

The complaint

Mr B is unhappy that a car supplied to him under a hire purchase agreement with Volkswagen Financial Services (UK) Limited (VWFS) was mis-sold and was of an unsatisfactory quality.

What happened

On 17 January 2019, Mr B was supplied with a used car through a hire purchase agreement with VWFS. The agreement was for £40,999 over 49 months; with 48 monthly repayments of £573.52 and a final payment of £20,293.75 if he wanted to keep the car at the end of the agreement. At the time the car was over three years old and had done 14,655 miles.

Mr B said he'd discussed the car's depreciation with the supplying dealership, and he'd been told that it would retain its value, and there'd be no issues if he wanted to sell or upgrade it within the first year. But, 14-months later, Mr B contacted the dealership to discuss his options to return the car. And he's said they told him the car was worth less than the amount he owed to VWFS. So, he feels he was misled into acquiring the car.

Mr B was also unhappy with the quality of the car. He's said he'd had to return the car to the dealership to have a rattle fixed, and that there was a further fault with the headlight controls. He's also said that he was told that the tyre tread was above the legal limit, and he had several months before they would need replacing. However, he was told by an independent tyre fitter that the tyres had insufficient tread and would need replacing sooner.

Mr B complained to VWFS, who said the dealership were unable to replicate the headlight fault. They also said that, having spoken to the dealership, there was no evidence to show Mr B had been told the car wouldn't depreciate in value. So they didn't uphold his complaint.

Mr B wasn't happy with VWFS's response, and he referred his complaint to the Financial Ombudsman Service for investigation.

Our investigator said she'd spoken to the supplying dealership and they'd said it's impossible for them to predict any future value of a car, because it depends on factors such as mileage and condition, as well as general market forces at the time. Which is why they don't discuss this with customers. Instead, they refer to the Guaranteed Minimum Future Value (GMFV). The investigator said that Mr B was provided with documentation showing the GMFV to be £20,293.75, which shows a depreciation of around £20,000 over the term of the agreement.

Because of this, the investigator said Mr B was provided with sufficient information, before he entered the agreement, to show that the car would depreciate in value. So she didn't think the agreement had been misrepresented or mis-sold.

The investigator also said that a rattle on the car was repaired on 28 March 2019, at no cost to Mr B. And there were further issues with the parcel shelf on May 2019, and a level sensor in August 2019. She thought these were wear and tear issues and didn't mean the car was of an unsatisfactory quality when supplied. She also said she'd seen no evidence of an issue

with the headlamp control, and that Mr B didn't need to replace the tyres until almost a year after taking possession of the car.

Because of this, the investigator didn't think Mr B should be allowed to reject the car. But she did think VWFS should pay him £100 for the trouble and upset he'd been caused by having to return the car for repair on a number of occasions.

VWFS agreed with the investigator, but Mr B didn't. And he's asked for an ombudsman to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr B was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

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 goods, VWFS are responsible. What's satisfactory is determined by things such as 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 and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also says goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless VWFS can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr B to show it was present when the car was supplied. So, if I thought the car was faulty when Mr B took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask VWFS to put this right.

Mr B has also made a complaint about misrepresentation. When considering misrepresentation, I'm looking at two things; whether there was a false statement of fact and, if there was, whether it was the false statement of fact that induced Mr C to choose the car.

Mr B has said that the supplying dealership verbally told him the car wouldn't depreciate in value. And it's not disputed that there's no evidence to show what Mr B was or wasn't told.

While I appreciate Mr B wanted a car that wouldn't reduce in value, because of factors such as age, condition, and mileage, it's extremely rare that a car wouldn't depreciate in value over time. And, where this is the case, it's also reasonable to expect that the car is insured for a fixed value, rather than a general market value which is normally the case.

The pre-contract information from VWFS explains how the GMFV is fixed, which protects the customer against depreciation. So, if the true value of the car is lower than the GMFV, then the GMFV would be used to value the car. And I've seen that, on 17 January 2019, Mr B signed to say he'd received and read this information.

I've also reviewed the agreement. While it doesn't specifically mention a GMFV, it also doesn't give any other guarantees about depreciation and the future value of the car. And the final optional payment is the same as the GMFV of the car.

What's more, I haven't seen anything to show me that Mr B insured the car for a fixed value. And, when he looked to return the car to the dealership, the price he was quoted was the trade value of the car, which is usually lower than the retail value that could be achieved on a private sale.

Taking all of the above into consideration, on the balance of probabilities I'm satisfied it's more likely than not that Mr B wasn't told the car wouldn't depreciate in value. Because of this, I don't consider there was any false statement of fact, and that the future value of the car wasn't misrepresented to Mr B.

Turning to the car itself, I've seen that Mr B first raised an issue with the car on 29 January 2019, as he didn't find the seats comfortable or supportive. However, at this time, he didn't raise any other issues with the car.

The service record for the car shows that, on 28 March 2019, the dealership fixed a rattle in the roof pan and replaced a battery in the key. At the time, the car had done 16,827 miles – 2,217 more than when it was supplied to Mr B.

On 9 May 2019, the dealership fixed some damage to the parcel shelf that was causing another rattle. At this point, the car had done 18,394 miles – 3,789 since supply. And, on 29 August 2019, when the car had done 22,413 miles (8,758 since supply), a level sensor was replaced. The car was then serviced on 25 October 2019, with no further work done.

It's clear from this that Mr B suffered a few faults with the car. But, as none of these faults reoccurred after the dealership attempted repair, it's reasonable for me to say that the repairs were successful. And, as Mr B didn't complain about these faults in his January 2019 email, it's also reasonable for me to say these issues weren't present when the car was supplied to him.

If these faults made the car of an unsatisfactory quality when supplied, then the CRA allows VWFS the chance at repair. And, as these faults were repaired at no cost to Mr B, the CRA doesn't give Mr B the right to reject the car. So, if I thought these faults made the car of an unsatisfactory quality, as they were successfully repaired, I wouldn't ask VWFS to allow Mr B to reject the car.

Mr B has also complained of a fault with the headlight control. The service record shows the dealership investigated this but couldn't find or replicate the fault. And I haven't seen any independent evidence of any headlight control fault. So I'm not satisfied this fault exists. And I won't be asking VWFS to do anything more.

Finally, Mr B has complained about the condition of the tyres, and he's said he was told the tyres wouldn't need replacing for several months. I've seen the invoice for the replacement tyres, and this shows Mr B had them replaced on 23 December 2019 – more than 11 months after the car was supplied, and after it'd done an additional 12,615 miles. This is in line with what Mr B says he was told. So, I also don't think VWFS need to take any further action.

Putting things right

The investigator acknowledged that Mr B had suffered some inconvenience in having to take the car in for repair, for several different issues, during the first few months of being in possession of it. And she recommended VWFS pay Mr B £100 compensation for the trouble and inconvenience he'd been caused. VWFS agreed with this recommendation.

I'm satisfied the investigator's recommendation is in line with what I'd award in similar circumstances, and I see no compelling reason to change this. So, VWFS should pay Mr B the £100 compensation.

My final decision

For the reasons explained, I uphold Mr B's complaint and Volkswagen Financial Services (UK) Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 April 2022.

Andrew Burford
Ombudsman