

The complaint

Mr B is unhappy that a car supplied to him under a conditional sale agreement with Vauxhall Finance Plc was of an unsatisfactory quality.

What happened

In August 2020, Mr B was supplied with a new car through a conditional sale agreement with Vauxhall. He paid a deposit of £12,500 and the agreement was for £28,114.86 over 49 months; with 48 monthly payments of £337.90 and a final payment of £16,266.

In April 2021 Mr B had problems with the SOS function on the car – the Police arrived at his property on three separate occasions as the emergency assistance was called, even though the car hadn't been driven for a few days. The supplying dealership replaced the SOS switch, which was corroded, and this fixed the issue. At the time of repair, the car had travelled 796 miles.

In May 2023 the car was recalled for issues with the rear drive shaft washer and corrosion to the battery support. The dealership also investigated an issue with a chiming noise and noted that the car wasn't detecting the keys. The dealership needed a body control unit, which wasn't available until late July, and Mr B was supplied with a courtesy car during this period. However, on 31 August 2023, the dealership had to carry out further repairs as the chiming noise was continuing. At the time of this repair the car had done 13,967 miles.

Mr B complained to Vauxhall, asking to reject the car. However, Vauxhall said the faults had occurred more than six months after the car was supplied to Mr B, and he hadn't provided any evidence the faults were present or developing when the car supplied. So, they didn't agree he had the right to reject.

Mr B wasn't happy with Vauxhall's response, and he brought his complaint to the Financial Ombudsman Service for investigation. While the complaint was being investigated, Mr B also provided evidence of the car not being able to be driven in electric mode.

Our investigator said there were ongoing faults with the car and, despite the repair attempts by the dealership, these faults remain. Whilst the investigator acknowledged Vauxhall's concerns about when the faults had happened, given this was a brand-new car and Mr B has done less than 14,000 miles in the first three years, she said the car wasn't sufficiently durable when supplied. As repair attempts had taken place, the investigator also said Mr B should be allowed to reject the car.

So, the investigator recommended that Vauxhall end the agreement and collect the car, refund the deposit Mr B paid, refund 10% of the payments Mr B paid while he had a courtesy car, as this was not suitable for him, and pay him an additional £150 for the distress and inconvenience he'd been caused.

Mr B agreed with the investigator's opinion. However, he said that he paid a £12,500 deposit, not the £12,000 referred to by the investigator, and he provided a copy of the vehicle order form to show this. He also explained he was still having ongoing issues with

the car and provided evidence that the electric mode was still not working all the time, as well as a video showing the car still had the issue where it intermittently didn't recognise the keys. Finally, Mr B provided evidence the steering rack now needs replacing at a cost of around £2,800 and Vauxhall were prepared to pay £1,000 of this.

Vauxhall didn't respond to the investigator's opinion, so this matter has been passed to me 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 B was supplied with a car 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') says, amongst other things, that the car 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 car 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 car 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 B to show it was present when the car was supplied.

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

I've seen evidence of the faults with the car, and that these faults are ongoing despite a number of attempts by the dealership to fix these. I've noted Vauxhall's comments in their complaint response letter about the faults arising after six months, and that the CRA implied it's for Mr B to prove they were present or developing at the point of sale. While this is the case, I also need to consider whether the car was sufficiently durable. And in this case I don't think it was.

I say this because any reasonable person would expect a brand-new car to be free of defects for a considerable period of time. I don't think that the ongoing electrical issues Mr B is experiencing could be reasonably expected to occur within the first 14,000 miles, especially when the car is a hybrid and one of these faults is the car not working in electric

mode. As such, I'm satisfied the car wasn't of a satisfactory quality when it was supplied to Mr B, given this lack of durability.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Vauxhall – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

Given this I'm also satisfied that Mr B should now be given the right to reject the car.

Putting things right

Mr B has been able to use the car while it was in his possession. And, while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage. However, and while I wouldn't necessarily expect a courtesy car to be of the same make, model, age, and specification, I would expect it to be a suitable replacement, especially when the courtesy car would be provided for an extended period of time, as was the case here.

Vauxhall had supplied Mr B with a full-sized SUV, which Mr B says he needed for personal and family use, especially the storage capacity. However, the courtesy car provided was a small hatchback, which provided substantially less space and storage. So, I'm satisfied that Mr B's use of the courtesy car has been impaired, and I think it's fair that Vauxhall refund some of the payments Mr B made. Taking everything into consideration, I think 10% of the payments made while Mr B had the courtesy car fairly reflects the impaired use caused by the car not being of a satisfactory quality.

It's also clear that Mr B has been inconvenienced by the ongoing issues with the car. So, I think Vauxhall should compensate him for this. The investigator had recommended Vauxhall pay him £150, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Vauxhall should (if they haven't already):

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr B;
- remove any adverse entries relating to this agreement from Mr B's credit file;
- refund the deposit Mr B paid (if any part of this deposit is made up of funds paid through a dealer contribution, Vauxhall is entitled to retain that proportion of the deposit);
- refund 10% of the payments Mr B made while he was in possession of the courtesy car;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr B made the payment to the date of the refund[†]; and
- pay Mr B an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Vauxhall to take off tax from this interest, Vauxhall must give Mr B a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr B's complaint about Vauxhall Finance Plc. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 May 2024.

Andrew Burford
Ombudsman