

The complaint

Mr D complains that a car supplied to him under a conditional sale agreement by Vauxhall Finance plc (“Vauxhall”) was of an unsatisfactory quality. He further complains that Vauxhall failed to undertake sufficient checks to ensure that the loan was affordable. And he complains that the terms and conditions of the loan were not made sufficiently clear.

What happened

In July 2019 Mr D visited a car dealer with his adult daughter. Mr D’s daughter wished to purchase a car, but was not approved for the finance that she would need to complete the purchase. So the dealer suggested that Mr D take the finance and complete the purchase instead. Mr D says he was told that it would be relatively simple, at a later date, to transfer ownership of the car to his daughter. The agreement was for £12,295 over 48 months with monthly repayments of £272.67 and a final repayment of £4,425. At the time of sale the car was around 30 months old and had done almost 34,000 miles.

I think it is fair to say that Mr D’s ownership of the car has been beset by mechanical problems. In March 2020 the spark plugs and coil pack failed and were replaced under warranty. Soon afterwards the catalytic converter failed – the dealer concluded that was not covered under warranty so Mr D had it repaired at a third-party garage at a cost of £530.56.

Further problems occurred the following year with the failure of the CAM sensor that was replaced by the dealer in August 2021. And over the following months the car suffered a number of breakdowns that required recovery. The car was taken into the dealer in October 2021 for further investigations where it remained until March 2022. No fault was identified during that time, but after the car had been returned to Mr D it continued to indicate problems with the engine management system. It again broke down at the end of March 2022 and the recovery firm indicated that there was a problem with the throttle of the car.

The throttle body was replaced by the dealer but it again broke down in November 2022. The recovery firm found that the throttle had jammed. And further engine warning indications happened in December 2022 and March 2023 that appear to have resulted from the failure of the replaced catalytic converter. At that time Mr D agreed to surrender the car and a repayment plan was put in place with a third-party debt collection firm for the remaining balance.

Mr D complained to Vauxhall about what had happened. Vauxhall told Mr D that it considered it was a consumer’s responsibility to ensure they were satisfied they could afford any repayments they needed to make. It said it had based its lending decision on the information Mr D had provided. And had that information been inaccurate it considered Mr D would have breached the terms of the finance agreement. It said Mr D had the opportunity to read the contract before he signed it. And it said that it considered its liability for any faults with the car ceased six months after the agreement had started. So it thought any repairs that were needed to the car after that time were Mr D’s responsibility. Unhappy with that response Mr D brought his complaint to us.

Mr D's complaint has been assessed by one of our investigators. He concentrated on the part of the complaint relating to whether the car was of satisfactory quality. The investigator didn't think the car had been of satisfactory quality and asked Vauxhall to pay Mr D some compensation. The investigator thought that the cost of the repair to the catalytic converter should be refunded to Mr D. And he thought that Vauxhall should refund 5% of the monthly repayments that Mr D had made to reflect his impaired use of the car. He also thought that Vauxhall should refund any repayments Mr D made whilst he didn't have use of the car (or a courtesy car). And he said that Vauxhall should repay any settlement charges (including those imposed by the third party) that Mr D had paid. The investigator asked Vauxhall to pay Mr D a further £450 for the inconvenience he'd been caused.

Mr D accepted the investigators assessment. But, disappointingly, Vauxhall didn't reply. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr D accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr D and Vauxhall. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumers, as far as is possible, in the position they would have been if the problem hadn't occurred.

Mr D has complained about the checks Vauxhall did before lending to him. I think I should say at this stage that I do have some concerns about what Vauxhall has told Mr D about its responsibilities when making the lending decision. I think the regulations are clear that it is the responsibility of Vauxhall to carry out a reasonable and proportionate assessment of whether Mr D could afford to repay what he owed in a sustainable manner. And Vauxhall needs to ensure that Mr D is given clear, fair, and not misleading information about the terms of the lending before he makes his decision whether or not to proceed.

However I do not have sufficient information in order to reach any firm conclusion about whether or not Vauxhall met its obligations to Mr D when the loan was agreed. But since, as I will now go on to explain, I don't think the car supplied to Mr D was of satisfactory quality, and because the redress for both would be similar, I am not going to make any further findings about what happened when the loan was first agreed.

Mr D was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of finance used to purchase the car, Vauxhall is responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and

other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history

The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. But, if the fault is identified after the first six months, then it's for Mr D to prove the fault was present when the car was supplied. So, if I thought the car was faulty when Mr D took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to expect Vauxhall to put this right

It seems that the initial failure that Mr D experienced was a fault with the spark plugs and coil pack. I note that the failed components were replaced under the warranty that Mr D purchased with the vehicle. Generally I would expect these parts to have lasted much longer than they did – industry guidance would suggest an expected lifespan of at least five to seven years, and in many cases the entire lifetime of the car. But given their replacement I don't think their failure would suggest Mr D was entitled to reject the car as being unsatisfactory quality at that time.

