

The complaint

Mr G complains that a vehicle hire agreement with PSA Finance UK Limited was mis-sold.

What happened

In 2018 Mr G entered a hire agreement with PSA to acquire a new car. He says that when he took out the agreement he was told it included maintenance. He says he was specifically told it covered tyres and MOT. He's paid £1,384.72 in total over the three-year term of the agreement for maintenance.

Mr G says the car needed new tyres towards the end of the term. He asked the dealer to change the tyres. He was told he would have to pay for the new tyres himself as it wasn't covered under the maintenance agreement. The agreement only covered servicing. Mr G complained to PSA about what happened.

PSA investigated his complaint. It said it couldn't comment on what was said between the dealer/broker and Mr G at the point of sale. But, it referred to Clause 20 of the terms and conditions for the agreement. It said this made clear that maintenance was subject to Clause 20 and the Services Schedule. The Services Schedule had not listed tyres or MOT. So, it said these weren't covered. Mr G didn't agree. He complained to our service.

Our investigator looked into Mr G's complaint. He considered whether there'd been a misrepresentation at the point of sale. He said his investigations indicated that to get the level of cover Mr G says he'd requested, he'd have had to pay more at the time. More expensive cover would've included replacement tyres and a courtesy car.

Mr G produced evidence to show that when he'd got his vehicle serviced, he'd been given a courtesy car. But, our investigator didn't change his mind. He said it wasn't unusual for a courtesy car to be provided by a garage when a vehicle was left in for servicing.

Mr G didn't agree. He said the Services Schedule referred to "PCH maintenance" but there was no document which described what that meant.

Because Mr G didn't agree, the complaint was passed to me to decide. I issued a provisional decision in which I said:

What I've provisionally 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 provisionally decided to uphold Mr G's complaint, in part. I'll explain why.

Section 56 of the Consumer Credit Act 1974

Mr G says he was told orally by the salesperson in the dealership that replacement tyres, MOT and servicing were included in the maintenance agreement. And, he says the amount he was paying each month also caused him to believe that this was the case.

Under s56 of the Consumer Credit Act 1974, we can consider some complaints about what was said before the agreement was entered into. But s56 doesn't apply in all circumstances where the complaint is made against the finance provider. The agreement here is a Hire Agreement. That means, insofar as PSA is concerned, I can only consider a complaint about misrepresentation during any negotiations before the agreement was entered into, if the dealer/broker was acting as an agent of PSA. PSA has now confirmed that the dealer was acting on its behalf in arranging the hire agreement. So my view is that s56 does apply here and PSA can be liable for any misrepresentation made by the dealer during the course of the negotiations before the contract was signed.

In order to make a finding that there was a misrepresentation, I would need to be satisfied that there was a false statement of fact, on which Mr G relied and that he only entered into the agreement because of his reliance on that statement.

The conversations between Mr G and the dealer were oral and no statement has been made available from the dealer because the salesperson no longer works there. So, I've had to consider what Mr G told us, together with the documentation that was signed at the time.

Mr G says he specifically queried with the dealer whether the maintenance agreement included tyres. He says this was important to him and the dealer confirmed to him during a telephone conversation that "the tyres would be included...and that it would be charged at the amount signed for in the contract."

It appears this telephone conversation may have taken place after the contract was signed. So, it wouldn't have formed part of the "antecedent negotiations" – that is conversations that took place before the contract was signed. I've also looked at a document called "Vehicle Delivery note." It was signed by both the salesperson and Mr G at the time. It included some mention of the maintenance agreement.

The vehicle delivery note states "Maintenance included" and beside this "Yes" is circled. It also has a checklist with ticks against each item to confirm that it has been covered in the conversation. In relation to "maintaining the vehicle" there are three items on the checklist. These all relate to servicing of the vehicle. The only reference to "tyres" is to say that Mr G has been made aware of the need to check tyre pressure.

The checklist then includes a section about "end of contract." This includes the following statement

"The vehicle must be roadworthy upon return and have a valid MOT Certificate and road legal tyres."

There is nothing on this checklist to suggest that the maintenance agreement covered anything other than servicing.

So, having considered the information provided, I'm not satisfied, on balance, there's enough evidence to support what Mr G has told us about a false statement of fact having been made to him during the antecedent negotiations.

It is the case that Mr G says he believed the tyres were included in the maintenance contract. He says that was confirmed to him during the telephone conversation referred to above and he's also commented on the documentation which he received from PSA. So, when considering whether PSA has acted fairly and reasonably here, I've looked at the documents Mr G received to see if they made clear to him that tyres were not included in the contract.

The documentation provided to Mr G

Mr G was given a number of documents. I'll consider each of these and comment on what they say about what was included in the maintenance agreement.

The Hire Agreement

The Hire Agreement is the legal contract between Mr G and PSA. So, I'd expect it to be clear on its face. It refers to the payments Mr G was required to make. These were an initial rental payment followed by 35 monthly rental payments and an initial "service charge" of £109.32 followed by 35 monthly service charge payments of £36.44. Over the term of three years Mr G would pay £1,384.72 for service charges.

