DRN-3382055

The complaint

Mr F complains about the quality of a car supplied to him by PSA Finance UK Limited ("PSA").

What happened

Mr F is represented in his complaint by his partner, who I will refer to as "Ms W".

In September 2019 Mr F entered into a hire purchase agreement with PSA. Under the terms of the hire purchase agreement PSA supplied Mr F with a brand-new car. The cash price for the car was £23,775.

Mr F tells us that he acquired the car as a birthday present for Ms W. Ms W is not a party to the hire purchase agreement though.

In December 2019 shortly after Mr F and Ms W had got out of the car, the car's engine caught fire whilst the car was parked in front of Mr F's and Ms W's home. The ultimate cause of the fire is currently unknown, despite the fact that there have been several expert reports carried out on the car. (The exact number of reports is disputed by the parties). At this point the car's mileage was around 1,500 miles.

The car was insured by Ms W with a third party I will refer to as "A". Ms W is the only policy holder in relation to this motor insurance policy. Mr F is a named driver on the policy. A has declared the car a total loss. Initially Mr F told us that A was willing to make a payment for the total loss. Ms W is the only policy holder of the car insurance policy with A, as I have already mentioned. Therefore, only she has the power to authorise A to make the payment to PSA. At this point Ms W was willing to give her authorisation to A. But also, at this point she had not been made aware of the likely consequences for her future insurance premiums if she made a claim for the total loss.

However, in any event, the total loss payment does not cover the full amount outstanding under the finance agreement. But Mr F also told us that a third party I will call "P" had agreed to pay the shortfall. According to Mr F, P made this offer because it realised that the credit broker had not offered GAP insurance (a type of insurance that if it had been in place might have covered the shortfall). Also, according to Mr F, the credit broker made a mistake in not offering GAP insurance and realising this P stepped in to make up for this error.

Mr F explains that it has taken too long from his perspective to sort matters out with PSA. Therefore, Mr F hired a solicitor in an attempt to get a fair resolution of this matter. Mr F continued to make his contractual repayments towards the finance agreement until May 2020. Mr F indicates that once he stopped making the repayment, PSA began chasing him for the payments it suggests Mr F owes it. Albeit Mr F no longer has the car, this is because A arranged for it to be removed. Notwithstanding the removal of the car, Mr F tells us there are still pieces of the car melted into his driveway. He can't remove this debris and it has damaged his driveway.

Mr F's initial position was that he wanted a refund of all payments he had made towards the agreement after the point when the car's engine caught fire. Further, he wanted the deposit he suggests he paid towards the car. He also wanted all losses that he says are associated with the hire purchase agreement plus his solicitors fees. He also asked that his credit file be updated to remove the negative information on his credit file. Mr F complained to PSA.

PSA responded to say that no deposit was paid, and the hire purchase agreement paperwork shows this. However, it did agree that Mr F had traded in his old car with the car dealership but not with it. In any event, according to what the car dealership told PSA, Mr F's original car had negative equity, so Mr F had made a cash payment to cover the shortfall.

But strictly speaking none of this was anything to do with the hire purchase agreement. It followed PSA was not going to look any further into this part of Mr H's complaint.

As to the quality of the car PSA suggested that three expert reports had been carried out (later on it said it was two). It suggested the extent of the damage to the car meant that the experts had not been able to determine the cause of the fire and whether this was due to a manufacturing fault. Given that according to PSA, none of the reports had identified a manufacturing fault as the underlying cause of the fire, PSA suggested Mr F might like to contact A. PSA did accept though that the car was no longer usable due to the fire damage.

PSA added that it was its understanding that A had offered to contribute £16,225 towards the settlement of Mr F's agreement. The settlement figure was £23,332.84 leaving a shortfall of £7,107.84 However it noted that P was offering to pay the shortfall. But P was doing this, according to PSA, as a goodwill gesture, but only on condition that Mr F accept A's offer of £16,225. PSA reminded Mr F the agreement between them made him liable for the shortfall.

In addition, as a gesture of goodwill PSA agreed to refund Mr F all repayments he had made towards the agreement.

