

## **The complaint**

Mr X complains about the quality of a vehicle he acquired from Vauxhall Finance plc ("Vauxhall")

## **What happened**

Mr X acquired a vehicle through a conditional sale agreement with Vauxhall in October 2021. It was around one year old and had travelled around 23,000 miles when he acquired it. He's told us that almost immediately, he noticed a strong smell of diesel/fumes within the vehicle, but it doesn't appear this was reported at the time to Vauxhall.

Mr X began to suffer problems with the electrics and the sensors shortly afterwards. He's provided notifications from his breakdown provider from December 2021 and twice in February 2022 and told us that he broke down because the Ad Blue sensor came on to say the vehicle had run out of Ad Blue, when the tank was full. The first occasion in February 2022 confirmed in a report that the Ad Blue was topped up, but the engine management warning light (EML) had still come on.

Mr X has told us that the vehicle was returned to the supplying dealership at this point and repairs were carried out. An invoice has been provided for this time period by the dealership, but it doesn't specify what if any work was carried out.

In May 2022 Mr X has told us he suffered further problems. He said the smell of fumes had continued and he was still having issues with the EML light coming on and the vehicle losing power. A Breakdown service report at this time said the vehicle had been booked into the dealership.

Paperwork provided by the dealership dated around this time says there was an EML on the dashboard which they investigated, and they carried out a DPF regeneration. A few days later there is another invoice for carrying out an annual service, and then three days after that, there is an invoice saying Mr X was still having the same issues, the vehicle was loud from the exhaust, and a report provided said that the air intake system had been checked and they had found an intake pipe in the system was split.

Mr X has told us that he had to take the vehicle at this point as he needed it for work, but that only a temporary repair had been done and some parts had been ordered to fully repair the problem. He says he tried to use the vehicle immediately, but suffered the same problems, so he took the vehicle back to the dealership in June 2022.

It was returned to him in July 2022, and he was told everything had been repaired. But he says that the smell of fumes remained, and a week later on 2 August 2022 the EML light came on again warning him about the level of Ad Blue, and he had to call his breakdown recovery service to help. On 2 August he returned the vehicle to the dealership, and he's told us didn't collect it again.

After this, I can see an email from Mr X to Vauxhall from August 2022 complaining about the problems, but it would appear this was sent to the manufacturer not the finance company. In

the documents the finance company have supplied, I can also see an email to the supplying dealership on 29 September October 2022 from Mr X, saying that he intended to stop paying for the vehicle and start legal action.

The dealership replied a few days later advising against this, and in this email chain the dealership have confirmed internally that a senior technician had investigated the vehicle and diagnosed a “missed exhaust gasket leak” which they had now repaired, but they needed to clean the cab and air conditioning systems before they could arrange to return the vehicle, as they needed to remove the smell of fumes.

Vauxhall sent their final response letter (FRL) in December 2022, saying they had received a complaint from Mr X on 23 November 2022. They didn’t uphold his complaint, and the timeline they provided in the FRL which they said had come from the dealership showed an issue with the Ad Blue sensor in February 2022, a DPF regeneration in May 2022 along with a service carried out, an issue in September 2022 whereby they had replaced an air intake pipe and a particulate filter, and an investigation into exhaust smells on 19 October 2022.

They explained that as it was over six months since the vehicle was supplied, and the vehicle had been repaired as authorised by Mr X, that they didn’t uphold the complaint and didn’t feel they needed to do anything further.

Mr X brought his complaint to our service in March 2023. An investigator here investigated it and upheld his complaint in August 2023. They recommended he should be able to reject the vehicle and should be given compensation. Vauxhall initially missed this view and then asked for more time to respond to this and escalate it further within their organisation.

They eventually responded on 7 November 2023 saying they didn’t agree with the view issued by our service. They said that from the job cards, they could see that the majority of issues Mr X suffered were due to a lack of regeneration carried out and highlighted that they believed the exhaust smells had been resolved on 19 October 2022 when a new clamp was fitted. They said they couldn’t understand how a customer wouldn’t have brought the vehicle back immediately if there was a strong smell of diesel. They asked for an Ombudsman 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 done so, I’ve reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven’t commented on any specific point, it’s because I don’t believe it’s affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I’ve reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I’ve had regard to the relevant law and regulations; any regulator’s rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr X was supplied with a vehicle under a conditional sale agreement. This is a regulated consumer credit agreement which means we’re able to investigate complaints about it.

