DRN-5145830

The complaint

Mrs N complains about the way Stellantis Financial Services UK Limited trading as Vauxhall Finance has dealt with her claim that a car it supplied to her under a conditional sale agreement was not of satisfactory quality.

She's assisted in bringing this complaint by a relative, Mr N. For ease of reading I'll refer to any actions or submissions whether by Mrs N or Mr N as being by Mrs N.

Background

I recently issued my provisional conclusions setting out the events leading up to this complaint and how I thought the dispute should be resolved. I've reproduced my provisional findings below, which form part of this final decision.

My provisional decision

In June 2022, Mrs N entered into a conditional sale agreement with Vauxhall Finance for a new car. The car was priced at £33,689.99. Mrs N paid a deposit of £5,000 and received a £500 deposit allowance from the dealer "D". The credit balance was to be repaid over 48 monthly instalments of £341.26, with a final payment of a little over £15,000.

Unfortunately, following a service in July 2023, the car stopped working. Following investigation by D it was established that there was a problem with the traction battery. Although Mrs N initially asked for the vehicle to be repaired, after nearly three months D wasn't able to source the necessary parts. So Mrs N complained to Vauxhall Finance seeking to reject the car, in line with the satisfactory quality provisions of the Consumer Rights Act 2015 ("CRA"). I understand that throughout this period until January 2024 Mrs N had the use of courtesy vehicles supplied to her without charge.

Vauxhall Finance issued its final response on 27 October 2023. It said that D had agreed to the rejection of the car and that following the return of the purchase funds from D, Vauxhall Finance would close the credit agreement and refund any payments Mrs N had made to it. However, Mrs N subsequently received conflicting correspondence from Vauxhall Finance and D regarding rejection and sums to be refunded. She escalated her complaint to us.

Our investigator noted Vauxhall Finance had accepted Mrs N was entitled to reject the car. Consequently he thought Vauxhall Finance wasn't acting reasonably in delaying reimbursement and terminating the credit agreement. Mrs N had received from D a return of her deposit and a goodwill payment of £2,047, equivalent to six months' payments. But the investigator felt a refund of monthly payments was still outstanding.

By way of resolution, the investigator proposed that Vauxhall Finance terminate the credit agreement, ensuring no adverse information appeared on her credit file, and refund – with interest – any payments she made under it from the point the car stopped working; that is, 13 July 2023. He also felt it would be fair for Vauxhall Finance to reimburse

Mrs N's insurance and vehicle excise duty costs from that same point, again with interest, and to pay her £100 compensation for the distress and inconvenience she'd experienced due to its handling of the matter.

Following further representations from Mrs N, the investigator contacted Vauxhall Finance to see if it would be willing to refund all the payments Mrs N made under the agreement as outlined in its final response.

Vauxhall Finance hasn't responded to the investigator's initial assessment, or to his subsequent enquiry. The matter has been passed to me for review.

What I've provisionally 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.

Because Vauxhall Finance supplied the car to Mrs N, a consumer, under a conditional sale agreement, it has certain obligations under the CRA. The CRA provides that when goods are supplied to a consumer, they have to be of satisfactory quality taking account of the price and other relevant circumstances. The quality of goods includes their state and condition, and aspects including freedom from minor defects, durability and safety.

In considering whether the car supplied to Mrs N was of satisfactory quality I've taken into account that the car was brand new, and that by the point it broke down it was only a year old and hadn't covered a significant mileage such that this might be a relevant factor in the failure of the traction battery. That might well point to a lack of durability. It appears to be accepted by all parties that the problems Mrs N experienced with the car are sufficient to conclude that it was not of satisfactory quality, but for the avoidance of any doubt, I share that view.

So how did Vauxhall Finance respond to the claim? It acknowledged that Mrs N was entitled to reject the car, and given the CRA provisions around repair needing to be performed within a reasonable time[1], there's little question that this was the appropriate position to take. However, I don't find there was any proper basis on which Vauxhall Finance, as the supplier of the car, should have then sought to make reimbursement contingent on D repaying the sale proceeds to it.