Further, whilst denying that the car had manufacturing faults, PSA also pointed out that under the agreement it had purported to exclude liability for any consequential losses Mr F had experienced due to quality issues with its car. On this basis it declined to pay for any costs Mr F might have incurred due to keeping himself mobile.

Dissatisfied Mr F complained to our service.

Once his complaint was with us Ms W provided us with further information on behalf of Mr F. She let us know that Mr F had had to buy a new car. This was because their son has a disability which means he is unable to use public transport. Mr F had not been able to get credit to help purchase this new car, therefore Mr F had taken money out of his pension fund. Later Ms W let us know she also had been unable to get credit. Later still, Ms W told us they'd been refused a mortgage. Ms W blamed the agreement with PSA for these instances of being unable to get credit. By which I think she means that PSA had asked the credit reference agencies to register negative information on Mr F's credit file in relation to the agreement, and this information was preventing the credit applications going any further.

Moreover, in addition to the refunds Mr F already told us he wants, Mr F also asked for other losses to be taken into account. Specifically, he told us that Christmas presents that were in the car had been destroyed in the fire, Mr F wanted to be refunded for these. Ms W had also lost some personal items as a result of the fire and Mr F wanted compensation for these items. Although A had already made a payment of £300 in respect of these items, but Mr F suggested that is not enough to cover the full loss. He also asked for the increased premiums Ms W will most likely have to pay for car insurance for making a claim on her car insurance. Mr F wanted compensation for taking money out of his pension fund. He also suggested it would be appropriate for a payment to be made for distress and inconvenience.

One of our investigators looked into Mr F's complaint. He recommended Mr F's complaint be upheld in part and recommended the following redress to put things right.

1. end the agreement with nothing further to pay, marking the agreement as settled.
2. remove any adverse information from Mr F's credit file in relation to the agreement.
3. refund all repayments Mr F had made towards the agreement from September 2019 to the date of settlement (as previously offered by PSA).

4. pay 8% simple yearly interest on all refunded amounts from 25 December 2019 until the date of settlement.
5. reimburse Mr F for the cost of the reading glasses subject to proof of purchase.
6. pay £500 for any trouble and upset that's been caused due to the faulty goods.

PSA accepted our investigator's recommendation and Mr F did not. After some to and fro Mr F withdrew his complaint as he wished to go to court instead and PSA was one of the parties he intended to take to court. However, subsequently, Mr F asked that we re- open his complaint so that he could accept the redress our investigator had recommended. He was still going to take third parties to court, but he had decided not to continue with the legal action against PSA provided it honoured the settlement it had offered. It appeared at that point he accepted the entirety our investigator's recommendation.

We told PSA that Mr F wished to accept the redress we had recommended. In response, PSA let us know that it had received no payment from A yet. On that basis while it was prepared to action redress points 3, 4, and 6. It would not be willing to carry out points 1 and 2 until it did receive payment from A. Further, PSA declined to pay for the reading glasses until it had proof of purchase.

Ms W responded to say that it was not Mr F's understanding that the redress was contingent on A making the total loss payment to PSA. Moreover, she said A "*has closed this claim based on a no fault claim. This is due to the vehicle being a faulty vehicle as well as the time scale it has taken. I doubt very much that [A] will be paying any monies out to PSA"*.

We explained to Mr F that it was fair and reasonable that A be permitted by the policy holder Ms W to pay the total loss money to PSA, in order that PSA should pay all of the redress we had recommended, and the complaint could be closed. In other words, the redress we had recommended was contingent on A making the total loss payment to PSA.

Ms W told us although originally she had been willing to let A make the payment to PSA, she had now reconsidered. She was no longer willing to permit A to make the payment to PSA. Ms W explained her stance about the payment from A on the basis that if A did make the payment, it would be treated as a fault claim. This in turn would very likely increase her future insurance premiums. Ms W thought this was unfair in the circumstances because she had done nothing wrong. But despite Ms W being unwilling to authorise the payment from A, and despite knowing that the redress was predicated on this payment being made - Mr F still wanted the redress our investigator had recommended.

In the meantime, around the same time we were discussing matters with Ms W, PSA let us know it had made the recommended payment to Mr F in relation to points 3,4, 5 and 6.

Ms W told us Mr F wanted an ombudsman to consider his complaint. In the meantime, he repaid the settlement money he had received from PSA.

