

## The complaint

Mr P complains about the quality of a new car he acquired with finance provided by Vauxhall Finance plc (VF).

## What happened

Mr P took out a conditional sale agreement (CSA) with VF in March 2020 to fund the purchase of a new car that cost over £16,000. He paid a deposit of £310 and agreed to repay over £20,000 (including interest) over 5 years at around £300 a month with a final “balloon” payment of over £6,000.

Over the next few years he had several issues with the vehicle. In July 2020 (at just under 1,000 miles) it failed to start and Mr P called out a breakdown service to get it going. Then, in 2021 (at around 4,500 miles) the car lost power and had to be towed to a third party garage (TPG) where a faulty valve in the petrol tank was identified and replaced under the manufacturer’s warranty. In August 2022, the car lost power again, a fault with the electro valve was found and it was off the road for three weeks for repairs. The same error message “engine power is reduced” appeared not long after, due to an issue with the vacuum pump, around 10,000 miles. The supplying dealer (that I’ll call L) replaced this part under warranty but the car was off the road for nearly five months – waiting for parts.

Mr P thought he shouldn’t have to wait so long and the courtesy car L provided wasn’t fit for purpose because it wasn’t the same size or standard as the car he was paying for under the CSA - it only had two doors and it also needed repairs. Mr P complained to VF and didn’t think it was liable because the relevant issues appeared more than six months after the car was supplied. VF offered to pay Mr P £300, as a goodwill gesture, but he didn’t think that was fair.

Mr P referred the matter to our service and one of our investigators considered the evidence. She accepted the car had some faults but she didn’t recommend the complaint should be upheld. In summary, she thought a fuel pump wouldn’t usually need replacing at around 4,000 miles in a one year old car and a vacuum pump should usually last much longer. She was satisfied however that Mr P accepted the repairs offered, which were successful, and VF’s goodwill offer of £300 was fair overall. She wasn’t persuaded that VF was liable for the electro valve failure in August 2022 - as the car had travelled over 10,000 miles in around two years at that stage and this part has lifespan of one to three years. She noted the electro pneumatic solenoid (EPS) also needed replacing in July 2023 which could be related to the earlier electro valve failure and she didn’t think VF could fairly be held liable for either.

The investigator didn’t think VF should have to do anything further but Mr P disagreed and asked for an ombudsman to consider the matter. In summary, he said:-

- the car was of unsatisfactory quality at the outset and VF had more than one chance to fix things so he’s entitled to fair redress;
- the investigator acknowledged the fuel tank pump failed prematurely and, whilst the electro valve may have a lifespan of one to three years, his car had only travelled about 10,000 miles - which isn’t a reasonable level of wear and tear - and, if this part

- is expected to wear so quickly, it would be a service item, which it isn't;
- he's unhappy that the investigator didn't comment on why it took so long to repair the car between 18 October 2022 and 3 February 2023 (or whether this was an acceptable timeframe);
- he acknowledges he was kept mobile at the time but considers the courtesy vehicle supplied was unfit for purpose and he should be entitled to a refund;
- the fault in June 2023 has the same diagnostic code as earlier issues and it's probably related to the vacuum pump defect - which the investigator accepted was a premature failure of that part;
- the car still has faults present which are probably connected to previous issues and evidence an unresolved issue in the fuel delivery system;
- he's been given no timescale for repairs and, whilst he was told the car was safe to drive in the meantime, he's worried this will cause further damage – which is especially concerning as the car's now out of warranty; and
- VF's customer service was poor – he had to chase many times for responses – and the £300 offered doesn't fairly reflect the distress and inconvenience caused.

The EPS was replaced in September 2023 at no cost to Mr P but he has since decided to hand the car back (under a process commonly referred to as voluntary termination). VF inspected the car on return and asked him to pay nearly £700 for damaged paintwork. Mr P thinks these charges are unfair and he considers car was mis-sold at the outset. He says the sale was pressured and he wasn't told about commission, among other things - which should also be considered by our service.

Having considered the available evidence, I was minded to uphold this complaint. So, I thought it was fair to give the parties the chance to see my provisional findings and make further submissions (if they wanted to) before I made my final decision. I issued a provisional decision on 22 January 2024. I've set out below (in italics) what I decided provisionally - and why – and this forms part of my final decision.

