

## **The complaint**

Mr M complains about the quality of a used car he acquired through a hire purchase agreement with Volkswagen Financial Services (UK) Limited trading as Audi Finance.

## **What happened**

In April 2017, Mr M signed a hire purchase agreement with Audi, which enabled him to acquire a used car from a dealer. Nearly two years later, Mr M took the car back to the dealer for a service. He says he told the dealer about a problem with the gearbox, in that the gearbox seemed to slip or jerk, when changing between second and third gear.

The dealer didn't make any repairs to the gearbox. Instead, the dealer completed the service and worked on the car's tailgate, as that part had been subject to a factory recall. When Mr M collected the car, he says he noticed damage to an alloy wheel and the front spoiler, which he says must have been caused by the dealer, during the repair of the tailgate.

To put things right, the dealer agreed to repair the damage Mr M had noticed. But, Mr M complained further to the dealer, as he says the car's engine didn't feel right after the repair and other parts weren't working as they should. He says it was at this point that he lost faith in the dealer.

Around a year later, a second dealer, which like the first was accredited in the make of Mr M's car, agreed to look at the car's engine. The second dealer's records show that a knocking noise was confirmed and the engine was lifted, stripped, repaired and rebuilt.

Mr M collected the car in March 2020, but it broke down shortly after leaving the second dealer's workshop. Mr M complained that a pipe to the engine hadn't been connected properly, and that the car now had a problem with the suspension and the sunroof. Mr M also complained that he thought the car had been driven excessively for 200 miles, in an attempt for the engine to correct itself.

After further correspondence between Mr M and Audi, Mr M complained that his car was faulty and that he wanted to reject it. In their final response, Audi said that the engine problems happened almost three years after Mr M had bought the car, and that it was unlikely the problems were there at the point of sale. Mr M didn't accept this and brought his complaint to us.

One of our investigators looked into Mr M's complaint and concluded that the photos Mr M had provided, prove there were faults with the suspension and the sunroof. She also found that the engine parts that the second dealer replaced shouldn't have failed, given the age of the car. And the investigator said that the pipe connected to the engine wasn't repaired correctly, which shows the lack of care given to Mr M's car.

The investigator upheld Mr M's complaint and asked Audi to allow him to exit the agreement and refund the deposit Mr M had paid. She also asked Audi to remove any adverse information they had recorded about the account, with credit reference agencies and to pay Mr M £500 for the distress and inconvenience caused.

Neither Mr M nor Audi accepted the investigator's findings. Mr M said that he should also receive a refund of the repayments he made under the hire purchase agreement, as he hadn't had use of the car since February 2019. Audi said that the engine and gearbox faults were fixed under warranty and were probably not present when Mr M acquired the car. They also said there's no proof of the problems with the suspension or the sunroof.

The investigator didn't change her conclusions, so Mr M's case has been referred to me to make a final decision. Since then, quite some time has passed. Mr M has told us that he's sold the car for less than the market value, and has repaid the outstanding amount owed under his hire purchase agreement with Audi.

I sent Mr M and Audi my provisional decision on this case, on 3 September 2021. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

#### *The car Audi supplied to Mr M*

*Mr M's car was supplied to him under a regulated hire purchase agreement and our service is able to consider complaints about these sorts of agreements. Here, Audi is the supplier of the goods under the agreement and is responsible for dealing with a complaint about their quality.*

*The Consumer Rights Act 2015 (CRA) covers agreements like the contract Mr M entered into. The CRA implies terms into the agreement that the goods supplied will be of satisfactory quality, fit for their intended purpose, and as described.*

*The CRA says that goods will be considered of satisfactory quality where they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. In a case involving a car, the other relevant circumstances to take into account might include things like the age and mileage at the time of supply, and the car's history.*

*In Mr M's case, the vehicle was a used car with a purchase price of around £43,000. It had covered around 4,000 miles when Mr M acquired it and was around three months old. The car's vehicle history form doesn't show any problems, before Mr M was given it. So, although the car wasn't brand new, I think it was reasonable for Mr M to have had similar expectations, to one that was. In other words, I think a reasonable person would expect the car to show very slight signs of wear and tear, but on the whole they could expect it to be fault free.*

#### *The faults and repairs to the car*

*I've thought about what happened when Mr M took the car for a service in February 2019. This was around 22 months after he acquired the car and it had covered around 12,000 miles since it was first registered. The car's history document show that the dealer confirmed the slipping between gears, which Mr M had told them about.*

*I can see that the dealer repaired the parts of the car which were due under a manufacturer recall. But, I cannot see that any repair was made to the gearbox. Instead, the dealer's notes show they caused damage to the car while they had it. Although I can see the dealer put right the damage they had caused, I don't think a further repair was made to correct the gearbox faults they had spotted.*

*Mr M has since said that the problem with the gearbox continued until he took it to the second dealer. Audi have said that it's unlikely the problems with the gearbox were present*

at the point of sale. But, Mr M's car was only two years old when he took it for a service in February 2019. And the car had only covered 12,000 miles at that time.

