that, because of the mileage allowance increase, she believed the next service to be due either in June 2022 or at 24,000 miles. PSA has not made further comment on that point.

PSA also said it was difficult to reconcile Miss Y exceeding her anticipated mileage to the extent she has with our investigator's recommendation that it should compensate her for loss of use. However, PSA agreed to Miss Y's request to increase the mileage allowance in August 2021, before the loss of power occurred for a second and third time, and after she had told them of a change in circumstances. So I don't consider the increase in mileage affects my conclusions.

PSA has had an opportunity to repair the car, but the cause of the fault has not been identified. So I consider it fair and reasonable that Miss Y should be allowed to reject the car.

I think it was reasonable for Miss Y to stop using the car in February as she believed it unsafe, so PSA should also refund any monthly payments made from February 2022 onwards. As I noted above, Miss Y has also incurred car hire charges in July and September 2022. I cannot fairly direct PSA to refund these charges in full, because if everything was working as it should Miss Y would have been making the normal monthly payments to PSA under the hire agreement. However I consider it fair to require PSA to refund the extra amount Miss Y had to pay out – that is, the difference between Miss Y's normal monthly payment under the PSA hire agreement and the amount Miss Y had to pay for the car hire for the months of July and September 2022.

Putting things right

PSA should:

- end the agreement with nothing further to pay.
- collect the car at no further cost to Miss Y.
- refund all monthly payments made by Miss Y from February 2022 onwards, adding 8% simple interest* per year from the dates of payment to the date the compensation is paid.
- refund the difference between Miss Y's normal monthly payment under the PSA hire agreement and the amount Miss Y had to pay for the car hire for the months of July and September 2022.
- remove any adverse information from Miss Y's credit file in relation to the agreement (if any has been added).

**if PSA considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss Y how much it's taken off. It should also give Miss Y a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

For the reasons given above, I have decided to uphold Miss Y's complaint. PSA Finance UK Limited should compensate Miss Y as I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 3 November 2022.

Jan Ferrari
Ombudsman