

The complaint

Miss S complains about the quality of a car she financed with Vauxhall Finance plc ('VF').

What happened

The details of this complaint are well known by both parties while the facts are broadly not in dispute – so I will cover these briefly and focus instead on giving reasons for my decision.

Miss S was supplied a brand new car on a conditional sale agreement by VF in September 2020.

However, she isn't happy with the car and says that she has had several major and minor issues with it. She says the car is unreliable and is still giving her problems – she wants to reject it for a refund.

VF didn't agree to take back the car. In summary, it noted repairs had been carried out by the dealer under the manufacturer warranty and Miss S had covered in excess of 30,000 miles in the car. It explained that the onus was on Miss S to show that the problems she has experienced were present at the point of sale and not some other reason (such as usual wear and tear and driving style). It also explained that the dealership would not accept a rejection of the car and therefore it isn't able to do anything about this.

Our investigator upheld the complaint but noted that all the issues Miss S complained about appeared to have been repaired – and any new issues needed to go back to VF to look at again. She did not agree rejection was fair here – but awarded Miss S £200 for the distress and inconvenience caused by the issues with the car.

The matter has come to me for a final decision.

I issued a provisional decision on this matter which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. VF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

I note on the file VF refers to its responsibility being limited regarding the quality of goods supplied on Miss S's conditional sale agreement. It refers to its liability 'ceasing' 6 months after the point of supply and also indicates the dealership (and not it) makes decisions regarding the consumer's ability to reject the goods. For clarity, as the supplier of the goods under the finance agreement it is VF that is responsible for their quality in law. It follows that the remedies available to Miss S in law (including repair, replacement or rejection) are available against VF, not the dealership. Furthermore, after considering the CRA I am not persuaded her rights against VF in law 'cease' after 6 months as VF has indicated.

VF supplied Miss S with a brand new car. It is fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used free from defects for a considerable period.

VF has referred to Miss S's car travelling a certain mileage as an indicator that it was not faulty at the point of sale. However, it is important to note the CRA points to durability being a factor in determining if goods are of satisfactory quality. So even if parts do not fail right away, if they fail prematurely (considering the reasonable expectations in the circumstances) this might indicate there was already a problem when the car was supplied. Particularly if those parts are major components of the car (for example those relating to the engine).

There does not appear to be any dispute Miss S has had several issues with the car since it was acquired. I also note that Miss S has provided detailed timelines and testimony about what has occurred. Furthermore, what she says is supported by numerous job-sheets, lengthy correspondence with the dealer and other evidence - including photos.

One of the central issues appears to be with the car losing power, going into 'limp' mode, stalling, overheating and overrevving. It appears this all began less than a year after Miss S had acquired the car. In her credible testimony she details how she broke down on the motorway and a warning light came on in July 2021. I note Miss S has provided a photo from around this time showing a warning lamp on her dashboard screen stating 'Engine Power is Reduced' and her mileage of less than 15,000 miles at the time. She has also provided correspondence showing that she reported a loss of power and breakdown to the dealer around this time (for which she needed to call out recovery).

Miss S says she went back and forth with the dealership in an attempt to resolve the issues with loss of power and overheating. It also appears that several attempts were later made to repair this issue. I note the following key evidence:

- 1. Job sheet dated 27/5/22 (mileage is 29,834) – Miss S reports EML light on and lack of power – dealership identify an 'engine under boost' fault code and the turbocharger as potential issue and replace the solenoid valve. It appears that*

around this time Miss S completed a 'customer incident form' where symptoms of the problems are detailed as including (in all conditions):

- Lack of power;
 - Difficulty engaging gears;
 - Issues with the clutch (remains on the floor/too soft);
 - Jerking/juddering and hesitation.
2. Job sheet dated 15/07/22 – Miss S reports the engine light on again, the car gets very hot – the dealership appears to identify a stored fault code and change the air deflector and temperature sensor.
 3. Job sheet dated 29/11/2022 – EML light on dash identified – Miss S reported a lack of power – dealership carry out diagnostics and investigation and identify a new turbo is required (and fit this).

It is important to note that job '3' (referred to above) was carried out after the car had already been with the dealer for several months. Miss S appears to have returned it for the ongoing power related issues in September 2022 (I understand due to a shortage of appointments she couldn't get it booked in before) and the car wasn't repaired until months later.

I have considered if the issues with the power/engine make the goods of unsatisfactory quality. I note that the goods were bought new for a high cost and the evidence I have indicates the faults likely began less than a year into the finance agreement. I also note there has not been any suggestion that Miss S has misused the car when it was taken in for diagnostics or that the issues were down to reasonable wear and tear – in fact the problems appear to have been perceived by the dealer as relating to faulty components.

