

The complaint

Mr N is unhappy with the quality of a car that was supplied to him under a conditional sale agreement with PSA Finance UK Ltd ("PSA").

What happened

In October 2018 Mr N took out a conditional sale agreement with PSA for a used car. This car was just over two years old and had travelled approximately 10,907 miles. It had a cash price of £11,088. Under the terms of the finance agreement, Mr N was to pay £250 upfront, followed by 60 monthly payments of £246.58.

Mr N says he began having problems with the car at the beginning of January 2023, when he noticed spots of oil on his driveway. He says he took it to a local garage, and the oil filter was replaced. Mr N says the low oil light came on later that month. He says he took it to the garage again, and an oil pressure sensor was replaced.

Mr N says within a couple of days the oil light came on again, so he stopped driving the car and booked it into the garage on 6 February 2023. He says after carrying out diagnostics the garage told him there were shards of metal in the oil. He says he was advised further stripping down would be needed to identify the exact fault, but it would probably need a new engine, which would cost around £6,000.

Mr N complained to PSA. On 10 March 2023 they issued their final response, saying they hadn't upheld the complaint due to the length of time since they'd supplied the car to Mr N. They said they hadn't seen any evidence to show this fault was inherent, or that it had occurred within the first six months.

Unhappy with this response, Mr N brought his complaint to us. He told us that he'd carried on paying his monthly instalments to PSA, even though he hadn't been able to use the car since the problem with the engine came to light. He says he got another car in April 2023 and has since been paying to tax and insure both vehicles.

After looking into what had happened, our investigator said he didn't think the car had been of satisfactory quality when it was supplied to Mr N, because it wasn't sufficiently durable. He said PSA should reimburse the £361.79 Mr N had paid for the fault to be diagnosed, and arrange for the car to be repaired.

The investigator said PSA should refund the monthly payments Mr N had made since 6 February 2023, because he hadn't been able to use the car since then. He thought they should also pay Mr N £150 compensation for the distress and inconvenience he'd been caused, and remove any adverse information that had been recorded on Mr N's credit file about this agreement.

PSA responded, pointing out that the agreement was due to come to an end very soon. They said it wouldn't be advantageous or economical to repair the car due to the timescales involved in sourcing parts, booking the repair, and the labour costs involved. Instead, they

offered to arrange to collect the car and end the agreement early. They agreed with the rest of the investigator's recommendations to resolve the complaint.

Mr N didn't accept PSA's offer. He said he'd almost finished paying off the finance for the car, which meant he'd soon own it outright. But PSA said they weren't prepared to offer him anything more. They said the car has minimal value without a working engine at 50,060 miles, and they felt they shouldn't be offering betterment.

PSA asked for the case to be reviewed by an ombudsman, so it was passed to me to make a final decision.

My provisional decision

I issued a provision decision saying:

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

As the agreement Mr N signed was a conditional sale, this service can consider his complaint about it. Under this type of agreement PSA is the supplier of the car, so they're responsible for a complaint about its quality.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says under a contract to supply goods, there's an implied term that the quality of those goods is satisfactory. It goes on to explain that durability can be an aspect of the quality of goods.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. In a case involving a car, it seems likely that a court would take into account things like its age, mileage, and history.

I bear in mind that the car was just over two years old and had covered around 10,907 miles when it was supplied to Mr N. I don't think a reasonable person would have the same standards for this car as they would a newer one with less mileage. But I think they'd still expect to be able to drive it for a reasonable amount of time without major issues.

It isn't disputed that there's now a significant fault with the car, and that repairs are likely to be very expensive. My starting point is to consider whether this problem is most likely to have been due to an inherent fault that would mean the car hadn't been of satisfactory quality when it was supplied to Mr N.

Mr N has shown us a copy of the garage's invoice for diagnostic work dated 7 February 2023. It records the car's mileage to have been 50,060 at that time. It says:

"several large fragments of metal in oil – unsure where metal fragments have come from but suspect either camshaft or big end/main bearings – would require engine removal and strip to confirm failing but will probably require replacement engine to rectify."

Mr N has provided a copy of the service history booklet, together with details of other maintenance he's had carried out whilst the car's been in his possession. I'm satisfied that it's been serviced in accordance with the manufacturer's recommendations throughout its life. If anything, this car has been serviced more often than the recommended service interval. Most of this servicing was carried out by manufacturer's garages.

I wouldn't expect an engine that's been so well maintained to need to be replaced after only 50,000 miles. I think Mr N was reasonably entitled to expect the car to last for longer than that without suffering such a catastrophic failure.

On balance, I think it most likely that there was an inherent fault with the engine, because I don't consider it to have been sufficiently durable. For that reason, I find it most likely that the car wasn't of satisfactory quality when it was supplied to Mr N.

Putting things right

The CRA sets out remedies for consumers whose right to receive goods of satisfactory quality hasn't been met. This includes the right to repair, or rejection of the goods. The CRA says that, if asked to carry out a repair, the business must do so within a reasonable time and without significant inconvenience to the consumer. But it makes it clear that the consumer can't demand a repair if this remedy is

- (a) impossible, or*
- (b) disproportionate, because the cost this would impose on the business would be unreasonable.*

Although I haven't seen a quote for replacing the engine, there doesn't seem to be any dispute that the cost is likely to be in the region of £6,000. I think installing a new engine is likely to be a disproportionate remedy in this case, bearing in mind the age and market value of the car. And I think it's highly unlikely PSA would be able to source a suitable reconditioned engine of equivalent age and condition within a reasonable timeframe.