I took a look at Mr F's complaint. I issued a provisional decision. In summary, this is what I said about what I had decided and why.

Mr F and PSA are the only parties to this complaint. I mention this because it is relevant to the redress that I am going to propose in this complaint.

The parties agree now it seems that the car was not of satisfactory quality. They also agree that PSA as the supplier of the car under a regulated finance agreement has to take responsibility for this. Therefore, the only question that I had to look at was the redress, given that as it stands, PSA is going to receive no payment from A for the total loss of the car.

The redress that was recommended by our investigator is the redress this service would generally recommend when it had been established that a car provided under a hire purchase agreement was not of satisfactory quality. However, it is important to note that this

redress would not standalone. I say this because I would also need to factor in what was going to happen to the total loss money and what should happen to it. This is because this redress would be predicated on the insurance money for the total loss being released to the owner of the car, that is PSA. Note though the redress is not reliant on Mr F having to pay the shortfall. This is because, generally, I would have said in these circumstances, PSA would have to write off the shortfall that is part of what is meant by saying the agreement should be ended with nothing further owing.

However, it was Ms W not Mr F who insured the car. She is the only policy holder in respect of the insurance policy as I have already mentioned. She has to agree that A can release the total loss payment to PSA. Ms W does not agree to authorise A to make this payment to PSA.

This leaves Mr F with two difficulties. He is asking for redress that relies on him being able to authorise A to make the total loss payment to PSA. But he cannot do this because he is not the policy holder, as I have already mentioned. In addition, Mr F, is obliged under the terms of the hire purchase agreement to insure the car. He did not insure the car and one of the consequences that flows from this is that he now has no insurance policy to call on.

With the above in mind I went on to look at what redress was fair and reasonable.

In principle, if Mr F had insured the car with A and if A had made an offer to make a total loss payment. I would say it was fair and reasonable that in order to get our normal redress Mr F would need to permit A to make that payment to PSA. And if he refused to do this then I would not think it fair and reasonable that Mr F should be awarded our normal redress in its entirety. However, the situation here is a bit more complicated because it is Ms W who has taken out the insurance policy not Mr F. Mr F cannot make Ms W authorise A to make the payment.

That said, Mr F is only in this situation re the insurance monies because he did not insure the car. I thought about whether the clause in the agreement that obliges Mr F to insure the car was an unfair term. Especially since the credit broker and therefore by extension PSA most likely knew Mr F was entering into the agreement to provide a car for Ms W to use. If I had found that the clause was an unfair contract term then I would say that PSA could not rely on it. But Mr F entered into a contract whereby he hired a car from PSA with the option, at the end of the contract to buy the car. Up until the point that he bought the car it remained the property of PSA. In this context I did not think I could fairly or reasonably say that the insurance clause in the contract met the relevant threshold and therefore it would be fair or reasonable to deny PSA the right to rely on it.

Further, the hire purchase agreement provides that if the car is a total loss the agreement will end. But only after Mr F has paid for the outstanding balance of the car. I am not sure what the outstanding balance currently is, but it is likely to be tens of thousands of pounds. If Mr F had insurance and if he had agreed his insurers could pay this money to PSA, it, PSA, would not be absorbing the full loss. But as it stands if I tell PSA it must treat the agreement as if it has ended and Mr F owes it nothing further, PSA will be substantially out of pocket. And one of the reasons for this will be because Mr F did not insure the car. I have to be impartial and act fairly towards both parties. I don't think that redress would be fair and reasonable.

I take on board, that Mr F acquired a brand-new car, he was entitled therefore to expect years of trouble free motoring. Instead he had the car for three months then it caught fire on his doorstep due to not being of satisfactory quality. Moreover, I don't underestimate the profound surprise, to say the least, that Mr F most likely experienced when the car caught fire, out of the blue. All of this through no fault of his own.

I also take on board all along Mr F has tried to do the right thing. I note he kept up his repayments towards the agreement until May 2020. He was contractually obliged to do this. But I can well understand why he might nonetheless have taken the view that it was very

frustrating that he had to continue to pay for the car. Afterall, this was a car that had caught fire, that was a total loss, which he could not drive, which had damaged his driveway. Moreover, Mr F had acquired the car as a present for his partner for a significant birthday and instead of bringing her joy the car had given Mr F and Ms W a nasty surprise.

