

## **The complaint**

Mr B complains that a car he obtained through a hire purchase agreement with PSA Finance UK Limited ("PSA") was of unsatisfactory quality. He says PSA should've accepted his rejection of the car but instead he was forced to sell the car back to the supplying garage.

He wants PSA to refund all his payments, pay him the £2,500 government grant, refund the cost of the report he obtained, and compensate him for the distress and inconvenience he's been caused.

## **What happened**

Mr B obtained a new car using a hire purchase agreement with PSA in June 2021.

He says that, within six months, he reported several faults, the main three being, a knocking noise when turning, a rattle in the roof, and the heated seats not working properly. He returned the car to the supplying garage for repair four times, but he says it failed to fix the faults, so he wrote to PSA to tell it he wanted to reject the car.

PSA obtained an independent report and, based on its findings, didn't uphold Mr B's complaint.

Mr B obtained his own independent report which concluded there were faults with the car which needed further investigation and could most likely be repaired under warranty.

Whilst the complaint was being investigated by our service, Mr B agreed to the supplying garage to buy the car back because he needed to obtain a replacement vehicle.

Our investigator concluded that the car wasn't of satisfactory quality when it was supplied, and that PSA should have accepted his rejection of the car. But he noted the finance had been settled by the supplying garage when it bought the car back and that Mr B received enough to cover the deposit he'd paid. He didn't think PSA needed to refund any of the monthly payments as the cost fairly reflected Mr B's use of the car. And he didn't think PSA needed to reimburse Mr B with the £2,500 government grant he received when he obtained the car in June 2021, because the grant was still available until 14 June 2022, which was before Mr B arranged to obtain a replacement car.

The investigator recommended PSA refund Mr B £264 for the cost of the report he obtained, plus interest. And that it pay him £250 for the distress and inconvenience he'd been caused.

PSA agreed with the investigator's conclusion. Mr B didn't agree, so the complaint was passed to me.

## ***My provisional decision***

I thought the complaint should be upheld and I explained why. I said:

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

The relevant law says that under a contract to supply goods, there's an implied term that "the quality of goods is satisfactory". As such, in order to uphold this complaint, I would have to be persuaded that the car wasn't of satisfactory quality and so a breach of contract has taken place.

Mr B has asked whether he can make a claim under section 75, or section 75a, of the Consumer Credit Act. Mr B has a hire purchase agreement, and the creditor and supplier of the goods is PSA. Section 75 and 75a don't apply to this type of agreement. But Mr B paid the deposit for the car using his credit card. I understand he has recently approached the credit card issuer to make a section 75 claim, but that this has been rejected. I can't comment on this further as this complaint is only about what PSA did or didn't do wrong.

The Consumer Rights Act 2015 says that, under a contract to supply goods, there's an implied term that "the quality of goods is satisfactory". As such, in order to uphold this complaint, I would have to be persuaded that the car wasn't of satisfactory quality and so a breach of contract has taken place.

In deciding whether a car is of satisfactory quality, some of the factors to consider are its age and mileage when it was supplied, and how long after supply the fault(s) materialised.

I am not going to repeat the detail of the timeline of events here. In summary, the car was brand-new when it was supplied. So it's reasonable to expect it to be fault-free for a reasonable period of time. Mr B reported three faults (a knocking noise when turning, the heated seats not working, and a rattle in the roof) around four months after he obtained the car and when he'd driven it around 4,300 miles. From early November 2021 to early February 2022, the car was returned to the supplying garage four times for repair. But Mr B said the faults weren't fixed and told PSA he wanted to reject the car.

PSA arranged for an independent inspection of the car. This was carried out in March 2022 when the car had been driven 8,690 miles. This concluded that:

1. A "rotational torque load knocking could be heard from the O/S driveshaft/suspension area on both left and right cornering". The inspector suggested the driveshaft might need replacing, although further inspection was required. He thought the fault was unlikely to be present at the point of supply and might be due to an aggressive driving style.
2. A "light intermittent rattle could be detected from the top area of the N/S 'B' pillar". The inspector thought this was unlikely to have been present at the point of supply; may have been made worse by Mr B's apparent attempt to repair the roof; and that it should be easily repairable.
3. The inspector couldn't find a fault with the heated seats.

Mr B arranged his own independent inspection. This was carried out in April 2022 when the car had been driven 9,962 miles. This concluded that:

1. There was “a clicking noise from the front of the vehicle on both left and right hand locks”. The inspector thought this “required attention”.
2. There was a “resonance/noise from the nearside B pillar around the area of the seatbelt anchor”. The inspector concluded that the attempted repair had been unsuccessful.
3. The offside front heated seat only operated intermittently.
4. There was “oil staining on the undertray and nearside suspension wishbone”. The inspector thought this required further investigation.

