

## **complaint**

Miss R complains about the refund she received from PSA Finance UK Limited.

## **background**

I set out the background to Miss R's complaint in the provisional decision I issued for this complaint earlier this year. However, I repeat that background here so that all relevant information can be found in this one document.

In October 2017 Miss R acquired a used car supplied by PSA under a conditional sale agreement. The conditional sale agreement was brokered by the car dealership whose showroom she went to when looking for a car. The car dealership is a firm, and I'll call it "P".

In summary, Miss R tells us from very early on, that is within 30 days, she complained about the quality of the car to both PSA and P but, she suggests, neither would help her. She told us she contacted PSA by email, to reject the car in November 2017. It asked her to supply her registration number which she says she did. But according to Miss R, she got no reply.

Miss R decided to try another tack. She tells us she tried to use PSA's online portal to cancel her agreement but could not. She suggested this was because she had been given the wrong details about her agreement so had put in the wrong reference.

Eventually, in December 2017, and then again in March 2018, P looked at the car. Each time it appears it said the car had been repaired and was road-worthy.

Finally, in June 2018, an independent expert third party assessed the car by doing an on road test. The expert was a firm which I will call "R". Following this on road assessment R did a report that suggested that the car lacked power, and it suggested the cause of this needed to be investigated. In response to the report, in July 2018, PSA collected the car, ended the agreement and agreed to give Miss R a refund.

According to PSA's records, in August 2018 PSA paid Miss R £1,650.86 which included a refund of all the repayments she made during the 9 months she had the car ( $9 \times £150.86 = £1,357.74$ ). It also refunded the repayment it received from her for July 2018 (£150.86). Plus, in November 2018, also according to PSA's records, PSA paid Miss R £172.95 for the cancellation of her insurance policy. So, it appears in total she has had a refund of £1,974.67 ( $= £1,650.86 + £150.86 + £172.95$ ).

Miss R appears to agree that she got the refunds mentioned above. However, Miss R indicates these refunds do not go far enough. In addition to what she has already received, she wants a full refund of her car insurance premium for the entire period that she had the car. The premium was £2,060.46. It appears her position is that if she'd been allowed to reject the car when she wanted to, namely in November 2017, she would never have run up this cost in the first place.

PSA's stance which it set out when it gave Miss R its last word on this matter in its final response letter is that it has already made an appropriate payment to Miss R and it need do nothing more.

Dissatisfied with PSA's final response Miss R came to our service.

I looked at Miss R's complaint. I came to the conclusion that I had no proper basis to ask PSA to do anything further. I repeat below what I said in my provisional decision about why I had come to this outcome.

*"First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.*

*Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.*

*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.*

*In considering what is 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 relevant time.*

*The agreement in this complaint is a regulated consumer credit agreement – so we can consider a complaint relating to it. PSA is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality. The Consumer Credit Act 1974 is relevant to this complaint as it sets out some of the rights that arise between a supplier of both finance and goods and a consumer.*

*In addition, the Consumer Rights Act 2015 ("CRA") is also relevant 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".*

*To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory. However, it seems that PSA has accepted that Miss R's car was not of satisfactory quality when supplied. It follows that the only question here now is does the redress it has offered so far go far enough?*

*I recognise that from Miss R's perspective she thinks she was forced by PSA to keep hold of a car that she did not want. And I realise she feels she was made to insure the car because by law it had to be insured. Further, Miss R seems to also think that because she says she complained in November 2017 the clock ought to run from this point. In the sense that the CRA gives her a short term right to reject that is within 30 days, and that as far as she is concerned, is what she did. But it is not as simple as that.*

*The law gives her the right to reject a car but only if it is not of satisfactory quality. However, as far as I can see in November 2017 it had not been established if the car was of satisfactory quality or not. The fact that Miss R was dissatisfied with the car was not enough, by itself, to show the car was of unsatisfactory quality. In other words, the short term right to reject under the CRA is not an absolute right to reject for any reason. It is a right to reject only when its conditions are met.*

*Miss R also mentions trying to cancel the contract. Certain contracts such as hers have a cooling off period in which they can be cancelled. Miss R indicates that she was given the wrong agreement number that is why she could not cancel it. I have seen a copy of the agreement which PSA says Miss R was given too, and that has the correct number on it. But Miss R says she has an email to show she was given the wrong agreement number. I have not seen that email. As it stands, on balance, it seems Miss R could have cancelled the agreement if she had wanted to do so. Even if I accept that Miss R was prevented by PSA's mistake from cancelling the agreement in November 2017, which I don't, I'd not say PSA has to give her the refund she asks for. This is because as I explain below I think she ought fairly and reasonably pay for the use she has made of the car.*