Added to which it appears even without receiving the payment from A, PSA was willing to refund the repayments Mr F had made and add interest to that refund, it was also willing to pay for the reading glasses and make a payment to Mr F for distress and inconvenience. With all of these individual points in mind I think it is fair and reasonable, in the circumstances, that Mr F gets some redress for being supplied with a car that was not of satisfactory quality even though he might be considered to have breached the contract too.

As I have already mentioned. I also think it is fair and reasonable that Mr F should not have to pay for any shortfall, that is the difference between what is currently owed under the agreement and the amount A is willing to pay for the total loss. I realise that P had told Mr F previously that it would pay the shortfall. However, I don't know if that is still the case. Mr F therefore, is at risk of being chased for the shortfall too, I don't agree that is fair and reasonable in the circumstances, after all the car that PSA supplied was not of satisfactory quality.

But I don't agree it is fair and reasonable to prevent PSA from being able to exercise its rights in relation to the total loss payment. It follows I am not going to tell PSA it must end the agreement with nothing further owed by Mr F. Neither am I going to tell it that it must contact the credit reference agencies and ask them to mark the agreement as settled. PSA can only pursue Mr F for the amount of the total loss payment. But of course, I am not saying it should do this, that's its choice to make.

The question of what else PSA must do in relation to Mr F's credit file is not straightforward. I understand that PSA has already asked the credit reference agencies to remove all negative information it had previously asked them to register on Mr F's credit file about the agreement. It seems to have done this as it accepts that it should not register negative information about the agreement during a period of time starting from when the car was supplied until when this complaint ends. However, as I am saying PSA should not be prevented from exercising the contractual rights in the paragraph above it follows it can register information on Mr F's credit file which relates to the pursuing of Mr F for the total loss payment.

If, however, Ms W changes her mind and decides to authorise A to make the total loss payment to PSA, and if A makes that payment before I issue my next decision then PSA must treat the payment as if it was made by Mr F. I said I would also add to the redress to say that PSA must end the agreement with nothing further to pay, and it must ask the credit reference agencies to mark the agreement as settled. And I would also order that PSA would have to ask the credit reference agencies to remove any adverse information from Mr F's credit file in relation to the agreement.

Finally, I asked whether PSA would consider a goodwill gesture. It seemed that the sticking point here was that if Ms W authorised the total loss payment her insurance premiums would go up through no fault of her own. I recognised that Ms W is not an eligible complainant in relation to this complaint. But I asked if PSA would consider compensating her for a limited time period for this increase in her premiums.

My provisional decision was as follows:

"*My provisional decision is that I intend to require PSA Finance UK Limited to:*

1. *refund all payments made by Mr F to the agreement from September 2019 to the date of settlement (as previously agreed).*

2. *pay interest at the rate of 8% simple per year on all refunded amounts from 25 December 2019 until the date of settlement. (also as previously agreed)*
3. *reimburse Mr F for the cost of the reading glasses as it has already agreed to do.*
4. *pay £500 for the distress and inconvenience most likely caused to Mr F due to being supplied with goods that were not of satisfactory quality, which it has already agreed to do.*

PSA Finance UK Limited must pay the total compensation within 28 days of the date on which Mr F accepts my final decision. If it pays later than this it must also pay interest on the £500 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr F how much it has taken off. It should also give Mr F a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."

I invited both parties to respond to my provisional decision should they wish to do that. As far as I am aware we have received no response from PSA. Ms W responded on behalf of Mr F. In brief, she explained that there were a number of points that Mr F felt needed to be addressed. In particular, she told us the main reason why she had told A it must not pay out to PSA is because P has said if that happens, it will not need to admit liability. Mr F is in the process of taking P to court.

Further Ms W pointed out she is the first named driver on her insurance policy and Mr F is the second named driver and therefore the way he sees it he has insured the car. That being so, Mr F does not understand the point I made about his obligation to insure the car.

