

The complaint

Mr H complains Volkswagen Financial Services (UK) Limited (VWFS) trading as Audi Financial Services has supplied him with a car of unsatisfactory quality. He asks to reject it.

What happened

I set out the background to this complaint in my earlier provisional decision. For clarity I repeat it here.

Mr H is represented in his complaint by a third party but for ease I will refer to Mr H throughout my decision.

Mr H took receipt of a brand-new car on 31 January 2019 financed by VWFS. He began experiencing problems with the car almost immediately and the car was returned to the dealership for investigation on 7 February 2019. It conformed the car had been repaired and Mr H collected the car on 13 February 2019.

On 21 February 2019, the dealership collected the car as it had broken down again. The dealership couldn't replicate the fault and suggested Mr H use the spare key and it would order a new key if he experienced any further problems.

On 31 March 2019, Mr H called out breakdown recovery as the car wouldn't open, lock or start. The breakdown recovery managed to get the car started but no-fault codes appeared. Mr H continued to experience problems with the keys with eventually the keys being replaced and recoded at no cost to Mr H.

On 3 August 2019, Mr H emailed the dealership with video footage to show neither key was working again, and he asked to reject the car. The dealership asked him to bring the car in for further diagnostics, but Mr H remained of the view he had no confidence in the car and wanted to reject it.

In November 2019, Mr H's third-party representatives contacted VWFS again requesting to reject the car. After initially requesting an authority form to liaise with the third-party representatives, no further correspondence was received.

On 23 December 2019, Mr H called out VW Roadside Assist who confirmed the key wasn't working again, the car couldn't be unlocked, and the driver door was implausible. In January 2020, VWFS raised the issue as a complaint.

In its final response, dated 9 April 2020, VWFS said although it partially upheld the complaint it didn't agree to a rejection of the car but would allow a "preferential purchase" of another car.

Dissatisfied Mr H brought his complaint to this service.

An investigator looked into things for Mr H. In his first view he felt Mr H had accepted the repairs and he hadn't seen any evidence of any issues since the repairs were carried out. Mr H provided further evidence in the form of video footage and a breakdown report dated 23 December 2019. VW Roadside Assist confirmed the key wasn't working again, the car couldn't be unlocked, and the driver door was implausible.

The investigator then issued a second view upholding Mr H's complaint. He said he was now satisfied the repairs had failed and Mr H should be allowed to reject the car. He said Mr H has been inconvenienced by the number of times he'd been left stranded and when the car had been in for repairs. He asked VWFS to:

- ❑ Arrange collection of the car at your cost;
- ❑ Terminate the agreement and remove it from Mr H's credit file;
- ❑ Retain the payments made until January 2020, but refund the payments from this date to Mr H – adding 8% simple interest;
- ❑ Refund Mr H's deposit, adding 8% simple interest;
- ❑ Award the sum of £250 for the distress and inconvenience has caused.

Mr H accepted the investigators findings.

VWFS didn't. It said it hadn't seen any evidence the car wasn't driveable following the repairs and it didn't understand why it had been asked to refund the payments made by Mr H in 2020. It asked for an ombudsman review.

In my provisional decision I considered what is fair and reasonable, I took regard of the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider having been good industry practice at the relevant time.

The hire purchase agreement in this case is a regulated consumer credit agreement – therefore this service can consider a complaint relating to it. There are various rules and protections about how hire purchase agreements operate, including those set out in the Consumer Credit Act 1974 ("CCA") The CCA is therefore relevant law in this complaint.

VWFS is also the supplier of the goods (i.e. the car) under this type of agreement, and responsible for a complaint about their quality. The CRA sets out some of the responsibilities of a supplier in relation to the quality of goods it supplies. The CRA is therefore also relevant law in this complaint.

I explained the CRA says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age of the car when supplied and when the issue that the consumer complains about first arose.