As the supplier, Vauxhall Finance's obligations under section 20 of the CRA are relatively clear. They have the effect that when Mrs N exercised her right to reject the car and treat the contract as at an end, she was entitled to receive back – without undue delay and in any event within 14 days of the point Vauxhall Finance agreed she was entitled to a refund[2] – the same amount of money as she paid under the contract. This refund entitlement is subject to the provision in Section 24(8), which says:

"If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered…"

I'll return to this latter point later in my decision.

Clearly, the sums Mrs N received from D notwithstanding, Vauxhall Finance did not provide a refund within the specified timescale. It hasn't explained why, though it wouldn't be unreasonable to conclude that possibly this was in some part connected either to the

[1] See Consumer Rights Act 2015 Section 24(5)
[2] See Consumer Rights Act 2015 Section 20(15)

caveat in its final response or to the dispute over the payments made through D, or possibly a combination of both. In any event, I'm satisfied there's been an unreasonable delay in refunding Mrs N.

I'm conscious that Mrs N has said she will not seek repayment of the insurance or vehicle excise duty provided that Vauxhall Finance adheres to the proposal made in its final response, which Vauxhall Finance clarified in its subsequent email dated 1 November 2023. That proposal was a refund of 16 monthly instalments amounting to £5,460.16 in total.

Vauxhall Finance's proposal seems to me to be consistent with the section 20 obligations I've mentioned. It was open to Vauxhall Finance to make a fair use deduction in line with section 24(8), but in making the proposal to Mrs N, it didn't seek to do so. Nor has Vauxhall Finance subsequently told us of an intention to make such a deduction. That doesn't mean I should disregard the use Mrs N had of the car when determining what I consider to be a fair and reasonable resolution to the dispute.

I'm conscious that Mrs N has already received £2,047 from D as well as her deposit. A further refund in the amount Vauxhall Finance proposed would have the effect of putting Mrs N in a significantly better financial position. She would in effect have had the unimpaired use of the car for a year not only free of charge but also be in pocket by an amount equivalent to six monthly payments. That doesn't strike me as being a fair and reasonable outcome bearing in mind the circumstances of this complaint.

Rather, I consider a reasonable resolution should take into account the use Mrs N had of the car and the alternative vehicles supplied to her while her car was unusable. I don't consider Mrs N suffered material detriment or was being treated unfairly during these periods, and note that she was kept mobile throughout. I'm inclined to find it reasonable that Vauxhall Finance only needs to refund Mrs N payments she made towards the credit agreement from the point she returned the hire vehicle; that is, from 25 January 2024.

I take on board Mrs N's comments that she has treated the proposals from D as an entirely separate transaction. I would observe that the fact Mrs N has received a sum equivalent to six months' instalments doesn't appear entirely coincidental, given that this is the same time period as elapsed between the point the car broke down and the point D paid this sum. I haven't been provided with details of the basis on which D proposed this payment, but it does seem to flow from the same cause of action – the car not being of satisfactory quality – and so while I don't propose to reduce any refund due from Vauxhall Finance in light of it, I don't think I can simply disregard it when considering Mrs N's overall position.

For similar reasons, I'm not minded to propose reimbursement of vehicle excise duty or insurance for periods where Mrs N was provided with alternative transport without charge. I'm not persuaded they constitute a loss to Mrs N during that time. If Mrs N has paid additional costs in either respect after January 2024, then subject to her providing evidence of them Vauxhall Finance should reimburse these costs. Mrs N has also indicated she incurred a recovery charge of £150 when the car broke down. If this has not already been refunded to her, then Vauxhall Finance should ensure she is reimbursed this sum.

Vauxhall Finance should of course ensure that Mrs N has no adverse payment information recorded on her credit file as a result of the dispute. It can do this by terminating the credit agreement effective from January 2024 with no further instalments due from Mrs N, refunding any overpayments she has made since that point as previously mentioned.

> I do have some concerns over the time it has taken to get to this point, which could have been reduced significantly had Vauxhall Finance engaged better either with Mrs N's concerns following the confusion over its final response offer or indeed, with our service. I've no power to make a punitive award or fine Vauxhall Finance in this respect, but I do think it's appropriate to recognise that this has caused Mrs N additional and unnecessary distress and inconvenience, for which she should receive compensation. I assess £400 as an appropriate sum in this respect.