Both Mr M and the dealer have confirmed there was a fault with the gearbox and the dealer didn't indicate that the fault was down to wear and tear. Having considered everything, I don't think a reasonable person would say Mr M's car was of satisfactory quality.

Under the CRA, after thirty days from the point of sale, Audi had a responsibility to offer Mr M a repair to the gearbox, or a replacement car. But, this didn't happen, leaving Mr M to continue to use the car until March 2020, with the fault remaining.

Like the first dealer, the second dealer was accredited by the car's manufacturer to carry out sales and repairs. So, I'm satisfied that Mr M approached a reasonable repair garage for the type of car he had. Mr M says he lost faith in the first dealer, because of the damage they caused to the car. I think it was reasonable for Mr M to have made this decision, given his experiences with that dealer.

The car's history document shows that the second dealer confirmed the knocking noise Mr M had noticed, in addition to the gearbox problem. The second dealer went on to repair the car and the records show the engine was removed, stripped, the variable valve timing (VVT) chain replaced and rebuilt.

In March 2020, Mr M's car was around three years old and had covered around 16,000 miles. I've considered the extent of the second dealer's repair and I think the VVT chain is a key component of the engine, which would usually be replaced on cars with a much higher mileage than Mr M's. Also, the dealer's notes don't indicate that the fault with the VVT chain was down to expected wear and tear.

When Mr M collected the car from the dealer in March 2020, he says it stopped working within a few miles. Mr M says that a pipe leading to the engine wasn't connected properly and when it was taken back to the dealer, it was crudely repaired with a cable tie.

Mr M has provided photographs of the second dealer's repair to the pipe and copies of emails sent to the dealer at the time. Mr M has also sent us details of a quote from a third manufacturer accredited dealer, to repair the pipe at a cost of around £850.

I think the third dealer's quote suggests the previous repair to the pipe with a cable tie was not an adequate, long term solution. I think Mr M has been credible and consistent in what he's told us about the car breaking down so soon after the repair by the second dealer. So, on balance, I'm persuaded the dealer's attempt at the repair has caused Mr M significant inconvenience.

Having thought about all the evidence, I think the rebuilding of the engine was a substantial repair to Mr M's car, considering the relevant circumstances, like the car's age, mileage and history. And I think the second dealer didn't perform an adequate repair to a pipe crucial to the working of the engine. This caused the car to stop working a short time after Mr M collected it. So, I don't think a reasonable person would say that Mr M's car was of satisfactory quality.

I've concluded that Audi should have repaired or offered to replace Mr M's car in February 2019. I've also concluded that the car needed significant repairs in March 2020, and that this wasn't done adequately. In all the circumstances, I think it's fair that Audi should have allowed Mr M to reject the car and exit the hire purchase agreement, after it was taken to the second dealer in March 2020.

*I now need to decide on a fair way to resolve this part of Mr M's complaint. I think it's fair that Audi should rework Mr M's hire purchase agreement as if it was ended in March 2020, at no additional cost to him. It then follows that Audi should refund the deposit of £4,879, which Mr M paid towards the car, back to him.*

*Mr M has been without the use of the deposit funds since the start of the hire purchase agreement. So, I think Audi should also add interest at an annual rate of 8% simple to the refunded amount, from the date it was paid, to the date when this complaint is settled.*

#### *The sunroof and the suspension*

*We've received photographs from Mr M of the car's sunroof and suspension. He says both these parts have faults and shows that the car wasn't of satisfactory quality. Mr M has also provided commentary from a mechanic, who specialises in the make of his car, to support what he says. So, I've thought carefully about Mr M's arguments and the evidence available.*

*Mr M's photographs of the sunroof show that one of the glass panels is misaligned with the other. Mr M has also provided an image of how the sunroof is supposed to look, from an online source. The commentary from the specialist also confirms that the height of one of the sunroof panels appears too low.*

*Turning to the evidence of a suspension fault, I'm unable to conclude from the photographs that a problem exists. Also, I don't think the notes from the three dealers Mr M took the car to, support what Mr M says about a fault. The commentary from the specialist does say that the car is at the maximum ride height. But again, this evidence doesn't go as far as to say there is a fault. So, I don't think I can support what Mr M says about a fault with the suspension.*

*Overall, I agree that the evidence provided about the sunroof, shows a fault. Given the circumstances of Mr M's car, I think this adds weight to my conclusions that a reasonable person wouldn't say Mr M's car was of satisfactory quality.*

#### *The repayments under the agreement*

*During his complaint with Audi, Mr M has said that he hasn't had any use of his car for a significant period, so he shouldn't have to make repayments for that time. I've considered this further to decide if it was reasonable for Mr M to have stopped using the car. I've also looked at the car's mileage records, to fairly decide how much use Mr M has had from it.*

*Both Mr M and the dealer have confirmed that the car jerked when changing gear. After the first dealer attempted a repair, Mr M noticed a knocking sound from the engine, which was confirmed by the second dealer.*

