

## **complaint**

Mrs O complains that a new car she acquired with a conditional sale agreement from Vauxhall Finance plc is of unsatisfactory quality.

## **background**

The background to this complaint and my provisional findings are set out in my provisional decision dated 24 July 2018 – a copy of which is attached and forms part of my final decision. In my provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties.

Vauxhall Finance accepted my provisional conclusions and agreed the deposit paid by Mrs O was £3,714.

Mrs O seems to accept some, but not all, of my provisional findings. In summary, she says

- Vauxhall Finance provided a very poor response to her complaint;
- the dealer should have sorted things out earlier and she shouldn't be penalised for what's happened;
- she should get all of her monthly payments back as she had to keep making the payments so her credit record wouldn't be damaged even though the car wasn't of satisfactory quality;
- she contracted a serious chest infection because of noxious fumes in the car. She had to take time off work and lost income of over £1,208 which Vauxhall Finance should refund;
- family members got ill as well - and one relative wasn't able to use the car in the way they'd expected and he's been inconvenienced because the car was faulty;
- the deposit refund should be reviewed as another car was part-exchanged when this finance was taken out;
- other costs should be taken into account including some extras she paid for at the outset - such as a treatment which she doesn't think was actually provided.

## **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.

Where 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.

I've had the opportunity to speak to Mrs O since she sent in her response to my provisional decision. I explained that, whilst I'm very sorry to hear about everything that's happened, I'm not going to increase the instalment refund or require Vauxhall Finance to pay more compensation.

On balance, I'm not satisfied there's enough evidence for me to fairly conclude that Mrs O's illness was caused solely by the faults found in the car. I'm not persuaded it would be fair or reasonable to hold Vauxhall Finance responsible and require it to refund lost earnings, in this situation. I have no doubt that Mrs O and her family have experienced trouble and upset

because of what's happened. But I can't order Vauxhall Finance to pay compensation to Mrs O's relatives, as they're not customers of the business.

I've given some thought to what Mrs O says about the "extras" she ordered at the outset. I can't be certain if the treatment was applied or not - and I think it's a bit late in this complaint to investigate that now. I consider Mrs O probably got some benefit from the extras she requested while she's had the car. I can see from the sale invoice that Mrs O appears to have received a number of other additional benefits - such as road tax - for free. And, it seems to me, these "balance out" overall. And I'm not persuaded it's fair to require Vauxhall Finance to provide an additional refund, in this respect.

Mrs O told me, when we spoke, that she's like another opportunity to check the paperwork before commenting on the deposit refund. I agreed she could have a little more time and she's now responded in detail. Mrs O says she doesn't think £3,714 is enough because

- the Financial Ombudsman Service should put the consumer back into the financial position they would be in if things hadn't gone wrong in the first place
- the manufacturer's contribution shouldn't be taken into account as the "contract was breached by the business and it is therefore rendered null, void and unenforceable"
- she, as a consumer, shouldn't be unfairly penalised for Vauxhall Finance's breach of contract
- I've found she's entitled to reject the vehicle and cancel the finance so she should get the full deposit of £6,114 back.

I've considered Mrs O's comments carefully. She's right to say when this service finds a business has done something wrong we generally require it to take steps to put the consumer back into the position they'd have been in otherwise - so far as far as that's reasonably possible.

There seems to be no dispute that the manufacturer paid £2,400 of the total deposit of £6,114 that's shown on the finance paperwork here. I'm satisfied this £2,400 wasn't paid by Mrs O. And I'm not persuaded it's fair to require Vauxhall Finance to refund that amount to her now. I think it's reasonable for Vauxhall Finance to provide a deposit refund of £3,714.

I do understand Mrs O feels most aggrieved about everything that's happened and she'd like Vauxhall Finance to have to pay more to put things right. But, for the reasons I've explained already in my provisional decision, I remain of the view that it's fair overall for Vauxhall to refund 25% of each monthly payment. I find this is sufficient to reflect Mrs O's loss of use and enjoyment. And I think £250 seems reasonable compensation for the distress and inconvenience she experienced because of the actions of Vauxhall Finance.

I realise this final decision may disappoint Mrs O in some respects. But, she doesn't have to accept what I've said, in which case Mrs O remains free to pursue this matter by alternative means if she wants to.