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Response to my provisional decision

Vauxhall Finance didn't respond to my provisional findings. It hasn't indicated whether it accepts or rejects them, or the resolution I've proposed.

Mrs N did respond. She summarised the events leading to the complaint and maintained that her claim should be settled in line with Vauxhall Finance's final response letter, noting its wording *"following receipt of our loan proceeds (the funds paid by us to the dealership to finance your vehicle), any payments made by you to us will be refunded, and your agreement can then be closed."*

Mrs N also expressed concern over the lack of any response to her (and to our service) by Vauxhall Finance following its letter. She said that showed very little concern for clients or the regulator. Mrs N indicated that while she received an ex-gratia payment through D this hadn't been described as final settlement. She remains of the view that Vauxhall Finance should return all finance payments in accordance with its final response letter, with interest from the date of the letter.

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've considered what Mrs N said in response to my provisional decision. It's clear that she places a good deal of weight on what Vauxhall Finance said in its final response letter. But when determining a complaint, I have to consider what's fair and reasonable in all the circumstances of a case. Our rules require that when doing so I take into account 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[3].

I don't see that it would be right for me to treat Vauxhall Finance's letter as a kind of trump card that overcomes all other aspects of this case. For a start, the settlement proposed in it was expressly contingent on Vauxhall Finance receiving funds back from D. And Mrs N's follow-up correspondence with Vauxhall Finance makes clear she wasn't willing to accept those settlement terms – leading, of course, to the complaint being referred to our service.

Whether or not it was appropriate for Vauxhall Finance to make a conditional offer in that way, given that Mrs N didn't accept its proposal, I can't say it should be binding on the lender. As the parties haven't been able to agree on a suitable resolution, it has fallen to me to propose one. In doing so, I've noted the CRA provisions, which I'm satisfied are relevant law. Even if Vauxhall Finance itself has not proposed a deduction for use (whether in the form of the payments made while the car was usable or as a price per mile calculation), I see

[3] FCA Handbook: DISP 3.6.4R

no reason for me to disregard that CRA provision when determining what's a fair and reasonable way to resolve the dispute.

I share Mrs N's unhappiness with Vauxhall Finance's lack of engagement with the complaint. I believe I said as much in my provisional decision. But I also said that I had no power to fine the lender or make an award of a punitive nature. Our service is not the industry regulator; that is a function of the Financial Conduct Authority ("FCA").

I appreciate Mrs N's strength of feeling. But her latest comments don't really amount to anything that she hasn't already said, or that I didn't take into account in my provisional decision. I see no reason to change my provisional findings and so I adopt them – and my proposed resolution – in full in this final decision, for the reasons I gave therein.

I realise, of course, that Mrs N sees the situation differently. I hope she can understand why I've reached the outcome I have. Should she decide not to accept my decision, it remains open to her to approach Vauxhall Finance directly, to ascertain the current position with D and to see if Vauxhall Finance is willing to settle matters as it originally proposed. My decision reflects that I can't rightly order it to do so.

Putting things right

For clarity, I consider a fair resolution to be for Vauxhall Finance to take the following steps:

1. cancel Mrs N's conditional sale agreement effective 25 January 2024, with no further instalments due from her after this date. It should ensure this is reflected in the information it has recorded on Mrs N's credit file;
2. collect the car at no cost to Mrs N;
3. return any payments Mrs N has made under the credit agreement since 25 January 2024, with interest on each payment calculated at a rate of 8% simple per year, from the date of each payment until the date it pays this settlement. If it deducts tax from this interest, it should provide Mrs N with an appropriate tax deduction certificate should she request one;
4. reimburse Mrs N any vehicle excise duty and insurance costs she has incurred in respect of the car after 25 January 2024
5. pay Mrs N £400 in recognition of the distress and inconvenience she's been caused by the way it has handled matters; and
6. if it has not already done so, pay Mrs N £150 in respect of the cost incurred for vehicle recovery at the point the car broke down

My final decision

For the reasons I've set out here and in my provisional decision, my final decision is that to resolve Mrs N's complaint Stellantis Financial Services UK Limited trading as Vauxhall Finance must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 13 December 2024.

Niall Taylor
Ombudsman