### **my provisional decision**

*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's 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 time.*

*Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Mr P has gone to some trouble to provide detailed submissions and I'm going to have to summarise things in my decision. The rules of our service allow me to do this but I want to assure both parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. I'm going to concentrate however on what I consider is key to reaching a fair and reasonable outcome overall.*

*Mr P brings this complaint about VF to our service because the car was supplied under a finance agreement. And, as the investigator explained, we are generally able to consider what happened (including what's said and done by the dealer) when a vehicle's acquired under finance in a complaint against the lender. It's not within my remit however to look into the standards of L's post sale customer service. And this service can only consider a*

*complaint if it's been raised already with the relevant financial business – to give it the chance to respond.*

*I can't see that Mr P has raised his additional concerns arising out of the finance agreement with VF previously and I'm unable to consider these issues - or the more recent damage charges - in this decision. It's for Mr P to decide if he wants to contact VF (and/or L - in its role as credit broker) about these additional issues (if he hasn't done so already). And, if he's unhappy with the response, he may be able to bring another complaint to our service.*

*VF supplied this car to Mr P under a CSA and it was obliged, under the Consumer Rights Act 2015 (CRA), to ensure (amongst other things) that the car was of satisfactory quality at the point of supply. The CRA says the quality of goods includes things like fitness for purpose, freedom from minor defects and durability.*

*The level of quality that's considered to be "satisfactory" will vary depending on circumstances. In the case of a vehicle it's generally reasonable to take the age, cost and mileage at the point of sale into account. The car Mr P got here was brand new and cost over £16,000. I think a reasonable person would expect the level of quality to be higher than a used vehicle and they'd experience a reasonable period of fault free driving.*

#### *What went wrong with the car ?*

*As far as I can see, the first issue arose when the car failed to start in July 2020, about four months after supply. I have no doubt that must have been disappointing in a new vehicle. I've read the report provided by the breakdown service which says this was due to a suspected "unsynchronised start up", fault codes were deleted and the car road tested fine. Based on the current evidence I can't fairly find this issue alone means the car was of unsatisfactory quality when Mr P got it – and, in fairness, I don't think he suggests that's the case.*

*It looks as if the next problem appeared about a year later - when a faulty valve in the petrol tank had to be replaced at around 4,500 miles. I don't have much evidence about what caused this exactly but, like the investigator, I'm satisfied the relevant part wouldn't usually be expected to fail so soon. I've seen nothing to suggest it's a wear and tear item - or the failure is likely to have been caused by something Mr P did or didn't do. On balance, I think it's more likely than not this component had an inherent defect which would have been present when the car was supplied. It looks as if the relevant repairs were covered by the manufacturer's warranty – at no additional cost to Mr P - and he seems to have accepted these at the time – which doesn't seem unreasonable in the circumstances.*

*Mr P was then able to drive the car for about a year and around another 6,000 miles before more issues appeared in July 2022 when an electro valve had to be replaced. The car was off the road for three weeks while L carried out repairs. Again I don't have much evidence about the exact cause of this issue - and I accept the car had travelled over 10,000 miles at this stage. However the component was replaced under the manufacturer's warranty which suggests it didn't fail due to any mis-use or lack of maintenance. It's unlikely the warranty would extend to wear and tear items and, on balance, I'm minded to find this component was also probably inherently faulty.*

*It looks as if Mr P was provided with a courtesy car while his vehicle was off the road for these repairs and he seems to have accepted the repairs at the time. Mr P told us he was happy with the car generally (aside from the various faults that appeared) and I think he'd probably have been content to keep it if this repair had resolved things.*

*Unfortunately the car went into limp mode again a few months later - in October 2022. Mr P was told the vacuum pump had to be replaced and L had problems getting the relevant parts*

so the repairs took nearly five months. I think it's fairly clear that Mr P had lost patience in early 2023 – in light of the previous problems and the delay in fixing the car - when he contacted VF several times to complain.

VF provided its final response in March 2023. It said “our liability with your vehicle ended in September 2020”. VF considered Mr P would need to prove that any faults present were there when he got the car, under the CRA, because the various issues occurred more than six months after supply.

I accept section 19(14) of the CRA says if goods do not “conform to the contract” (are of unsatisfactory quality - for our purposes here) within six months of supply then they're taken not to have conformed at the point of supply. The CRA goes on to say (under Section 19(15)) that the presumption under s19(14) doesn't apply however if it's established that goods did conform to the contract at the outset - or its “application is incompatible with the nature of the goods or with how they failed to conform with the contract”. So I think it's possible some faults that appear within six months may prove not to have been there at the outset and, on other occasions, issues that arise after six months can turn out to have been present at supply. And I've considered all of the available evidence here about the particular components that failed in order to decide what's most likely.

Based on the evidence I've seen so far, I don't think a reasonable person would expect a new car to have the various faults identified in this car at just over two years and 10,000 miles of travel. I realise Mr P thinks the faults found point to some ongoing issue with the fuel delivery system overall but I don't have enough evidence to reasonably find that's the case.