### **my final decision**

My decision is I uphold this complaint. In full and final settlement I require Vauxhall Finance plc to

1. cancel the finance and arrange to collect the car at no cost to Mrs O;

2. refund the deposit of £3,714 along with 25% of any monthly payments Mrs O has made towards the finance agreement;
3. pay interest on the refunds referred to at 2 above at 8% simple a year from the date of payment to the date of settlement;
4. remove any information recorded about the finance from Mrs O's credit file; and
5. pay Mrs O £250 compensation for distress and inconvenience.

If Vauxhall Finance considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs O how much it's taken off. It should also give Mrs O a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 6 October 2018.

Claire Jackson  
**ombudsman**

## **copy provisional decision**

### **complaint**

Mrs O complains that a new car she acquired with a conditional sale agreement from Vauxhall Finance plc is of unsatisfactory quality.

### **background**

Mrs O got this car on 30 November 2017. She had problems soon after and complained to the dealer about

- damage around the fuel cap when the car was collected
- the heating and ventilation system circulating cold air and noxious fumes
- condensation issues
- a temperature warning light that said "engine overheating- idle engine"
- faulty Bluetooth connection.

The car broke down on 29 December 2017 and had to be recovered by a third party. Mrs O contacted the dealer and sent through a copy of the breakdown report showing the car had lost coolant. She's disappointed the dealer didn't seem to take her concerns seriously. She's lost confidence in the car and wants to return it for a refund.

Vauxhall Finance arranged for an independent expert to inspect the car last March. The expert didn't see any engine lights and he couldn't find anything wrong with the heating and ventilation system or any evidence of condensation. He acknowledged the ambient temperature on the day might have affected that. The expert concluded the Bluetooth connection doesn't work and should be investigated. Vauxhall Finance offered to have the Bluetooth checked but sees no evidence of a serious fault and considers Mrs O shouldn't be entitled to reject the car.

The Consumer Rights Act 2015 (CRA) says it's usually reasonable to allow the supplier of faulty goods to have an opportunity to put things right – if that's not going to take too long or prove too expensive. And our investigator didn't think it would be fair to say Mrs O should be allowed to reject this car without knowing how serious the Bluetooth problem is. He recommended Vauxhall Finance should arrange to have that looked at and check any ongoing engine warning lights.

Mrs O didn't think that went far enough given all of the trouble she'd had. After some further discussion, the parties agreed that a second dealer would look into the following

1. paintwork damage on collection
2. heating/cooling/ventilation system doesn't work properly
3. a noxious smell at times
4. engine warning lights illuminated to say the engine is overheating
5. coolant requires topping up frequently - every other day
6. the engine stalls if heating is left on
7. condensation/demisting issues in cold weather
8. Bluetooth "infotainment" system doesn't work properly
9. poor road handling and "spongy" brakes

This inspection took place last month. A problem with the coolant system was identified and a cylinder head was replaced but other issues couldn't be replicated. Mrs O says the coolant level has continued to drop since she got the car back. She's unhappy that the Bluetooth fault and other things haven't been fixed. She wants to reject the car and receive a refund and compensation.

### **my provisional findings**

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

Where 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.

Vauxhall Finance supplied this car under a finance agreement and it was required to ensure that the car was of satisfactory quality when Mrs O got it. The car was new and I think Mrs O had a reasonable expectation it would be fault free when she took delivery.

There's no dispute that Mrs O contacted the dealer soon after she got the car to report problems and the car broke down a few weeks later. I accept the dealer offered to take a look at the car at that stage, to see if there was something wrong that might be relatively easy to fix. I don't think that was an unreasonable offer and - from what Mrs O has told me - I don't think she objected to this (in principle) either.

It's unfortunate, but the dealer and Mrs O weren't able to arrange for the car to be inspected at this point. I understand the dealer may have felt Mrs O could have done more to facilitate this - but I don't think I can fairly criticise Mrs O, in these particular circumstances.

Mrs O says she couldn't drive the car to the dealership (which isn't nearby) because of bad weather. I'm satisfied she'd been having trouble with heating, ventilation and poor de-misting. I note this was winter and the car had already broken down once. And I think it's understandable that Mrs O might have felt nervous about driving very far. Mrs O has explained family commitments mean it's particularly difficult for her to do without a car. And I accept she was worried about how long the dealer might keep it - and whether she'd receive a suitable alternative form of transport.