The Hire Agreement also had a section entitled "key Information." Although there is no specific reference to a service charge in this section there is extensive reference to clauses in the Terms document. Mr G says he didn't get that document. But, I think the wording in the Hire Agreement which he signed would've drawn his attention to the fact that there were Terms and it was important for him to read them.

Apart from the cross reference to the Terms, the Hire Agreement itself doesn't set out any further details other than the amount of the "service charge."

The Terms

The Terms also form part of the legal agreement between Mr G and PSA.

Clauses 20 and 21 of the Terms set out what PSA's servicing and maintenance obligations were and what Mr G's obligations were. I've set out what the relevant Clauses in the Terms say below:

"20.1 If you have chosen maintenance on the services schedule you will pay the services charge shown overleaf and we will arrange for the vehicle to be maintained throughout the period of

hire on the terms set out in the clause and the terms (if any) set out in the services schedule.

20.3 Provided that you carry out your obligations under clause 22 and the vehicle is in the United Kingdom the maintainer will arrange for:

20.3.1 the servicing of the vehicle at the intervals recommended by the manufacturer;

20.3.2 the supply during servicing of oil or lubricants recommended by the manufacturer;

20.3.3 the supply of anti-freeze either during servicing or each autumn as the maintainer may select; and

20.3.4 all necessary repairs and replacement parts (including batteries) except for those referred to in clause 21.4

20.4 Our obligations under Clause 21.3 will not cover ...repairs maintenance or replacement parts which are stated in the services schedule and Clause 21 to be your responsibility.

21.2 You will be responsible for:

21.2.1 arranging the service of the vehicle by the repairer at the intervals recommended by the manufacturer or whenever

21.2.2 necessary and ensure that the repairer stamps the vehicle's service book;

21.2.3 providing the vehicle on a day to day basis with the correct type and amounts of fuel, oil, lubricants, water and additives;

21.2.4 maintaining the vehicle on a day to day basis in accordance with the manufacturer's recommendations;

21.2.5 having all missing or unfit part of the vehicle for which you are responsible under Clause 22.3 replaced by the dealer;

21.2.6 checking the tyres regularly to ensure that they comply with any legal requirements and are in good condition; and

21.2.7 having all necessary repairs and maintenance carried out promptly by the dealer.

21.3 You will

21.3.1 pay for and have carried out any repairs, maintenance or replacement parts which are stated in the services schedule or Clause 22 to be your responsibility;

21.3.2 arrange for this work to be carried out and parts to be supplied and fitted in accordance with Clause 22.4 below.

21.4 When servicing or any other work needs to be carried out on the vehicle, you will, at your cost, take the vehicle to the dealer..."

I'd just comment firstly that there are several cross references above to Clause 22. These cross references appear to be erroneous since Clause 22 deals with "Relief vehicle". Whilst this is unhelpful to the reader, I think the references to Clause 22 should infact be references to Clause 21, and that is how I have construed the meaning here.

The Terms at Clause 21.3.1 state that Mr G was responsible for paying for and having carried out any repairs, maintenance or replacement parts which were not stated in the Services Schedule or Clause 21 (as I have interpreted it) to be his responsibility. The phrase "repairs, maintenance

or replacement parts” is not defined. In relation to the tyres, Mr G’s responsibility was to check the tyres regularly and ensure they complied with any legal requirements. Having looked at this it isn’t clear to me that this meant he had to pay to replace the tyres.

When reaching that view I’ve looked at the list of items in Clause 21.2. These included “arranging the service of the vehicle”. There is no dispute that Mr G wasn’t responsible for paying for the service of the vehicle. So, I’m not persuaded, on balance, the Terms, on their own, precluded Mr G from thinking that tyres and MOT were included in “PCH maintenance.”

The Services Schedule

The Services Schedule referred to a service type “PCH Maintenance.” The description of this service also states “PCH Maintenance.” There is no further detail included about what this means.

There are other items on the services schedule which are also not explained in any detail. For example, it refers to “Contract management” and “Accident management” but no detail is provided.

Clause 21.3 of the Terms stated

21.3 You will

21.3.1 pay for and have carried out any repairs, maintenance or replacement parts which are stated in the services schedule or Clause 22 to be your responsibility

Having looked at the Services Schedule there is no mention there of any repairs, maintenance or replacement parts which were Mr G’s responsibility.

PSA has provided our service with an example of a Services Schedule where it says the customer was provided with cover for “tyres.” The Services Schedule in that case included PCH Maintenance and a separate type of service referred to as “Tyres.” PSA says this shows that if Mr G had selected cover for tyres, this would’ve been reflected on the Services Schedule. It also says the price he was paying should’ve put Mr G on notice that tyres were not included in PCH maintenance.