The inspection report concluded that there was no specific evidence to show these faults were present at the point of supply. But that, as the car was still under warranty, the faults should be investigated further and repaired as required.

I firstly need to decide whether I think the car was of satisfactory quality when it was supplied.

I'm persuaded from Mr B's testimony, from the supplying garage's job cards, and from the two independent reports, that there were faults with the car (as listed above). But for me to conclude that the car wasn't of satisfactory quality when it was supplied, I would need to conclude that the faults were present, or developing, when the car was supplied.

The second independent report didn't conclude whether the faults were likely to have been present when the car was supplied. The first report concluded that the noise from the B pillar was unlikely to have been present when the car was supplied. But it hasn't explained why. It does suggest that repairs carried out by Mr B might have caused some issues. But Mr B denies carrying out any repairs himself. And the first report concludes that the knocking noise when cornering might be due to an aggressive driving style. I've considered this carefully. Taking into account what I said earlier – that it's reasonable to expect a brand-new car to be fault free for a reasonable period of time - it seems surprising that the car developed the faults within four months without excessive mileage. Although the first report mentions aggressive driving style as a possible cause, the same report also notes that the car “had an appearance considered less than commensurate with regard to the vehicle age both externally and internally”. This would suggest to me that the car had been well looked after which wouldn't suggest the dangerous driving approach the report mentions.

On balance, I find the car wasn't of satisfactory quality when it was supplied – because it was brand new and developed three faults within about four months, and an oil leak within around ten months.

Under the terms of the Consumer Rights Act, Mr B had a right to reject the car within the first 30 days. I've not seen evidence that he rejected the car during this period.

After the initial short-term right to reject, Mr B had a right for the car to be repaired or replaced.

He told us he returned the car to the garage four times and that some repairs were carried out. But it's clear to me that those repairs were unsuccessful because the independent reports, which confirmed the faults, were completed after the attempted repairs.

Whilst the reports suggest repair as a remedy, I don't think that would have been a fair and reasonable outcome. That's because the supplying garage already had four attempts at repair. I think at this stage it would have been fair and reasonable for PSA to accept Mr B's rejection of the car.

But PSA can't do that now, because in June 2022 Mr B agreed to the car being repurchased by the supplying garage. Mr B was clearly unhappy with the car and had some concerns about its safety because of the undiagnosed knocking sound. He decided he wanted a replacement car, but he couldn't afford to continue to pay for the existing one as well. He decided to accept the supplying garage's offer to buy the car back. I don't think this was unreasonable, because the faults he'd reported remained after he'd given the supplying garage four opportunities to investigate and carry out repairs.

I've considered carefully what PSA should do to fairly compensate Mr B, taking into account that he no longer has the car, and the hire purchase agreement has been settled. My aim is, as far as it is possible, to put Mr B back in the position he'd be in if he hadn't been supplied with an unsatisfactory quality car. For ease, I've used sub-headings for each of the items I've considered.

#### *Settlement of the hire purchase agreement*

The hire purchase agreement ended in June 2022 when the outstanding finance settled. So I'm satisfied Mr B does not owe any money under the terms of the agreement. PSA should ensure the agreement is showing as settled on Mr B's credit record or remove it altogether.

#### *Deposit*

I find it's fair that PSA refunds the deposit Mr B paid, plus interest at 8% simple per year from the date the deposit was paid to the date of settlement. The invoice shows Mr B paid a deposit of £1,000.00.

#### *Government grant*

In April 2021 when he obtained the car, Mr B received a government grant of £2,500 for the purchase of a new electric car. The investigator didn't think this should be reimbursed to Mr B because it was still available when the hire purchase agreement was settled – so he could have benefitted from it on the purchase of a new (replacement) electric car. But by June 2022 when Mr B was arranging the supply of a new electric car, the scheme had been downgraded and wasn't available on cars costing more than £32,000. I'm satisfied that Mr B benefitted from the grant in April 2021 and that PSA should pay him the equivalent sum now to off-set the cost of the new car.

#### *Monthly payments*

Mr B made 13 monthly payments of £336.79. Mr B has had use of the car and I find it's fair that he pays for that use. I think the monthly payments he's made fairly reflect the use he's had of the car.

