

The complaint

Mr O complains about the quality of a car he acquired under a hire agreement with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (VWFS).

What happened

In March 2019, Mr O entered into a hire agreement with VWFS to acquire a brand-new car. The duration of the hire period was 36 months. Mr O paid an advance rental payment of around £3,067 and there were 35 monthly rentals of around £367 with the first one payable one month after the registration date.

In November 2020, Mr O contacted VWFS. He says he received a letter that the car had a recall notice due to a safety fault with the starter-alternator. He says the letter stipulates that the repair would take around 2 hours, but he says that two different dealerships told him that it would take a day or two to rectify. He says that they also couldn't offer him a courtesy car, drop him off, collect the car, or allow him to stay at the dealership while it was being repaired due to Covid-19 restrictions. Also, Mr O says he was inconvenienced as he couldn't park the car in a multi-story car park due to the fault, and he felt unsafe having his family in the car too. He is also unhappy with the customer service he received from VWFS, when he was trying to sort out this issue. He says that, because VWFS has been unreasonable in providing a fair resolution, he feels he has no option but to reject the car.

In December 2020, VWFS wrote to Mr O. In this correspondence they said that they are unable to accept Mr O's request to return the vehicle free of charge, because a technical solution for the recall is available. They say that the starter-alternator requires replacement on the affected cars as a precautionary measure and the work will be completed free of charge. They apologised for the level of service Mr O received from them, and, in recognition of the distress and inconvenience caused, they offered him one monthly rental of around £367. In this correspondence they go on to explain that the early termination charge of around £3,576 is payable as per his terms and conditions, and if this remains unpaid, they said they may report late payment markers to the credit reference agencies.

Mr O feels that the one-month rental payment back doesn't compensate him properly for the inconvenience caused, and he thinks that he should not be responsible for the early termination amount of £3,576. So, he brought his complaint to this service.

Our investigator thought the complaint shouldn't be upheld.

Mr O disagreed with the investigator.

So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 17 September 2021. In the provisional decision I said:

'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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the events of the complaint, but I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr O acquired the car under a hire agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. VWFS is the supplier of the goods under this type of agreement, and is responsible for dealing with complaints about their quality. The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr O entered into.

Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the car's price. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this case, the car that Mr O acquired was brand new. So, the car should have been in perfect working order, free from minor defects.

The CRA sets out that Mr O has a short term right to reject the car within the first 30 days if the car is of unsatisfactory quality, however, he would need to ask for rejection within that time. Mr O would not be able to retrospectively exercise his short term right of rejection after the 30 days have passed. Even if I accept that there was a fault which made the car of unsatisfactory quality, Mr O could only reject the car within the first 30 days, and only if he expressed his wish to do so. But the CRA also says that Mr O would still be entitled to return the car after 30 days, if the car acquired wasn't of satisfactory quality, or not as described, and if Mr O had exercised his right to repair which has failed to rectify the issue. Therefore, for me to conclude that Mr O can exercise his right to reject the car I would need to see that the car wasn't of satisfactory quality, because the fault he complains about was likely to have been present or developing at the point of supply, and that VWFS's one attempt at a repair had failed. So, I will now consider if the car acquired was of satisfactory quality.

From the manufacturer's safety recall notice that Mr O has provided, I can see, insofar as it's relevant here, that it says that moisture could enter the housing of the belt-driven starter-alternator. As a result of this a chemical reaction, in unfavourable circumstances, could cause a short circuit in the component. And because of the resulting local overheating, the car subsequently catching fire can't be ruled out. The notice goes on to say that, due to a very small risk associated with this concern, individuals can continue to use the car and that there have been no confirmed cases at the time of writing in the UK. But it explains that as a precautionary measure the car should only be parked outside. It also says that if a

smouldering smell while driving the car is noticed, one should contact the manufacturer's roadside assistance on the given telephone number.

So, considering this I thought about whether Mr O's car had the faulty recalled part. But I can't reasonably conclude that it is more likely than not that Mr O's car contained the defective part solely on the grounds that the manufacturer issued a recall notice for his particular model. This is because the manufacturers will sometimes issue a blanket recall when it's been established that some cars may have an inherent manufacturing issue. This doesn't mean that every single car that is subject to the recall definitely has the defective part.

And I've not been presented with any evidence that would allow me to conclude that there was a fault with Mr O's car. It's possible that a fault may arise on the car in line with what the manufacturer has said, but a recall notice doesn't mean that there was a fault with the car. The fact that a fault may occur doesn't mean that Mr O's car wasn't of satisfactory quality. So, while Mr O has my sympathy, I don't think it would be fair or reasonable to allow him to exercise his right to reject the car. And I'm not asking VWFS to waive any of the early termination charges which are payable as per the terms and conditions of his hire agreement.

I know that Mr O says that he was significantly inconvenienced by VWFS, because they failed to escalate or return promised calls when he was looking for a solution and was in the process of trying to return the car. I think this has caused him distress and inconvenience, but I think the £366.72 compensation already offered to him by VWFS fairly reflects the impact this had had on him.

