

## **complaint**

Mr T complains about a car supplied to him under a conditional sale agreement which he entered into with Banque PSA Finance, trading as Peugeot Financial Services ("Peugeot"). He said that the car was not of satisfactory quality at the point of sale.

## **background**

Mr T complains about the quality of a convertible car purchased in April 2011 under a conditional sale agreement. It was four years old at the time of purchase. In October 2011, and on several occasions after, Mr T complained about water ingress through the car's roof, and damp. He has since had restricted use from the car because of the problem. He has been told that the cost of repairing the roof would amount to over £2,460. He would like to reject the car, and wants his money back. He also complains about unsatisfactory complaint handling as Peugeot did not formally respond to his complaint dated January 2013, and Mr T had to chase it for a response in April 2013.

Peugeot said that the problem was not due to an inherent fault, and so it had no reason to allow rejection of the car.

## *our adjudicator's view*

The adjudicator did not recommend that the complaint should be upheld. She said that she was unable to safely conclude that the fault with the roof's seals was present at the point of sale. She noted that a third party dealer for the car's manufacturer had said that if the problems with the seals were a manufacturer's fault, then this would have been apparent sooner. The dealer explained that the seals could stop working due to wear and tear. The adjudicator suggested that Mr T obtain an independent report.

Mr T disagreed. He obtained an independent expert's report which said that there was no damage to the seals, and no signs of them perishing or distortion. He also produced extracts from three independent car assessment websites which all highlighted issues with roof leaks in the same car model as Mr T's car.

## *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr T and to Peugeot on 28 November 2013. I summarise my findings:

As the evidence was incomplete, inconclusive, or contradictory, I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

I noted that Mr T said that the car was fine until the weather changed in October 2011 when the roof began to leak. He called the dealership and was told to contact the warranty provider who said that the car was not covered. He then contacted the manufacturer who said that the roof leak was a common fault on the design of the car, but that due to the age of the car, it would not be covered by warranty. He also contacted Peugeot who said it had nothing to do with them and it was a matter for the dealership. He took the car into one of its manufacturer's dealers in March, April and December 2012 for the leak to be investigated. The dealer told him in January 2013 that the cost of repair would be just over £2,400. The dealer also said that "to cure fault vehicle will need all seals changed as it has never had a

seal kit previously so has not got the modified seals, so will need complete kit to rectify fault." The adjudicator raised this specific comment with the manufacturer who has not responded.

In view of the above comment made by the manufacturer's dealer and the general comments contained in the extracts from car assessment websites supplied by Mr T, I considered it was more likely than not, that there was an inherent problem with the roof seal in Mr T's car. His independent report obtained after the date of the adjudicator's view, also confirmed that there was no damage to the seals, so that the leak does not appear to have been caused by wear and tear.

I also found that a reasonable person would find the car's leaking roof to be unsatisfactory. In these circumstances, and on balance, I considered that it was more likely than not that the vehicle was not of satisfactory quality at the point of sale in April 2011, and that there had been a breach of the Sale of Goods Act 1979 which applies to conditional sale agreements. I considered that Mr T should be permitted to reject the car.

I noted that Mr T had had limited use from the car (he drove just over 1,800 miles from November 2011 when the fault became apparent until July 2013), and that the car's faults had significantly restricted his enjoyment of it. I therefore concluded that Mr T should be awarded 50% of each monthly instalment from October 2011 to take account of the loss of enjoyment and use. I also found that Mr T incurred distress and inconvenience arising out of the problems with the car, including having to take it to the dealer on three occasions, and as a result of Peugeot's complaint handling. I considered that it should pay him £250 compensation.

Subject to any further representations by Mr T or Peugeot, my provisional decision was that I was minded to uphold this complaint in part. I intended to order Banque PSA Finance, trading as Peugeot Financial Services, to:-

1. Arrange for the collection of the car and cancel the remaining finance at no additional cost to Mr T;
2. Refund Mr T's deposit of £3,245 in full. Interest should be calculated on this amount at 8% simple per annum from the date of Mr T's deposit payment to the date of settlement;
3. Refund 50% of each monthly instalment that Mr T has paid from October 2011. Interest should be calculated on these amounts at 8% simple per annum from the date of each payment to the date of settlement;
4. Refund £143 being the total cost of the independent expert's report and the January 2013 dealership's investigation; and
5. Pay Mr T a further £250 in relation to distress and inconvenience.

If Banque PSA Finance considered that tax should be deducted from the interest element of my award, it should provide Mr T with the appropriate tax deduction certificate so that he is able to claim a refund, if appropriate.

Peugeot said that whilst it had no further information to submit in response to the provisional decision, its dealership said that the issue had been raised with it a significant time after Mr T had taken delivery of the car. It also said that it had not received a formal written complaint.

Mr T said that he had no further information to submit in response to the provisional decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Whilst I note that the dealership said that Mr T did not contact it until around 21 months after he had bought the car, I note that Mr T said that he had contacted the dealership six months after purchase. He said that the dealership told him to contact the warranty provider, and that it was nothing to do with it. I also note that he had contacted a local dealership several times in 2012 about the fault.

Whilst the dealership had not received a formal letter of complaint about the fault, I can see that Mr T had initially phoned the dealership about the matter in October 2011, and he then contacted his warranty provider upon its request to do so.

So, I am satisfied that the proposed resolution in my provisional decision is fair in all the circumstances, and I find no basis to depart from my earlier conclusions.

## **my final decision**

My decision is that I uphold this complaint. In settlement of it, I order Banque PSA Finance, trading as Peugeot Financial Services, to:-

1. Arrange for the collection of the car and cancel the remaining finance at no additional cost to Mr T;
2. Refund Mr T's deposit of £3,245 in full. Interest should be calculated on this amount at 8% simple per annum from the date of Mr T's deposit payment to the date of settlement;
3. Refund 50% of each monthly instalment that Mr T has paid from October 2011. Interest should be calculated on these amounts at 8% simple per annum from the date of each payment to the date of settlement;
4. Refund £143 being the total cost of the independent expert's report and the January 2013 dealership's investigation; and
5. Pay Mr T a further £250 compensation in relation to distress and inconvenience.

If Banque PSA Finance considers that tax should be deducted from the interest element of my award, it should provide Mr T with the appropriate tax deduction certificate so that he is able to claim a refund, if appropriate.

Roslyn Rawson  
**ombudsman**