

The complaint

Mr Y complains about the quality of a used car that was supplied through a conditional sale agreement with Vauxhall Finance plc (Vauxhall).

What happened

In November 2021, Mr Y acquired a used car through a conditional sale agreement with Vauxhall.

The car was about five years and four months old and had travelled 53,481 miles when it was supplied to Mr Y. The cash price of the car was £7,742. Mr Y paid a deposit of £99, so the total amount financed on this agreement was £7,643 payable over 60 monthly repayments of £157.

The history of this complaint is well known to both parties, so I don't propose to rehearse it here, but in summary, Mr Y experienced issues with the car soon after acquiring it. He complained to Vauxhall at the time and ended up bringing the complaint to our service. In October 2022, a final decision was reached by one of our ombudsmen which upheld Mr S' complaint. The final decision included an instruction for Vauxhall to arrange for repairs to be carried out to the spark plug/ rocker cover gasket at no cost to Mr Y.

However, Mr Y contacted our service again to inform us that he was still experiencing problems with his car which included overheating. Mr Y explained the car also broke down and failed to start. Mr Y brought his car to a third-party garage who advised the engine needed to be stripped to assess the extent of the damage.

Mr Y complained to Vauxhall in December 2022 about the issue with the car's engine. In February 2023 Vauxhall issued their final response to Mr Y's complaint, which they didn't uphold. Vauxhall explained that as the current issues occurred more than six months after the car was supplied to Mr Y, the onus was on him to provide evidence that the issues were present or developing at the point of supply. They also said that due to the age and mileage of the car, they didn't think it was reasonable to expect the car to be of the same standard as if it was new.

Unhappy with their decision, Mr Y brought his complaint to our service for investigation.

Having reviewed all the information on file, our investigator recommended that Mr Y's complaint should not be upheld. Our investigator acknowledged there were faults with the car but concluded there was no evidence to show that the issues were present or developing at the point of supply.

Mr Y didn't accept our investigator's view. He said the car had been presenting problems from the start and doubted the initial repairs were successful. So, he asked that his complaint be referred to an ombudsman for a final decision.

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 considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and 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.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The agreement in this case is a regulated conditional sale agreement. As such, this service is able to consider complaints relating to it. Vauxhall is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that Vauxhall supplied Mr Y with a used car that had travelled around 53,000 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage. It would also be reasonable to expect the car would require some level of maintenance or repair sooner than if it was less road worn.

From the information provided I'm persuaded that there was a fault with the car. This is due to the email from the third-party garage advising that it was highly likely the engine has severe internal damage. Having considered the car has a fault, I've considered whether it was of satisfactory quality at the time of supply.

Mr Y complains that the engine of his car was faulty when it was supplied to him, and he believes that it should have been picked up when the dealership initially looked at his car for the issues relating to his initial complaint.

In their final response, Vauxhall confirmed that the dealership identified issues with the car in November 2022, around six months after supply. The issues as confirmed by the dealership were relating to excess oil, insufficient coolant, a leaking water pump and shock absorbers. I note from an invoice provided by the third-party garage also in November 2022, that the mileage was in excess of 59,000 which means Mr Y had travelled around 6,000 additional miles since being supplied the car, which in consideration of the timeline could be considered as reasonable usage.

I acknowledge the dealership identified some issues with the car, however, I've seen no evidence that they were present at the point of supply. The third-party garage carried out repairs as recommended by the dealership in November 2022, to the shock absorbers,

water pump, drive belt and rocker cover gasket, (as directed by our ombudsman's decision at the time). However, there's no comment or diagnostic relating to the condition of the engine which is the current issue.

What I have seen, is an email from the third-party garage suggesting severe damage has been caused to the engine. But what it doesn't say is how this was likely to have been caused or for how long the issue had been present or developing.

In addition, I think it's unlikely Mr Y would have been able to travel 6,000 miles had the engine been at a severely damaged stage at the point it was supplied.

Vauxhall said they feel it's reasonable that Mr Y should prove the issues were present when the car was supplied to him. And, Although the CRA doesn't specifically say that faults discovered after six months means the onus is on the consumer to prove the issues were developing; in the circumstances of this complaint, I think it's reasonable to expect Mr Y to do so. I say this because he's had continued usage for around six months and had driven it around 6,000 miles, which I think is a fair amount of usage for an issue to develop. In addition, I think it's reasonable to consider that a car with the age and mileage of Mr Y's car, is more likely to experience maintenance issues than if it was less road worn or newer.

In his reply to our investigators view, Mr Y said he believed all the issues he's experienced with his car since being supplied it, were all connected; and I recognise his strength of feeling about this. However, the issue regarding the replacement rocker gasket was already addressed by our service, so I won't be revisiting that in my decision; and as explained above, as I've not seen any evidence pointing to the current issues being present when the car was supplied to Mr Y, for example in the form of a specialist report or expert commentary or advice, I'm unable to conclude that the problems with the engine were present or developing when the car was supplied to Mr Y.

As I've concluded that the problems with the car's engine were not present at the point it was supplied, I don't require Vauxhall to take any action in respect of this complaint.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mr Y's complaint about Vauxhall Finance plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 30 September 2023.

Benjamin John
Ombudsman