I acknowledge the more significant problems appear to have started when Miss S had already covered around 15,000 miles – however, cars should be reasonable durable. I don't think a reasonable person would consider it satisfactory that a new car would have these significant issues at this time, particularly considering the symptoms and how they appear connected to the malfunction of major components.

Furthermore, when considering if the goods were satisfactory at the point of sale I note that the power/engine issues have not been the only things that have gone wrong. While some things will possibly be down to general wear and tear I note for example that the car required a speaker replacement after eight months – which seems premature for a brand new car and also indicates that it was not of satisfactory quality at the point of sale.

Because of when certain problems with the car were brought to light, VF says Miss S needs to provide more evidence to prove the car wasn't of satisfactory quality when it was supplied. It refers to the 'burden of proof' as set out in the CRA.

I've carefully considered what it has said, but I don't think it's fair to ask Miss S to provide more evidence – such as another expert report. I have enough evidence to persuade me that the car was likely not of satisfactory quality when it was supplied including detailed testimony, job sheets and other information.

As I have concluded that the car was likely not of satisfactory quality at the point of supply I have looked to what would be a fair remedy here. In doing so I have considered the provisions of the CRA.

I note that before job '3' above took place – Miss S requested to reject the car. She appeared to be completely fed up with the ongoing issues at that stage. However, to date she has not been allowed to reject it. I don't think this was fair and reasonable considering what had occurred here and the relevant law.

The CRA says that a consumer has the final right to reject in certain circumstances. One of those is where after one repair or replacement the goods still do not conform to the contract.

In the circumstances evident here it appears that VF (via the dealership) had already had two attempts to repair the issues with the loss of power/overheating (turbo solenoid and temperature sensor repairs) and failed. Furthermore, I note that even before these repairs had taken place Miss S had other repairs on the car for things that had gone wrong – most notably the speaker issue.

So according to the provisions of the CRA Miss S was able to exercise her right to reject the goods when she did – and she was unfairly prevented from doing so.

Even if I were to accept that VF was entitled to more attempts to repair (which I do not accept) the CRA also refers to repairs being carried out in a reasonable time and without significant inconvenience to the consumer. Although Miss S was given a courtesy car by the dealership while the car was in for job '3' (set out above), I consider that overall (and noting the lengthy lead up to this repair and other visits to the dealer for apparently the same issue) Miss S had already experienced more inconvenience than was acceptable. I don't think it was fair to have her wait several months more for a repair at this stage.

So I consider Miss S had a right to reject and was denied this unfairly. I have considered if it is still reasonable for Miss S to be able to exercise this right. I note that she has continued to drive the car – but I don't think this shows she has accepted the repairs as a fair remedy. She has said that:

- A. she has to use the car due to the nature of her work;*
- B. there are still ongoing issues with power management the clutch and gearbox; and*
- C. the last attempt at repair was done poorly and has led to further problems such as condensation in the headlamps.*

I note the ongoing issues referred to in 'B' appear to be supported by an expert report which Miss S has recently acquired. Furthermore, I note that similar problems with the clutch and gearbox were reported by Miss S before job '1' (referred to above) was carried out. This strongly indicates that the problems Miss S had which the dealer attempted to fix by eventually replacing the turbo, are in fact still ongoing and part of a wider set of issues that are to date unresolved.

All things considered and noting my points A to C above I think it fair and reasonable that Miss S is now able to reject the car. If she agrees to this then VF will have to collect it at no further cost to her and end the finance agreement with no further liability for Miss S for future rentals.

Miss S has asked for a full refund of the payments she has made. However, I don't think that is fair. I note that while her use of the car has been impaired (which I will come on to shortly) she has been able to use it for in excess of 43,000 miles to date – which is above average mileage for the time she has had it. I also note that while the car was in the garage in respect of the lengthy turbo replacement Miss S was given a courtesy car to use. So any

redress needs to reflect this and the provisions of the CRA support a deduction for fair use from any refund due.

However, a fair refund also needs to reflect the fact that Miss S has made contributions to a car she was going to eventually own (albeit she still has about 2 years remaining on the deal). And the fact that she has had continuous problems with the car which has impaired the benefit she has received for her monthly rental payments.

There is no scientific way of determining what a fair refund is here. But in doing so I have considered that although Miss S describes problems with the car from an even earlier stage she clearly had the more significant issues with breakdowns and loss of power from July 2021. This is all supported by credible testimony, breakdown records and correspondence with the dealer over a significant period. These issues appear to have continued since to some degree (now more in respect of the clutch and gearbox).