Having thought about all of this, I don't think it would be fair for me to direct PSA to arrange for the car to be repaired. They've offered to take it back unrepaired, end the agreement early, refund Mr N's monthly instalments for the period of time he was unable to use it, reimburse the expenses he's incurred and pay him a goodwill amount. I've considered this.

But I don't think that would be a fair outcome here. After paying the final instalment due in October 2023, Mr N would own the car outright. As PSA have pointed out, it now has minimal value without a working engine at 50,060 miles. If Mr N had been supplied with a car of satisfactory quality, I think he'd be reasonably entitled to expect it to be worth the market value for that type of car with a working engine.

The CRA makes it clear Mr N can seek other remedies. I've considered the fairest way to put him back - as closely as possible - into the position he would've been in if he'd been supplied with a car that was of satisfactory quality.

I've looked at four industry guides to assess what the car was likely to have been worth when the agreement came to an end if the engine hadn't failed. I'm satisfied that, in good condition with 50,060 miles on the clock, the retail market value would've been around £7,900. Mr N has provided three estimates of the price he'd be able to get for the car without having it repaired. Taking the average of those three estimates, I think it's likely to be worth around £900 in its current condition.

In broad terms, I consider Mr N to have incurred a loss of around £7,000 as a result of being supplied with a car that wasn't sufficiently durable. So, to put things right, I think PSA should pay him that amount.

In reaching this decision, I take into account the fact that the car hasn't been used since the engine failed. If things hadn't gone wrong, I'd expect it to have covered more miles by the time the agreement came to an end. I think that reduction in market value would've been in

the region of £300 - £400. I consider the benefit to Mr N as a result of the car's lower mileage to be offset by:

- i. the stress and inconvenience caused by having no car to use, followed by the financial strain of having to buy another one. I'd consider an appropriate level of compensation for that to be £250;*
- and*
- ii. the additional expense caused by having to tax and insure a second car for the last six months of the agreement period.*

To be clear, having awarded Mr N the loss in value of the car PSA supplied to him, I make no direction for any of his monthly instalments to be returned. But Mr N has provided evidence showing he paid £361.79 to have the engine problem diagnosed, so I think PSA should reimburse him for that.

For the reasons I've explained, I intend to uphold this complaint and direct PSA Finance UK Ltd to:

- Pay Mr N £7,000 for the loss he's incurred as a result of being supplied with a car that wasn't of satisfactory quality.*
- Reimburse Mr N the £361.79 he paid on 7 February 2023 for diagnostic work, plus 8% simple interest calculated from the date of payment until the date of settlement.*
- Remove any adverse information that's been recorded on Mr N's credit file about this agreement.*

If PSA consider tax should be deducted from the interest element of the award, they should tell Mr N how much they've taken off. They should also give him a tax deduction certificate if he asks for one.

I invited both parties to send me any further information or comments they'd like me to consider.

Mr N said he was happy with my provisional findings and had nothing further to add.

PSA agreed to reimburse Mr N the £361.79 expense he'd incurred, and to remove any adverse information about the agreement from his credit file. But they asked me to reconsider the car's average value in good running order and allowing for fair usage.

PSA provided a screenshot showing a valuation of £5,150 for a vehicle in average condition in October 2023. They said they don't believe they should be offering betterment by paying the retail price that would apply if the car was in good running order, pristine, and on a retailer's forecourt.

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'm grateful for both parties taking the time to respond to my provisional decision. But after carefully reviewing the information and comments provided, my decision remains the same.

PSA have provided a screenshot showing a vehicle valuation of £5,150 in October 2023. As this doesn't show what vehicle details were entered to obtain this valuation, I don't find it persuasive.

I think PSA's main point here is that I should consider the car's trade value, instead of its retail value. I disagree. When the agreement came to an end in October 2023, I think Mr N was reasonably entitled to expect to own a car of this make and specification with a working engine. Whereas now, to get himself into that position, he'd have to pay the retail price of an equivalent car.

As I explained in my provisional decision, I've looked at four industry guides to assess what the car was likely to have been worth in October 2023 if the engine hadn't failed. I'm satisfied that, in good condition with 50,060 miles on the clock, the retail market value would've been around £7,900.

I've seen no new evidence or information that persuades me this valuation is unfair. I've already set out my thoughts on the fair use Mr N would've had of this car if the engine hadn't failed, so I won't repeat that here.

My final decision

For the reasons I've explained, I uphold this complaint and direct PSA Finance UK Ltd to:

- Pay Mr N £7,000 for the loss he's incurred as a result of being supplied with a car that wasn't of satisfactory quality.
- Reimburse Mr N the £361.79 he paid on 7 February 2023 for diagnostic work, plus 8% simple interest calculated from the date of payment until the date of settlement.
- Remove any adverse information that's been recorded on Mr N's credit file about this agreement.

If PSA consider tax should be deducted from the interest element of the award, they should tell Mr N how much they've taken off. They should also give him a tax deduction certificate if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 27 December 2023.

Corinne Brown
Ombudsman