Moreover, the burnt out car sat on Mr F's driveway for 18 months before it was taken away. The offer to pay the shortfall was not a goodwill gesture. Further Ms W mentioned what third parties had said about that Mr F should have been given a replacement car as soon as the original car caught fire. Mr F considers that by not replacing the car immediately PSA breached the Consumer Rights Act 2015 and the warranty agreement. Moreover, Mr F suggested he would not be in this position in any event if PSA had given him a replacement car straightaway.

Ms W underlined how much time Mr F had spent on this complaint. She also reiterated how strongly Mr F feels about this complaint.

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 thank Mr F for his response to my provisional decision. It has been particularly helpful that Mr F took the time to set out his views on the redress which I proposed in my provisional decision, so that I have been able to gain a fuller understanding of his position and concerns about some elements of the proposed redress.

I've reviewed the complete file again, revisited my provisional decision and thought about what Mr F said in response to my provisional decision.

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.

I acknowledge that Mr F has been left in a very difficult position and this is in part because PSA supplied him with a car that was not of satisfactory quality. I also acknowledge that Mr F has spent a great deal of time dealing with this complaint. I am also well aware of Mr F's strength of feeling in relation to this matter. Ms W I realise also has spent time on this complaint and has strong feelings about it too. However, she is not a party to this complaint, so I have no power to compensate her for this.

As I have mentioned before Mr F is in the process of taking a number of third parties to court in relation to this car. I can well understand why Mr F would not like to encourage Ms W to authorise A to make the total loss payment to PSA if he thinks that this would excuse any of those third parties from liability. I repeat though as part of this complaint PSA has accepted liability in that it agrees that it supplied Mr F with a car that was not of satisfactory quality. However, only PSA is a party to this complaint so I can only look at issues that relate to it. I note that as it stands no total loss payment is going to be authorised so that A can pay PSA.

The agreement between Mr F and PSA requires Mr F to insure the vehicle, he has not. Rather, Ms W has insured the vehicle and made Mr F a named driver on her insurance policy. That is not the same thing as Mr F insuring the vehicle. Mr F is not the policy holder. Only Ms W is the policy holder. Therefore, Mr F has not met the terms of the agreement in relation to his obligation to insure the vehicle.

I think most people would be extremely fed up, to say the least, if they had a burnt-out car on their drive for 18 months, when they are not responsible for the car being burnt-out. The £500 payment for distress and inconvenience is, in part, intended to compensate Mr F for this.

I don't think it is appropriate to comment on what third parties may have said about PSA's failures to meet its responsibilities. The issue is not what interpretation these parties have on the relevant law. Neither can I take their views to represent the views of PSA.

Mr F suggests he should have got an instant remedy, in particular he suggests that the Consumer Rights Act 2015 provides for this. I don't agree, rather, the Consumer Rights Act 2015 talks about remedies that are available where it has been established that the goods sold are not of satisfactory quality. That does not mean, as Mr F appears to think it means that without establishing whether the goods were of satisfactory quality or not the supplier must immediately supply the consumer with a replacement. I've not seen the warranty but in any event I understand this is a manufacturer's warranty, it is not supplied by PSA who is the provider of the finance and the supplier of the car. I'm therefore unable to consider the actions of the manufacturer who supplied the warranty. This manufacturer is not a party to this complaint.

In any event, even if PSA had supplied Mr F with a replacement car in December 2019, it would still have expected to receive the total loss payment. Therefore, the issues that I have already gone through with regards to the insurance of the car would still be relevant.

I have not been persuaded by the new points raised by Mr F in response to my provisional decision. 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 require PSA Finance UK Limited to:

1. refund all payments made by Mr F to the agreement from September 2019 to the date of settlement (as previously agreed).

2. pay interest at the rate of 8% simple per year on all refunded amounts from 25 December 2019 until the date of settlement. (also as previously agreed)
3. reimburse Mr F for the cost of the reading glasses as it has already agreed to do.
4. pay £500 for the distress and inconvenience most likely caused to Mr F due to being supplied with goods that were not of satisfactory quality, which it has already agreed to do.

PSA Finance UK Limited must pay the total compensation within 28 days of the date on which Mr F accepts my final decision. If it pays later than this it must also pay interest on the £500 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr F how much it has taken off. It should also give Mr F a certificate showing this 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 F to accept or reject my decision before 21 April 2022.

Joyce Gordon
Ombudsman