While no one reasonably expects completely trouble free driving (and occasional issues that need the attention of a garage) I think from reading Miss S's testimony the impact on the benefit she got from the car is significant from July 2021 onwards – and what most would deem unreasonable in the circumstances. She was using the product and paying full price for it each month – but it wasn't the standard of product she could have reasonably expected due to juddering, breaking down, overheating and clutch/gear related issues. So while she was able to drive it I also think it fair that she is awarded a refund of 30% of each monthly payment from July 2021 inclusive – with additional interest on each refund at 8% simple from the date of each payment to the date of settlement. This fairly reflects her impaired usage of the car.

I also think that Miss S should fairly get back the value of her deposit and part exchange car which I understand are £550 and £1,300 respectively. She should also get back the value of the expert report she paid for recently as long as she produces proof of this cost to VF. Interest should fairly be added to these amounts from date of payment to settlement.

I also note that Miss S has pointed to the impact of the ongoing issues with the quality of the goods on her. I can see VF was not as involved as it could have been in assisting (at some stages indicating it wasn't responsible for the quality of goods) - and things went on for too long when they really should have been sorted. Although I note Miss S had a representative helping her liaise with the dealership I think the impact on her, from what I have read was still notable (including causing distress and anxiety). In the circumstances I think an additional award for distress and inconvenience of £200 (as put forward by our investigator) is still appropriate.

My provisional decision

I uphold this complaint and direct Vauxhall Finance plc to:

- end the conditional sale agreement with no further liability to Miss S in respect of future monthly rentals;*
- collect the car at no further cost to Miss S;*
- refund Miss S 30% of each monthly rental payment she has made from July 2021 (inclusive);*
- refund Miss S her upfront contribution to the agreement being £1,850 in total;*

- *refund Miss S for the expert report dated 3/7/23 as long as proof of payment for this is provided;*
- *ensure that Miss S has no adverse information remaining on her credit file as a result of this agreement ending early;*
- *pay yearly 8% simple interest on each refund above from the date of payment to the date of settlement; and*
- *pay Miss S £200 compensation for distress and inconvenience.*

Miss S agreed with my provisional decision and pointed out that she has recently paid for a service of the car which she won't fully benefit from if she returns it. She also mentioned having to pay for an upcoming rental imminently and that the car is due an MOT in a few weeks.

VF has not responded by the deadline I set.

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 don't consider that either party has given me cause to depart from my provisional findings (as copied above). I still consider the proposals to be fair and reasonable in the circumstances and they form part of my final decision.

Miss S has mentioned the recent cost of a service. It appears this was done on 28 July 2023 and cost £215. I don't think it was unreasonable that Miss S had a service carried out in order to keep maintaining the car. And I don't think she is going to have much benefit from this going forward if she accepts my decision so she should fairly get the cost of this back. I also note Miss S has provided us with proof of the cost of the expert report – which I mentioned in my provisional decision should fairly be refunded.

I note Miss S has pointed out that she is about to pay for another monthly instalment– and she appears to be indicating that she won't get more than 30% of this back but will be handing back the car before the end of the period the payment relates to. However, for clarity my provisional decision wasn't intended to make Miss S liable to pay for future use of the car that she won't have. So, if by the time the car is taken back VF determines that Miss S has paid up for future liability it should provide her a refund of that amount plus interest in accordance with my direction below. For that pro-rated month VF will only fairly be required to refund Miss S 30% of the amount it retains.

Furthermore, Miss S has mentioned the cost of an MOT which she says is due in a few weeks. If she accepts my decision VF should arrange to collect the car before the MOT is due to avoid Miss S being put to the inconvenience of arranging this. In any event if she accepts my decision she shouldn't be liable for its cost – it will be VF.

Putting things right

VF should put things right in accordance with the direction below. I consider this fair and reasonable for the reasons I have stated above (including my provisional findings as copied).

My final decision

I uphold this complaint and direct Vauxhall Finance plc to:

- end the conditional sale agreement with no further liability to Miss S in respect of future monthly rentals;
- collect the car (as soon as possible) at no further cost to Miss S;
- refund Miss S 30% of each monthly rental payment she has made from July 2021 (inclusive) - except for her last monthly payment where it will;
- work out in respect of that final payment if Miss S has paid for any period of use post collection of the car and if so provide her with a refund of that amount plus 30% of the remaining amount of the monthly payment it retains;
- refund Miss S her upfront contribution to the agreement being £1,850 in total;
- refund Miss S for the expert report dated 3/7/23 and the service dated 28/07/23 costing £288 and £215 respectively;
- ensure that Miss S has no adverse information remaining on her credit file as a result of this agreement ending early;
- pay yearly 8% simple interest on each refund above from the date of payment to the date of settlement; and
- pay Miss S £200 compensation for distress and inconvenience.

If VF considers it is necessary to deduct tax from the interest element of the award it should provide Miss S with a certificate of tax deduction so she may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 11 September 2023.

Mark Lancod
Ombudsman