The Consumer Rights Act 2015 (‘CRA’) is relevant to this complaint. It says, amongst other things, that the vehicle should’ve been of a satisfactory quality when supplied. And if it wasn’t, as the supplier of goods, Vauxhall are responsible. What’s satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price,

description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the vehicle must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the vehicle was supplied, unless Vauxhall can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr X to show it was present when the vehicle was supplied.

So, if I thought the vehicle was faulty when Mr X took possession of it, or that the vehicle wasn't sufficiently durable, and this made the vehicle not of a satisfactory quality, it'd be fair and reasonable to ask Vauxhall to put this right.

As Mr X hasn't asked to reject the vehicle until August 2022, I'm satisfied that Vauxhall had the right to try to repair it before this. But once they have had one or more opportunities to repair the vehicle, if the repairs have not succeeded in fixing the problems, I'm satisfied that Mr X would then have the right to reject the vehicle. This is in line with the CRA and how things can be resolved when there are issues with the quality of a supplied vehicle.

The timeline I have described above is put together by combining what Mr X has told us in his testimony, alongside the physical evidence provided by Vauxhall, in the form of notes, emails and invoices from the supplying dealership. Fundamentally, this case has become very confused because Vauxhall seem to have provided two different timelines here.

Their comments in asking for a final decision and in their FRL suggest one set of events occurred, and these seem to have been provided to Vauxhall by the supplying dealership when sending them information to answer the complaint. But when I look at the invoices and emails and notes they have provided as evidence to our service, largely from the supplying dealership, another picture emerges, and one which is more persuasive, as it corroborates Mr X's testimony.

It's unclear in this complaint exactly when and how Mr X complained to Vauxhall Finance plc. Most of his concerns were being raised with their broker, the selling dealership involved. From the evidence provided, I can first see the dealership suggesting Mr X should speak to the finance company when he tells them in an email on 29 September 2022 that he intends to stop paying the finance and take legal action. And Vauxhall have said they received a complaint from him in November 2022.

In the email chain provided, it's clear from the dealership email dated 5 October 2022 that they have the vehicle, and only wanted to return it once they had removed the smell of fumes. This email also confirms that the dealership has at that time diagnosed a "missed exhaust gasket leak". The word "missed" suggests they hadn't diagnosed this previously.

I've looked into the symptoms of an exhaust gasket leak, and one of them is a loud noise coming from the engine. Another is the smell of fumes inside the vehicle. Another is reduced power from the engine. Two of these symptoms are described on the invoices provided by the dealership for Mr X's visits to them in May 2022, and the third, the smell of fumes, is described in his testimony. This is many months before Vauxhall have said the problem occurred and was fixed.

Alongside this, Mr X has provided clear evidence that he has repeatedly broken down through 2022 and had taken the vehicle back to the dealership at least twice, because of problems with the Ad Blue sensor triggering the engine management light. On 11 August 2022, after he has left the vehicle at the dealership, there is an invoice confirming that they

carried out a repair because:

*“EML (engine management light) on a blue injector require replacing”*

Mr X had taken the vehicle to the dealership with the problem to do with the ad blue sensor not working correctly on at least two occasions before this, without the issue ever apparently being resolved. That can be evidenced via his testimony, the breakdown service reports, and the invoices provided from the dealership when they've seen the vehicle.

Mr X has told us that he's taken the vehicle back to the dealership in February 2022, on more than one occasion in May 2022, and in June 2022, before returning it to them in August 2022 and asking to reject it.

Based on the evidence provided, I'm persuaded that it is fair for him to be able to reject the vehicle. Whilst there is no evidence corroborating his testimony that the smell of fumes was present from the beginning of the agreement in 2021, I'm satisfied that the symptoms described by the dealership in May 2022 when examining the vehicle are consistent with an exhaust gasket leak. This would likely also have caused the smell of fumes Mr X has described on several occasions.

The dealership also identified a different issue with the air intake system in May 2022, when they diagnosed and fixed a split pipe. Alongside this, I am persuaded that Mr X suffered multiple issues with an engine management light coming on and the vehicle losing power due to the ad blue sensor wrongly coming on. His breakdown service suggested this in their reports, and then the dealership have finally identified the fault in August 2022 after he's left the vehicle with them, and they've replaced a faulty sensor.

Mr X gave the dealership several chances to investigate and repair these issues, but that doesn't seem to have happened until he's left the vehicle with them and told us he indicated he wanted to reject it. As such, I think Vauxhall's broker have had several chances to repair the vehicle, and failed to do so, which would give Mr X the right to reject the vehicle.