My provisional decision

For the reasons given above, I intend not to uphold this complaint. Volkswagen Financial Services (UK) Limited trading as Audi Financial Services have offered to pay Mr O £366.72 compensation. I think this is fair in the circumstances of this complaint. If they have not already done so they should pay this directly to him.'

I asked both parties to provide me with any additional comments or information they would like me to consider by 29 September 2021.

VWFS replied accepting my provisional findings and had nothing further to add.

Mr O replied disagreeing and provided further submissions. I will address these in my findings below.

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 also considered again my provisional findings. Once again, I want to acknowledge that I've summarised the events of the complaint, but I want assure Mr O and VWFS that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr O, in response to my provisional decision, says that the fundamental point is that the dealership and VWFS were not reasonable in helping him to find a solution. He says they wouldn't fix the car over the weekend and wouldn't provide him with a hire car, which he

says he needed in order to be able to commute, as he was a key worker. He also says that they were not able to arrange a suitable appointment for him to bring the car into the dealership to assess the risk and to replace the recalled part. Mr O says that when he asked the dealership and VWFS when they would be able to provide a courtesy car, they couldn't even suggest a date. He says he was trying to find solutions and was unhappy that VWFS wouldn't speak to the dealership on his behalf. So, he says that he was stuck in a catch-22 situation, where he didn't know the risk and could not get it assessed. And overall, he feels that he was more than reasonable in trying to find a solution.

Also, in a response to my provisional decision, Mr O mentioned certain legislation, among others the CRA, and talked about satisfactory quality and fit for purpose. He says that he expected the car to be of a reasonable quality, and he feels that he was entitled to a repair, which should've been done in a reasonable time frame.

I agree that the CRA implied a term into Mr O's contract that the goods supplied will be of satisfactory quality and fit for purpose. And I agree that, if a business is required to repair the goods, they must do so within a reasonable time and without significant inconvenience to the consumer. But, like I said in my provisional decision, for me to conclude that Mr O can exercise his right to reject the car, I would need to see that the car wasn't of satisfactory quality or fit for purpose. And in considering this I need to think about whether there was a fault that was present or developing at the point of supply. Which means that, before I could even consider whether VWFS carried out, or attempted to carry out, the repair within a reasonable time and without significant inconvenience to the Mr O, I would need to be satisfied that the car wasn't of satisfactory quality. But I can't reasonably conclude that it is more likely than not that Mr O's car contained the defective part, solely on the grounds of an issued recall for his particular model by the manufacturer. Manufacturers do sometimes issue blanket recall notices when it has been established that some cars may have an inherent manufacturing issue. This doesn't mean that every single car that is subject to the recall has the defective part.

It is important to note that I've not been presented with any evidence that would allow me to conclude that there was a fault with Mr O's car. I understand that Mr O says that he tried hard to get the car looked at to ascertain whether his car had the defective part, but even if the part in question was replaced under the recall notice, this wouldn't automatically mean that it was a defective part. This is because a recall notice doesn't automatically mean that there was a fault with the car, and sometimes parts get replaced under a recall as a precautionary measure. So, the fact that a fault may subsequently occur due to a part that is listed under a recall notice doesn't automatically mean that Mr O's car wasn't of satisfactory quality. I know that Mr O feels that VWFS was unreasonable and wouldn't help him to find a solution to have the car taken into the dealership for the recall part to be looked at. But I can't reasonably say that VWFS was required to help him with this, as I have not been provided with any evidence that would allow me to conclude that car was of unsatisfactory quality.

So, while Mr O has my sympathy, I still don't think it would be fair or reasonable to allow him to exercise his right to reject the car. And I'm still not asking VWFS to waive any of the early termination charges which are payable as per the terms and conditions of his hire agreement.

Mr O has also told our service that the amount of compensation paid was not reasonable and not enough. He says that he spent hours on the phone and was promised multiple calls that were not returned. Mr O feels that the compensation should be far higher than what VWFS has offered. As he feels that none of the stress, time taken and impact on him and his family has been considered. The other reason that he thinks that the compensation should

be higher is because he says that he is now responsible for an early termination amount of around £3,576.

I recognise that Mr O suffered a lot of distress and inconvenience, as well as financial loss because he terminated his agreement early, but for the reasons set out above I don't think VWFS is liable for what has happened. Also, I accept that Mr O had to make numerous telephone calls, but I think the compensation offered by VWFS is fair and reasonable, and truly reflects the impact of the situation.

In view of the responses to my provisional decision, I see no reason to reach a different conclusion to what I have reached in my provisional decision, as copied above.

My final decision

For the reasons given above, and in my provisional decision, I don't uphold this complaint. Volkswagen Financial Services (UK) Limited trading as Audi Financial Services have offered to pay Mr O £366.72 compensation. I think this is fair in the circumstances of this complaint. If they have not already done so they should pay this directly to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 28 October 2021.

Mike Kozbial
Ombudsman