In coming to that conclusion, I've taken into account that Mr B says he planned to buy the car at the end of the agreement and that, if he hadn't had that intention he'd have just taken out a lease agreement. I accept the monthly payments under a lease

agreement may have been less than the amount he paid under the hire purchase agreement. But I can't say for certain how much he'd have paid to rent a car, and, on balance, I'm satisfied that the monthly payments aren't unreasonable to reflect the use he's had of the car.

I've also thought about Mr B's view that it's not appropriate to charge him for use when the car has increased in value over the time he's had it. But I don't find that makes a difference. If he hadn't been supplied with an unsatisfactory car, he would have still needed a vehicle and would have had to have paid for it. So I don't find he's in a worse position by having to have paid what he has. Whilst I understand why he felt he had no choice, he agreed to the supplying garage buying the car back from him. The price the supplying garage was able to re-sell the car at doesn't have a bearing on the amount of compensation that it is fair to award Mr B.

But Mr B obtained a brand-new car and he reasonably expected it to be fault free. Whilst the faults didn't stop him driving the car, it has clearly spoiled his enjoyment of it. And it's clear he had some concerns that the faults may have impacted his safety. The car was also with the garage for attempted repair for eight to nine days. Taking all this into account, I think it's fair that PSA pays Mr B £300 to compensate him for his lack of enjoyment of his new car.

#### *Cost of independent report*

Mr B has provided evidence that he paid £264 for the cost of the independent report. Mr B wouldn't have incurred this cost if the car had been of satisfactory quality or if PSA had concluded the car wasn't of satisfactory quality at an earlier stage. So I think PSA should reimburse this cost, plus interest at the rate of 8% simple per year from the date he paid it to the date of settlement.

#### *Distress and inconvenience*

Being supplied with a car which wasn't of satisfactory quality has caused Mr B distress and inconvenience. He returned the car to the supplying garage four times.

He also says that, whilst he was supplied with a courtesy car, this was a petrol car which cost him more to run than the electric car he'd chosen.

Taking into account that Mr B reasonably gave the supplying garage four chances to put things right, and he incurred some additional running costs, I think £400 is fair and reasonable for the distress and inconvenience he's been caused and the costs he's incurred.

#### *Amount received on termination of the agreement*

When the supplying garage bought back the car, Mr B says he received £3,198.22, after settlement of the finance. It's fair that PSA should deduct this sum from the total amount it compensates Mr B.

So, in summary, I was minded to order PSA Finance UK Limited to:

1. Record the hire purchase agreement as settled on Mr B's credit file or remove it altogether.
2. Refund the deposit Mr B paid of £1,000.00 plus 8% simple interest per year from the date it was paid to the date of settlement.

3. Pay Mr B £2,500, being the amount of the government grant.
4. Pay Mr B £300.00, to reflect his loss of enjoyment of the car.
5. Pay Mr B £264 for the cost of the independent report, plus 8% simple interest per year from the date Mr B paid for the report to the date of settlement.
6. Pay Mr B £400 compensation for the distress and inconvenience caused and to cover his costs.
7. PSA Finance UK Limited can deduct £3,198.22 from the amount it pays Mr B, to reflect the amount he's already received from the supplying garage.

#### *Mr B's response to my provisional decision*

Mr B said he paid £2,500 deposit, £1,000 on his credit card when he first visited the supplying garage and £1,500 when he collected the car. He's provided copy bank statements showing the payments.

He explained, in detail, why he didn't agree with my provisional decision. He provided his reasoning in substantial multiple submissions. I'm not going to list what he has said, but I have fully considered all his submissions. In very brief summary, he doesn't think his monthly payments bear any relation to the use he had of the car, or its depreciation. And he doesn't agree that the payment he received when he sold the car back to the supplying garage should be deducted from the compensation he receives.

#### *PSA's response to my provisional decision*

PSA said the paperwork it has doesn't evidence a deposit payment of £1,000.

And it didn't agree with paying Mr B £2,500, the amount of the government grant. It said, in summary, that the grant didn't form part of the finance agreement; that Mr B benefitted from it, but it was never a payment that PSA received; if PSA pay it to Mr B it will be bettering his position – it was applied as a discount, not a cash sum to be used for any purpose; and that it had no control over the application of the grant, or the government's decision to stop providing it.

#### **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 B has replied at some length, and in several submissions, to my provisional decision. I appreciate Mr B would have preferred to enter into some form of negotiation and that he would like me to respond to each of the points he's made. I'm sorry, but I'm not going to do that for the reasons I explained previously - I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. In saying that, I understand Mr B's strength of feeling on this matter and I respect his professional experience.