*In any event it is not clear what the problem was at first. The invoice for when the car was returned in December 2017 talks about Miss R complaining about brake noise and the EML light being on. These are not the problems that the expert said needed investigating. It is not ideal that PSA did not come back to Miss R when she says she contacted it in November 2017, although PSA's case notes don't show that she did contact it in November 2017. But in any event, I don't agree she lost out because of this. I say this because I don't think it likely that PSA would have accepted rejection at that point. And given that as I have explained above at that stage there was no persuasive information to show that the car had a problem that would make it of unsatisfactory quality I don't think Miss R was treated unfairly at this juncture.*

*I don't agree that PSA ought to have done more in March 2018 either. The invoice for this visit suggests that brake noise and an acceleration problem were investigated and fixed by P. A repair is an acceptable remedy according to the CRA in these circumstances. I realise that Miss R didn't agree that the problem with the acceleration had been fixed, and it seems she was correct about that, as the expert's report showed in July 2018. But in March 2018 there was only Miss R's word against P's who was more expert than Miss R was about the topic. So, I don't think that it was unreasonable for PSA to rely on what P said. Moreover, PSA did not close the door entirely it was open to getting more analysis done which is why it agreed to get the expert to carry out the assessment when Miss R continued to complain.*

*Miss R asks for the whole of the premium she paid for her car insurance. From the letter I have seen from her insurer the total premium she paid to cover October 2017 to July 2018 was £2,060.46. I agree with her that it would be fair and reasonable to compensate her for the insurance that she paid from the point that she stopped using the car. I recognise she chose to stop using the car but that seems a reasonable choice for her to have made given what R says this about the driving experience of the car. Namely R says:*

*"the engineer considered the general performance to be distracting and below that expected of today's modern vehicles."*

*In these circumstances, I think most reasonable people would have stopped driving the car. Further, it is correct that Miss R was legally required to keep the car insured if she wanted to drive it. But the point is she most likely did not drive it on a consistent basis after the end of March 2018 because the car was not of satisfactory quality which is something that PSA is responsible for.*

*However, I also think Miss R should have to pay for any use she had of the car, it is clear she used it. The mileage when the car was first supplied was 39,000 miles and when it was returned to PSA it was just under 41,000 miles. It also seems that Miss R was using the car*

*up to and including March 2018 and possibly after this point too. For example, R describes Miss R using to car in July 2018 to pick up a child from school on the day of the assessment. That said Miss R might have used the car on that day as a one-off as she felt safe with R in the car with her. So, on balance, I am finding that Miss R did not use the car on a consistent basis from April 2018 onwards. However, PSA refunded her for every month she had the car, including the months when I find it likely that she used it consistently, so I would have to factor that into any payment I would award her.*

*As I have already mentioned, PSA's records show, that Miss R received a refund of her monthly repayments totalling £1,375.74 (= £150.86 x 9). Miss R has not said that these records are wrong. Specifically, PSA refunded Miss R for the months between October 2017 and March 2018 when I find she was using the car. That means I think it over refunded her by £905.16 (= 6 x £150.86). And possibly more because she did use the car in July 2018. But I am persuaded on balance she stopped using the car day to day from April 2018, as I said above.*

*Miss R claims £2,060.46 when I take off the £905.16 I mention above that leaves £1,154.84.*

*However, I also think it is fair and reasonable that Miss R should have to pay the insurance for the time she had and used the car, that is October 2017 until March 2018 inclusive. As I have already mentioned, the letter from Miss R's insurer suggests the total premium she paid to cover October 2017 to July 2018 was £2,060.46. Which suggests the insurance per month was £206.05 (= £2,060.46/10). She drove the car between October and March so should have paid £1,236.30 (= £206.0 x 6) in insurance.*

*If I take the £1,236.30 off the £1,154.84 PSA actually owes her nothing.*

*In summary, I recognise my conclusions may well disappoint Miss R. But Miss R has asked that PSA pay her for the costs that she ran up as a result of its breach of contract. That I find fair and reasonable. But when I look at what she is fairly owed I have to factor in all relevant costs that she is responsible for, as well as what PSA owes, as I have done above. I can't just look at one side of the equation and ignore the other, that would not be fair and reasonable. And when I do that, I have no proper basis to ask PSA to pay her anything further."*

I invited both Miss R and PSA to respond to my provisional decision should they wish to. As far as I am aware neither party chose to respond.

## **my findings**

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

Neither party has sent in any new information following the issuing of my provisional decision. That being so, it follows that I have come to the same conclusions for the same reasons as I did in my provisional decision.

## **my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 23 January 2021.

Joyce Gordon  
**ombudsman**