It looks as if the dealer and Mrs O reached a bit of a stalemate at this stage. I think it was reasonable of Vauxhall Finance to appoint an independent expert to inspect. I appreciate Mrs O feels that expert should have checked the car more thoroughly. And I think it is regrettable that he doesn't seem to have been given much information about the earlier breakdown. It might have been helpful (for example) if the expert had been asked to comment on the coolant loss. Nevertheless, I accept he wasn't able to verify the problems with the ventilation system that Mrs O had reported - although I note he acknowledged that might have been due to the conditions at the time of his inspection. I'm satisfied the expert found the Bluetooth doesn't work properly.

It's taken a little time to arrange, but the car has recently been looked at by a second dealer. I'm satisfied a relatively significant fault has been identified - requiring repairs costing around £1,500. The relevant job card says the cause was a coolant leak.

Looking at the issues Mrs O has been reporting for some time, I think several (those numbered 2-7 in the list above) were probably related to the fault that's been found. I'm minded to find the car has probably been leaking coolant for several months and it's likely to have been faulty when it was supplied.

Mrs O says she's been monitoring coolant levels since she got the car back and it is still going down. She doesn't believe the repairs have resolved all of the faults and I think she's probably right. It looks as if the second dealer couldn't replicate the Bluetooth issue but I'm satisfied the independent expert had no trouble confirming that's present.

This was a new car and I don't think it's surprising that Mrs O has lost confidence in it, in the light of what's happened. For the reasons I've given, I think it's likely this car had several faults when it was supplied. I am satisfied Vauxhall Finance has had a reasonable opportunity to fix things. And I am not satisfied that the car is fault free now, from the evidence I've seen.

I don't think it's fair for Mrs O to have to keep the car any longer, in this situation. Subject to any further evidence or information I may receive in response to this provisional decision, I am minded to find it is fair and reasonable for Vauxhall Finance to take the car back and refund any deposit, plus interest.

It's not entirely clear to me (from the paperwork I have) how much Mrs O paid towards this conditional sale agreement by way of deposit. The finance agreement says the deposit was just over £6,000 - but this seems to include a £2,400 "contribution" from the manufacturer. The related invoice says "please contra settle" the previous agreement with the sum of £4,285 and makes reference to a £250 cash deposit from Mrs O.

On the current information, I think it looks as if the deposit refund due to Mrs O is £3,714 (the deposit shown on the agreement less the manufacturer's contribution). If I'm wrong about that, I'd be grateful if the parties could please explain why and/or provide further evidence. I'll take that into account when I make my final decision.

I'm satisfied Mrs O seems to have had some use of the car over the last seven months - but I note there's less than 2,000 miles on the clock. On balance, I think Mrs O has probably used this car less than she otherwise would because of all the trouble she's had. I find it fair that Mrs O should pay something for usage but I have to balance that against the fact she's had to drive a car that was faulty.

I'm satisfied Mrs O has also experienced the not inconsiderable inconvenience of having to top up coolant nearly every day - and she's been deprived of the enjoyment she could reasonably have expected from acquiring a new car. Taking all of this into account, I'm minded to find Vauxhall Finance should refund 25% of each of the monthly payments she's made towards the finance.

I'm satisfied Mrs O is likely to have experienced distress and inconvenience as a result of receiving this faulty car. I think it's fair for Vauxhall Finance to pay her £250 compensation for that. I appreciate Mrs O may well feel this award should be higher. I know she's been most disappointed by the dealer's after sales service, in particular. So, I should make it clear that I can't hold Vauxhall Finance responsible for what happened between Mrs O and the dealer, after the sale. And I'm unable to fairly require Vauxhall Finance to compensate Mrs O further in respect of that.

I now invite both parties to consider what I've said and let me have any further evidence or information that they would like me to take into account by 7 August 2018. After that I'll review all the available evidence and make my final decision.

#### **my provisional decision**

Subject to any further submissions I may receive from the parties by 7 August 2018, my provisional decision is I intend to uphold this complaint. I'm minded to find Vauxhall Finance plc should

1. cancel the finance and arrange to collect the car at no cost to Mrs O;
2. refund the deposit of £3,714 along with 25% of any monthly payments Mrs O has made towards the agreement;
3. pay interest on the refunds referred to at 2 above at 8% simple a year from the date of payment to the date of settlement;
4. remove any information recorded about the finance from Mrs O's credit file; and
5. pay Mrs O £250 compensation for distress and inconvenience.