I’ve thought about what PSA has said here. But, it doesn’t change my current view. Mr G wouldn’t have been familiar with how different services were set out on Services Schedules for other customers. And, I don’t think it’s fair or reasonable to have expected him to know what was and wasn’t covered by the phrase “PCH Maintenance” when there was no further information about that in any of the documentation he’d been provided with.

I’ve also thought about what PSA told us concerning the relative price the consumer paid where the Services Schedule included “tyres.” As I’ve already mentioned Mr G wouldn’t have had knowledge of what services a different customer had selected – or what that customer would’ve paid. So, I think it’s fair and reasonable to look only at what was presented to Mr G and what he should reasonably have been aware of.

PSA has provided a breakdown of how the monthly service charge was made up.

*Road Fund Licence - £9.98
Contract maintenance £9.49 and
Maintenance £16.97*

PSA says the figures show that Mr G was paying £16.97 per month for routine servicing costs. It says that an average annual service costs around £200. So, it says Mr G would've reasonably known that tyres were not included.

I'd just point out that I don't see where this breakdown of the monthly service charge was provided to Mr G – so he would only have been aware of the overall charge he was paying for “services.” It's also not clear, from the information PSA has provided, what is covered under “Contract maintenance” and what is included under “Maintenance.” So, I'm not currently persuaded, on balance, it's reasonable to say that Mr G should've known, because of the price he was paying, that tyres were not included.

The Adequate Explanations Document

There is a reference to “services” in the Adequate Explanations document. It says only that the customer can opt for additional services and if the service charge is nil then no services have been provided. But, that wasn't the case here – there was a charge for services.

The purpose of the Adequate Explanations document is described in the Financial Conduct Authority (FCA) Handbook – the section known as CONC (the Consumer Credit Sourcebook). CONC 4.2.5 R says that before making the agreement the firm must provide the customer with an adequate explanation about certain matters. The purpose of that document is:

“... to place the customer in a position to assess whether the agreement is adapted to the customer's need and financial situation.”

The matters which should be explained include the features of the agreement which may make the credit to be provided “unsuitable for particular uses.”

Having looked at the Adequate Explanations document, I don't think it did adequately explain what was included under “Services” in the agreement. And, it didn't refer Mr G to any other document where he would've been able to get more information. I don't think it was enough to simply include a statement to say he could telephone if he had any questions. I would've expected the Adequate Explanations to have detailed what was included in the services and to tell Mr G about any exclusions or unusual terms that applied. He could then have made an informed decision about whether or not it met his needs and financial situation.

Having considered everything here, I'm currently persuaded that PSA didn't do enough to adequately describe the services Mr G had acquired when he entered the agreement. For that reason, I think PSA needs to take action to put things right.

What needs to be done to put things right

I've set out above the breakdown of the monthly service charge provided by PSA. It is the case that Mr G has received value under the agreement in that the car has been serviced during the period of the contract and the road fund licence has been provided. Apart from what he's told us about tyre replacement, Mr G has received what he thought he would receive under the contract. So, I don't think it would be fair or reasonable to require PSA to have to refund these payments to him.

Mr G believed that the services he'd acquired included replacement tyres. He's told us he paid £179.04 for the replacement tyres. Having looked at everything here, I currently think it is fair and reasonable to require PSA to refund this sum to him.

I've also thought about the inconvenience Mr G has experienced as a result of what happened here. He had to make arrangements to pay for the tyre replacements himself. And, he's had to progress his complaint with PSA and then to our service. In the circumstances, I currently think it's fair and reasonable to require PSA to pay him £100 for the inconvenience he experienced.

My provisional decision

For the reasons given above my provisional decision is that I intend to uphold this complaint, in part, about PSA Finance UK Limited.

I intend to require it to:

- Upon receipt of evidence of payment, pay Mr G £179.04 for the price of replacing the tyres on the car together with 8%* simple interest on this amount from the date of payment to the date of settlement; and*
- Pay Mr G £100 by way of compensation for the inconvenience he experienced as a result of what happened here.*

PSA responded to my provisional decision. It said it had no further submissions to make.

Mr G also responded. He provided a copy of the cash sale invoice for the replacement tyres which is dated 13 May 2021. The invoice confirms he paid £179.04 for the replacement tyres. Mr G didn't make any further comments.

So, I now need 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 considered the responses, neither party has given me any new information which persuades me to change my findings from those reached in my provisional decision.

Mr G has provided a copy of the cash sale invoice for the tyres which confirms the information he'd previously provided.

So, I've not changed my view about how this complaint should be resolved or the reasons for my decision.

My final decision

For the reasons given above, I uphold this complaint, in part, about PSA Finance UK Limited.

I now require it to:

- pay Mr G £179.04 for the price of replacing the tyres on the car together with 8%* simple interest on this amount from the date of payment (13 May 2021) to the date of settlement; and
- pay Mr G £100 by way of compensation for the inconvenience he experienced as a result of what happened here.

** If PSA Finance UK Limited considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr G it should tell him how much it's taken off. It should also give Mr G a certificate showing this 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 G to accept or reject my decision before 28 July 2022.

Irene Martin
Ombudsman