But shortly afterwards the catalytic converter failed. Mr D says that his garage told him it seemed likely that failure had been caused by the problems with the coil pack. But whatever the reason it would seem that the catalytic converter present on the car was not sufficiently durable when it was sold. Whilst I accept that any mechanical part can fail from time to time I think it would be reasonable to expect this part to have a far longer lifespan if nothing went wrong. So I think Vauxhall should have agreed to replace this part for Mr D.

I accept that the repair to the catalytic converter was not carried out by a garage of Vauxhall's choice. But given the refusal of the dealer to pay for the repair I think it was reasonable for Mr D to source the repair at an affordable cost. I have no reason to think that the repair was of a lower quality than it might have been had it been performed elsewhere. And I think the repair that was completed was exactly that recommended by the dealer. So I'm not persuaded that Mr D, or the repair done by the third party, bears any responsibility for the faults that happened later.

As I have set out in my introduction, a series of further faults occurred on the vehicle. The cause of some could be identified, but others remained undiagnosed. But from the reports provided by the third-party roadside recovery company, and the testimony of Mr D, I am entirely satisfied that the faults were present. Over the three years that Mr D held the car it travelled little more than 18,000 miles.

So I am satisfied that the continuing faults, shown by the engine management system warning lights, the repeated failure of the throttle system, and the second failure of the catalytic converter would suggest that there were serious underlying problems with this car and would reasonably lead to a conclusion that the car was not sufficiently durable when it was sold. That would make me think that it was not of satisfactory quality.

Throughout the life of the car Mr D has faced problems with its reliability. Whilst the mileage travelled suggests he has been able to make use of the car, its benefit has no doubt been impaired by the repeated breakdowns. So I will direct that Vauxhall refunds part of the repayments Mr D has made to reflect the impaired usage.

But there were times when Mr D was unable to use the car – either because it required repair, or was undergoing extended diagnostic activities. It appears that, for much of the time that the car was off the road, Mr D was provided with a courtesy car. So at least he retained the use of a vehicle. But there was a period of time, of approximately eight weeks from September 2021 when Mr D didn't have use of another car. So during that time he was effectively making repayments on goods that he was unable to use.

Given the problems that Mr D faced with the car, and since I have found it was not of satisfactory quality when it was supplied, I would have concluded it was reasonable for him to reject the vehicle. But as I said earlier, Mr D agreed to return the car to Vauxhall and make a payment to complete his conditional sale agreement. I don't think it was reasonable, given that the car was not of satisfactory quality when it was sold for those charges to be made. And I also don't think Mr D should have needed to make any payments to the third-party debt company engaged by Vauxhall when he faced problems with his repayments.

There is no doubt that the problems with the car will have caused Mr D distress and inconvenience over an extended period. I have considered that in fact Mr D was not the user of the vehicle, but I think the failures suffered by his daughter, amplified by the fact that his grandchildren were sometimes in the car when it broke down, would have caused a great deal of concern to Mr D. So I will also direct that Vauxhall makes an additional payment of £450 to Mr D for his distress and inconvenience.

Putting things right

I am satisfied that the car supplied to Mr D was not of satisfactory quality. And I think it would have been reasonable, given the extended and repeated problems with the car, for it to have been rejected. But since its return has already taken place, I think Vauxhall should do the following in order to put things right for Mr D;

- Pay a sum equal to 5% of the monthly repayments made by Mr D from the time of the first breakdown in March 2020 to the end of the agreement to reflect any loss of use, or impaired use, of the vehicle because of the inherent quality issues.
- Refund two monthly repayments made by Mr D (in September and October 2021) to reflect the period of time that the vehicle was off the road and a replacement car had not been provided.
- Refund any final settlement payment made by Mr D to terminate the agreement. Or, if no payment has been made, any outstanding balance should be waived.
- Refund the cost of replacing the catalytic converter in July 2020 that amounts to £530.56
- Refund or waive any charges applied by the third-party debt management company associated with managing Mr D's account
- Refund any charges incurred by Mr D in transporting, or recovering, the vehicle to the dealer following any breakdowns. Mr D should provide invoices to Vauxhall showing any charges he has incurred that require reimbursement.
- Vauxhall should add simple interest at a rate of 8% per annum to any amounts it is refunding to Mr D from the date they were paid to the date of settlement. HM Revenue & Customs requires Vauxhall to take off tax from this interest. Vauxhall must give Mr D a certificate showing how much tax it's taken off if he asks for one.
- Vauxhall should additionally pay Mr D £450 to reflect the distress and inconvenience he will have been caused.

- Any adverse information relating to this agreement should be removed from Mr D's credit file.

My final decision

My final decision is that I uphold Mr D's complaint and direct Vauxhall Finance plc to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 June 2024.

Paul Reilly
Ombudsman