

complaint

Miss A complains that a car she acquired with the assistance of finance from PSA Finance UK Limited is not of satisfactory quality.

background

Miss A entered in to an agreement with PSA to finance the purchase of a used car on 30 October 2018 for £10,358. Miss A raised concerns with the supplying dealership that the car was struggling to move through the gears and juddering. Miss A took the car back to the supplying dealership on 7 November 2018 and following a test drive the car was booked in for a repair which was completed on 5 December. The gearbox actuators were reset and the car was handed back to Miss A. The faults persisted and on 19 December 2018 Miss A returned the car to the garage. At this visit it was explained to Miss A that the issues were characteristic of a semi-automatic transmission. Miss A says that this was the first time she discovered that her car was not a fully automatic car. Miss A complained to PSA in January 2019.

PSA responded in early March that there were no faults with the car and as Miss A had an opportunity to test drive the car on 3 occasions she should have been aware of the driving characteristics. PSA said it did not agree that the car could be rejected and Miss A should collect it from the dealership or the agreement would be terminated and the car repossessed.

Miss A collected the car and arranged an inspection on 4 July 2019. This inspection report noted that the gears were slow to change and the car was juddering and cut out when trying to pull away. In addition, the report found there were 14 stored fault codes on the car and the service was recorded at 18006 miles when the car had only travelled 17094 miles.

PSA arranged an inspection which took place on 1 August 2019. The engineer test drove the vehicle in the presence of Miss A's mother. When Miss A's mother drove the car it displayed a shuddering and was slow to change through the gears. The engineer concluded that this was driving style and said that he explained a certain type of driving style was necessary for cars with this transmission to achieve a smooth gear change. He noted the fault codes and suggested that they were investigated.

Our investigator considered Miss A's complaint and thought it should be upheld. She thought that on balance the car wasn't of satisfactory quality as the issues appeared to go beyond what is characteristic for this car and she wasn't told that she would need to adapt her driving style. She thought that PSA should allow Miss A to unwind the agreement and compensate Miss A for the time she had been unable to use the car properly because of these issues by refunding all her monthly repayments since 20 December 2018 and a further £150 for the trouble and upset caused.

PSA didn't agree with the investigator's view and said that Miss A had the opportunity to test drive the car on three occasions and there was no fault with the car that would suggest it was not of satisfactory quality. PSA asked for the matter to be passed to an ombudsman to decide. This is the final stage in our process.

my findings

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

The finance agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. PSA is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Miss A wants to reject the car pursuant to the Consumer Rights Act 2015 (CRA). PSA says that the car should not be rejected because there is no fault with the car and the issues with car are as a result of Miss A's driving style.

The Consumer Rights Act 2015 ('CRA') is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

I don't apply the law directly in the same way that a court would approach matters but I do take it into account when deciding what is fair and reasonable. The CRA provides 30 days to reject the car if it is not of satisfactory quality. After 30 days the business is allowed an opportunity to repair the car.

My starting point is that PSA supplied Miss A with a 3 year old car that had covered around 17,000 miles. The car cost £10,358. With this in mind I think that a reasonable person would consider that the car would have a level of performance above that of a more inexpensive or older model and be relatively free from noise and vibration.

I note that the issue first presented a short time after Miss A had owned the car. Miss A noticed immediately that the car was juddering and struggling to pull away. When Miss A brought the car in to the dealership on 7 November 2018 the person who road tested the car agreed that there were issues and the car was booked in for a repair. Although PSA doesn't have a record of this visit I think it is likely that the car was inspected before a repair was booked. It seems to me that at this stage both Miss A and the supplying dealership thought that there was an issue which was why a repair was attempted.

Miss A said the issue wasn't rectified and so she returned the car to the dealership. The dealership did not inspect the car again or make any repairs as it didn't consider there was anything wrong with the car. After Miss A collected the car some weeks later, she took it to a third party garage who noted the following, "*Road tested vehicle found gears very slow to change & al juddering when pulling away. Car cut out when pulling away aswell.*" (sic) This suggests to me that the person who road tested the vehicle thought that there was an issue that went beyond driving style.

At the RAC inspection when Miss A's mother was driving the car, the engineer noted the following, "*While the mother was driving the vehicle, pulling away from a stationary position a*

juddering sensation was intermittently evident.” The engineer was unable to replicate the issue when driving the car and so concluded that the juddering was likely to be as a result of driving style. The engineer then clarified that he gave advice about the driving style required for this type of transmission.

Taking all of the above into account I am persuaded that the juddering and slow gear change is an issue with Miss A’s car that goes beyond being a characteristic of the transmission. I say this because on the basis of the evidence I have seen about the people who have driven the car, only the RAC engineer has been able to drive it without an issue. Miss A and her mother aside, a mechanic and a representative of the supplying dealership both considered that there was an issue with the car that required further investigation. In these circumstances I consider that it is likely that the car has a fault and it wasn’t of satisfactory quality at the point of sale.

I don’t think it is reasonable for a car of this age and cost to perform in a way that causes juddering and slow gear change. Miss A has reported intermittent cutting out and this was also noted by the mechanic at the third party garage. Again, I am persuaded that it is likely that the car has a fault that was present at the point of sale.

I have taken into account that Miss A had an opportunity to test drive the car. It seems to me that if this was an issue relating to driving style it would have occurred on the test drive. PSA suggest that the test drives carried out by Miss A were more than enough to establish that the car was a good fit and comfortable to drive. If this were the case then I think Miss A would not have bought the car and would not be reporting the issues she is now.

I now need to decide what PSA needs to do to put things right. I think Miss A has been patient and has allowed repairs on two occasions and an inspection to be completed. I also don’t think a further inspection/repair attempt will remedy the issue given the car has been in to the garage twice and that PSA doesn’t consider the car to actually be faulty.

Having carefully considered all of this, I think it reasonable for Miss A to be able to reject the car and end her agreement with PSA. When ending the agreement and writing off anything more that was due, PSA should also refund the deposit Miss A paid at the outset, along with simple interest.

I think Miss A has been caused inconvenience by having to return to the dealership and having to drive the car when it’s had problems with it. Given the loss of and impaired use, as well as the inconvenience, I think PSA should pay £150 and refund Miss A all of the monthly instalments she has paid from 20 December 2018 to date.

I’m not aware of any adverse information having been added to Miss A’s credit file. However if there was, PSA should remove it.

my final decision

My final decision is that I uphold this complaint. To put things right PSA Finance UK Limited should do the following:

- End the agreement with nothing further to pay;
- Collect the car at no cost to Miss A;
- Refund the deposit paid with 8% simple interest from the date of payment until the date Miss A gets it back;
- Refund all the monthly payments from the 20 December 2018 when Miss A has been unable to have a full use of the car until the complaint is settled;
- Pay Miss A £150 for the trouble and upset caused;
- Remove any adverse information from Miss A's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 7 June 2020.

Emma Boothroyd
ombudsman