Vauxhall have said repairs were carried out in September and October 2022, apparently unaware that Mr X had left the vehicle with the dealership in early August 2022 and not collected it. Whilst I accept this isn't ideal, and it would have been better for Mr X to have contacted the finance company directly before this point, the evidence provided suggests that the vehicle was indeed left off road at the dealership. The invoice produced by the dealership dated 2 August 2022 says the mileage was 42,860, and on checking the MOT online system, I can see the mileage recorded as 42,974 in June 2023, suggesting the vehicle was barely used between these dates.

I'm persuaded that after many months of problems with the vehicle and having returned it several times to the dealership to be fixed, Mr X was within his rights to ask to reject it. I've seen no evidence suggesting he authorised the dealership to carry out further repairs when he left it with them in August 2022. Indeed, it was October 2022 when the email chain suggests that the dealership had identified the fault causing the smell of fumes, and still needed to get the smell of fumes out of the vehicle before they could return it. I'm not persuaded they would have taken two months to identify this issue if they believed Mr X was waiting to collect the vehicle after it had been repaired.

The vehicle was a year old when it was supplied, and two years old when Mr X has evidenced the problems he was having. I don't think a reasonable person would expect a vehicle of this age and mileage to be suffering the types of problems which were happening here, and which didn't seem able to be identified and repaired. Vauxhall have suggested that the issues might have been wear and tear, but I'm not persuaded by this argument for a

vehicle of this age and mileage. I'm persuaded that the quality of the vehicle was not satisfactory.

Mr X has provided evidence of two occasions when he had to hire a vehicle to allow him to remain mobile and do his job while his vehicle was in the garage off the road, and has asked for these to be refunded. These were from February and June/July 2022, well before he has left the vehicle with the dealership and stopped paying for it. I think it would be fair for Vauxhall to refund him his costs for these invoices as I've seen nothing to contradict his testimony that no courtesy vehicle was available for him. By June 2022, he had given the dealership several opportunities to repair the vehicle, so whilst I appreciate that the invoice for 22 days of vehicle hire at that time is quite high, I'm persuaded that it's fair in these circumstances that he needed to be able to remain mobile to keep his business trading. The business was unable to repair his vehicle adequately, so he needed to take this measure to remain trading.

Mr X also claimed other costs for loss of business and damages which I won't be considering. As was explained to him when our investigator gave their view on the case, much of this claim wasn't evidenced suitably, and his requests for compensation weren't in line with how our service operates. His request for compensation for distress and inconvenience of £10,000 is not in line with how our service assesses this type of compensation, as can be seen on our website. I agree that the payment recommended by the investigator here of £300 was reasonable and don't intend to depart from that.

He also asked for over £17,000 to compensate for jobs he was unable to complete due to the faulty vehicle, but this isn't how our service would assess the impact of time without a fully functioning vehicle. He also hasn't supplied evidence that persuades me these were jobs he had, what we've had seems to suggest they were just requests for quotes, so I am not awarding compensation for these.

Mr X also asked for a refund of his monthly payments from November 2021 to September 2022, but I won't be awarding most of this. I am satisfied judging from the mileage he covered before leaving the vehicle with the supplying dealership in August 2022 that it was working during this period, and I am satisfied that the business is entitled to keep his monthly payments for this period until August 2022 to recognise the fair usage of the vehicle which he had. Once he left the vehicle at the dealership on 2 August 2022, it would be fair for his monthly payments from this time to be refunded, as he was rejecting the vehicle.

I am satisfied that the other redress recommended by the Investigator was fair and detail below what Vauxhall should do to put things right.

### **Putting things right**

For the reason already given above, this agreement should be ended on the basis of Mr X rejecting the vehicle. Vauxhall should do the following to put things right for Mr X:

- end the agreement with nothing further to pay
- collect the vehicle if this has not been done already at no further cost to Mr X
- Refund Mr X's deposit/part exchange contribution he paid
- Refund any rentals paid by Mr X since 2 August 2022 to the date of settlement as the vehicle was not reasonably used from this point
- Refund Mr X for the hire costs for the two occasions described above when he had to

hire a replacement vehicle

- Pay 8% simple yearly interest on all refunded amounts above from the date of payment to the date of settlement
- Pay a further amount of £300 to recognise the distress and inconvenience caused due to the faulty vehicle
- Remove any adverse information from Mr X's credit file in relation to the agreement

### **My final decision**

I am upholding this complaint and direct Vauxhall Finance plc to settle the complaint as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr X to accept or reject my decision before 24 April 2024.

Paul Cronin  
**Ombudsman**