I'm satisfied from the bank statements and invoices Mr B has provided that he paid a deposit of £2,500 and this should be refunded in full, plus interest, for the reasons I set out in my

provisional decision.

I've considered what PSA has said about the government grant. It says the grant didn't form part of the finance agreement, PSA never received it, and that it was applied as a discount on the manufacturer's price of the car. It says Mr B shouldn't receive the grant as cash to be used for any purpose. I've considered this carefully, but it hasn't changed my conclusion. Mr B received the benefit of the grant in April 2021. In April 2021 he was supplied with a car that wasn't of satisfactory quality, so he had to obtain a replacement car. The grant was no longer available, so Mr B no longer had the benefit of the £2,500 through no fault of his own. I accept the grant didn't form part of the finance agreement. But the failure to supply Mr B with a satisfactory quality car – means PSA is responsible for compensating Mr B and to ensure, as far as is possible, that he isn't in a worse financial position. I find it's fair that PSA pays him the equivalent amount of the grant.

Mr B doesn't think it's fair that PSA retains all of his monthly payments. He says he paid £4,378.27 (13 payments of £336.79). But he says, when the supplying garage bought the car back, it paid £2,220 less than Mr B paid for it. He says this is a better way of calculating the cost of his use of the car.

He's also unhappy that I concluded PSA can deduct £3,198.22 from the overall compensation figure, being the amount Mr B received after he sold the car back to the supplying garage and the finance was settled. He says PSA has received payment in full, following settlement of the agreement, plus interest on his monthly payments. It shouldn't benefit from the amount he received from selling the car.

I understand Mr B's arguments, but it remains fair that he pays for the use he had of the car. That's because, if he'd been supplied with an alternative, fault free, car, he would have incurred the same costs for driving it. I appreciate that the monthly rentals may be going towards the purchase of the car if he decided to purchase it at the end after paying the balloon. And, whilst he told us he intended to buy the car, I can't conclude with certainty that this is what he would have done and, until that point, the agreement is like a hire agreement. The monthly payments seem a reasonable sum to pay for his use of the car, considering the circumstances.

The matter is complicated by the fact that Mr B sold the car before he finished paying for it. But my aim is, as far as is possible, is to put him back into the position he would have been in had he not been supplied a faulty vehicle. And, taking that into account, the cost of usage is relevant as Mr B would have incurred that cost elsewhere if he hadn't bought this faulty car. And, in trying to put him back in the position he'd be in if he hadn't been supplied with a faulty car, it's fair that the amount he received from the sale of that car – which he hadn't finished paying for – is taken into account.

Mr B has made reference to the additional costs of the car he now has, and the higher cost of that car. But I can't compare the new car with the old because, whilst the cars have similarities, there are significant differences between the cars including the brand, technical capabilities and specification levels which would result in a different price.

Mr B also asks why the whole transaction is not null and void because PSA didn't accept his rejection of the car under the Consumer Rights Act. But there is nothing in the Act that says the agreement should be treated as null and void. Our role is to consider what impact the business's actions have had on him, and this is what I have done.

Mr B has also explained in detail why he thinks he should be awarded damages of £10,225. I set out in my provisional decision why this service's decision may be different from the outcome of court proceedings, and I explained that we have no ability to make awards for

damages in the same way a court would. Mr B is free to reject my decision and pursue his claim through the courts if he chooses to do so.

### **Putting things right**

PSA Finance UK Limited should:

1. Record the hire purchase agreement as settled on Mr B's credit file or remove it altogether.
2. Refund the deposit Mr B paid of £2,500 plus 8% simple interest per year from the date it was paid to the date of settlement. \*
3. Pay Mr B £2,500, being the amount of the government grant.
4. Pay Mr B £300.00 to reflect his loss of enjoyment of the car.
5. Pay Mr B £264 for the cost of the independent report, plus 8% simple interest per year from the date Mr B paid for the report to the date of settlement. \*
6. Pay Mr B £400 compensation for the distress and inconvenience caused and to cover his costs.
7. PSA Finance UK Limited can deduct £3,198.22 from the amount it pays Mr B, to reflect the amount he's already received from the supplying garage.

\* HM Revenue & Customs requires PSA Finance UK Limited to take off tax from this interest. PSA Finance UK Limited must give Mr B a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

My final decision is that I uphold this complaint. PSA Finance UK Limited should pay compensation, and take the actions, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 April 2023.

Elizabeth Dawes  
**Ombudsman**