I've seen nothing however to suggest that these faults were caused by normal wear and tear - nor have I seen anything that indicates they're likely to have resulted from something Mr P didn't or didn't do. On the contrary, L and the manufacturer seem to have accepted the faults found up to this point were due to issues that fell within the manufacturer's warranty - which wouldn't usually cover normal wear and tear, any lack of maintenance or mis-use, for example. On balance, on the current evidence, I think it's more likely than not the faults in 2021 and 2022 were caused by inherent issues and I'm minded to find this car was not sufficiently durable - meaning it was of unsatisfactory quality when Mr P got it.

The CRA says a consumer has the final right to reject goods where they still don't conform to the contract after one repair or replacement. I'm satisfied, by October 2022, L already had more than one opportunity to repair this car so I don't think Mr P was obliged to accept further repairs. Even if I'm wrong about that, the CRA says repairs should be carried out in a reasonable time and without significant inconvenience to the consumer in this situation. I accept Mr P was supplied with a courtesy car in this instance but he's explained that was a smaller two door vehicle which was unsuitable for his family and curtailed his use of the vehicle. In addition I'm not persuaded it was reasonable to expect him to wait for nearly five months for his car to be repaired in all the circumstances.

I think Mr P made it reasonably clear that he was extremely unhappy – in correspondence he sent VF at the relevant time. I'm minded to find he should reasonably have been allowed to exercise his right to reject the vehicle at that stage and it's unfair he was denied this opportunity.

#### Putting things right

Mr P has already handed the car back and the CSA has ended so I've thought about what else (if anything) VF should do to put things right – and, as far as it's reasonably possible, put him back in the position he would have been in if he hadn't been supplied with this faulty car.

*In general, when a car is rejected and returned to the lender because it was not satisfactory quality, we'd expect the finance to end and be recorded as settled and the consumer to receive a full refund of their deposit. We'd also usually expect any reasonable out of pocket expenses to be reimbursed and award compensation for any lost or impaired use and, relevant distress and inconvenience.*

*In light of my provisional findings above, I find it fair that VF should ensure the agreement is reported as settled on Mr P's credit record and refund the deposit he paid (which, according to the finance agreement, was £310).*

*I think it's right Mr P should pay for the use he had of the car but I accept this was probably impaired at times. It looks as if he was generally kept mobile when his car was off the road for repairs but the replacement vehicle provided in October 2022 seems to have been much smaller than the car he acquired under the CSA. Mr P told us (and I find what he says to be credible) that he was unable to undertake some of his usual activities as a result, over the five months or so it took for these repairs. In addition I'm satisfied that being supplied with this faulty car probably caused him distress and inconvenience - he had to take the car back and forth to the dealer and the TPG several times for repairs, for example.*

*Working out what's fair in this situation isn't a scientific exercise. Taking everything I've seen so far into account, I think the £300 offered already by VF is fair and reasonable compensation for Mr P's distress and inconvenience. In terms of usage, I'm satisfied he was kept mobile, albeit not always in a reasonably comparable vehicle. And I'm minded to find it fair VF should refund 10% of any monthly payments made between 18 October 2022 and 3 February 2023 to reflect his impaired use. These dates were supplied by Mr P, who has been reasonably consistent in his recollection of events. I've seen nothing to contradict what he says but, if VF disagrees with this timeframe, it should let me know in response to this provisional decision - and provide relevant documentary evidence.*

*I have given some thought to what happened after Mr P got the car back in February 2023. I don't think there's any dispute that it needed more work in June 2023 – when the ESP had to be replaced. The car was out of the manufacturer's warranty at this stage and I don't have enough evidence to reasonably find this issue was caused by an inherent defect. The relevant repairs seem to have been covered by the manufacturer and L and carried out at no cost to Mr P in any event. And, on the current evidence, I'm unable to fairly find VF should make an additional refund in this respect.*

### **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 invited the parties to consider my provisional findings and let me have any further submissions by 5 February 2024. Both parties have now responded. Mr P has accepted my provisional decision and VF has nothing to add so I see no reasonable grounds to depart from my provisional conclusions in all the circumstances.

### **My final decision**

For the reasons set out above, my decision is I uphold this complaint and require Vauxhall Finance plc to:

1. record the finance agreement as settled on Mr P's credit file;

2. refund the deposit paid of £310 plus 10% of any monthly payments made while the car was off the road for repairs between 18 October 2022 and 3 February 2023, for impaired use;
3. pay interest on the above refunds at 8% simple a year, from the date of payment to the date of settlement; and
4. pay Mr P £300 compensation for his associated distress and inconvenience (if this hasn't been paid already).

If VF does not pay the compensation for inconvenience and distress within 28 days of the date on which we tell it that Mr P accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If VF considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr P how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 March 2024.

Claire Jackson  
**Ombudsman**