VWFS supplied Mr H with a brand new, relatively expensive, prestigious car. In the circumstances, I said I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car or even a cheaper new car. And that it could be used – free from defects – for a considerable period of time.

Mr H started to report a problem with the keys and the locking system within a week of obtaining the car. The issue has gone on ever since with the dealership having multiple

attempts to repair the car, which have failed repeatedly. This culminated in a request from Mr H to reject the car in August 2019.

VWFS said it hadn't seen any evidence the car hadn't been driveable and as such didn't agree to allow Mr H to reject it. I explained, whether the car has been driveable isn't the test here.

The relevant legislation says that if a fault arises in the first 6 months, it's for the business to show that the fault wasn't present when the car was supplied. After 6 months it's up to the consumer to show that the car wasn't of satisfactory quality. The fault was reported within a week and the car was back in the dealership for repair within the same week. The fault has also persisted, and the car has been back and forth up to six times since. After the final repair, Mr H has provided further video evidence of the same fault and a breakdown report evidencing the same fault again. I said the relevant legislation allows one attempt at repair, I'm persuaded the evidence shows the repair failed and as such Mr H should be allowed to reject the car.

This was also a brand-new vehicle and should have been fault free for a considerable period of time. So, in looking at what I consider fair and reasonable redress, I said I'd taken into account the mileage Mr H has been able to undertake in this car, which amounts to approximately 6450 but also what I consider to be a great deal of inconvenience, trouble and upset. Having to go back and forth to the garage for repairs, being stranded as the car wouldn't start or the doors unlock and what should have been an enjoyable experience with a prestigious and expensive car has been seriously impaired.

For these reasons I said I intended to ask VWFS to:

- ❑ Arrange collection of the car at no cost to Mr H;
- ❑ Terminate the agreement and remove it from Mr H's credit file;
- ❑ Retain the payments made until August 2019 (when he first asked to reject the car), but refund the payments from this date to Mr H – adding 8% simple interest;
- ❑ Refund Mr H's deposit, adding 8% simple interest;
- ❑ Award the sum of £400 for the distress and inconvenience this matter has caused.

I invited both parties to provide any further submissions they wished me to consider before reaching a final decision.

Both parties responded.

VWFS accepted my provisional findings.

Mr H accepted my provisional findings, but his representative asked me to consider refunding Mr H's insurance and road tax costs in addition to the redress I intended to ask VWFS to make.

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 both parties for their submissions and I've looked at all the information afresh. I have further considered the request from Mr H's representative for a refund of the insurance and road tax costs.

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 courtesy 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.

Both parties agree with my provisional findings, but Mr H's representative asked me to consider his additional road tax and insurance costs.

I have look at the submissions regarding the road tax. There does seem to be a discrepancy in the information provided as one the one had Mr H says he kept it on a friend's driveway, and it was SORN, whilst on the other he was paying the car tax monthly. So, If the car was SORN there wouldn't have been any road tax costs.

To some degree this is not hugely relevant as Mr H has also confirmed whilst the car was not used for large periods of time, he did use it occasionally and this is reflected in the mileage.

I accepted the usage was minimal but this would still require the car to be taxed and insured and so I can't fairly say the costs should be reimbursed. I have, however, taken into account the trouble and upset and sheer frustration Mr H must have felt to be paying for a car that he couldn't use, and this is reflected in the increased award for trouble and upset.

It follows that I'm not persuaded to increase the redress from my provisional findings.

My final decision

For the reasons I have given I uphold this complaint and I direct Volkswagen Financial Services (UK) Limited to:

- ☒ Arrange collection of the car at no cost to Mr H;
- ☒ Terminate the agreement and remove it from Mr H's credit file;
- ☒ Retain the payments made until August 2019 (when he first asked to reject the car), but refund the payments from this date to Mr H – adding 8% simple interest;
- ☒ Refund Mr H's deposit, adding 8% simple interest;
- ☒ Award the sum of £400 for the distress and inconvenience this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 July 2021.

**Wendy Steele
Ombudsman**