*When Mr M collected the car from the second dealer, he says the car broke down within a few miles. I've concluded that the car wasn't fixed correctly by the second dealer in March 2020. In addition, Mr M noticed other problems with the sunroof and the suspension.*

*Having considered everything, I think Mr M had reasonable concerns about the safety of the car and was rightly hesitant that continuing to drive it, may have caused further damage. So, I think it was reasonable for Mr M to have stopped using the car in March 2020. I acknowledge that Mr M took the car to different garages after this date. But, I think that was done out of necessity to deal with his case, rather than the normal day to day use he could have expected.*

*I've reviewed the records of the mileage covered by the car from April 2017 to when Mr M*

*took the car to the first dealer for repair in March 2019. Having done so, I can see that the car had covered around 11,000 miles, 7,000 of which were covered by Mr M.*

*Similarly, I've looked at the records to see the mileage covered until Mr M says he stopped using the car in March 2020. The records show that the car covered around 16,000 miles, which means Mr M had a further 5,000 miles of use from it.*

*Although Mr M has recently given the car back to Audi, we asked him for evidence of how many miles the car had covered since March 2020. Mr M provided us with an invoice from a mechanic, dated 7 June 2021, showing the mileage to be around 17,000.*

*Overall, I think Mr M had full use of the car up until March 2020, when he decided to stop driving it. Because of the mileage records, I don't think the car was used much after this date, except for the journeys Mr M made for various repairs.*

*I've concluded it was reasonable for Mr M to have stopped driving the car in March 2020, and that it remained largely unused until it was given back to Audi in the summer of 2021. I've also found that Audi should have let Mr M reject the car in March 2020.*

*In all the circumstances, I think it's fair that Audi refunds the monthly repayments Mr M made under the hire purchase agreement from March 2020 to the date he settled his agreement.*

*I also think that Mr M was without the use of the funds needed for the repayments, he made to Audi. So, I think Audi should also add interest at an annual rate of 8% simple to the refunded repayments, from the date they were paid, to the date when this complaint is settled.*

#### *The distress and inconvenience Mr M experienced*

*Looking at the records kept by Mr M and Audi, I can see that the car has been seen by three separate dealerships. Each of the dealerships has assessed the faults with the car and two of them have carried out work, which I think has caused more inconvenience for Mr M.*

*Mr M has explained that from when the initial service took place in February 2019, to when the second dealer returned the car to him in March 2020, he has suffered distress and worry about the safety of the car. Mr M also says that he's needed to arrange alternative transport since the second dealer returned the car, as he had lost faith in it.*

*I've concluded that Mr M didn't use the car from March 2020 onwards, and that it was reasonable of him to use a different vehicle. So, I'm persuaded that there was an impact on Mr M, in that he was put to the trouble and upset of making these arrangements, while still being required to service the hire purchase agreement with Audi.*

*I think Mr M experienced distress and inconvenience when Audi caused damage to the car, after the service in February 2019, and after the work was carried out on the engine a year later. In all the circumstances, I think it's fair that Audi pays Mr M £500, by way of compensation in recognition of that.*

#### *The credit reference agency records*

*I've concluded that it was reasonable for Audi to allow Mr M to reject the car, after the second dealer returned it to him in March 2020. Mr M continued to pay the amounts due under the hire purchase agreement with Audi, until he recently sold the car. This was despite having to make other travel arrangements and paying the costs involved with that.*

*I can see that throughout his complaint with Audi, Mr M has asked for the repayments to be suspended, but Audi didn't agree to that. I don't think it's fair for Mr M to suffer an impact over any difficulties he may have encountered, while trying to maintain his payments for the hire purchase agreement, during his dispute with Audi.*

*So, I think it's fair that Audi remove any adverse information they have recorded about the hire purchase agreement, with credit reference agencies from March 2020 onwards.*

Mr M responded to the provisional decision and in summary, he said:

- Keeping a car he wasn't using meant that he was forced to incur costs such as insurance, road tax, extended warranties and replacement tyres.
- He was forced to sell the car at between £4,000 and £5,000, below its market value.
- The stress he had been caused over a long period of time is unquantifiable.

Audi responded to the provisional decision and accepted it. They also said that Mr M repaid the outstanding balance of £19,632.25, to his hire purchase agreement in May 2021. They said they wrote to Mr M the following month to say they no longer hold a financial interest in the car.

### **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.

#### *The additional costs incurred by Mr M*

Mr M has explained that he needed to keep his car insured, taxed and under warranty for the time he was waiting for Audi to help him. I've concluded that it was reasonable for Mr M to have stopped using the car in March 2020. So, I've considered the costs Mr M says he incurred from March 2020 onwards. The costs total £1,328.06 and they are:

- Car Insurance renewal on 5 May 2020 – £392.29
- Car Insurance renewal on 5 May 2021 – £99.54 (Mr M has already received a part rebate, which is why this is less than the 2020 renewal cost)
- Extended warranty bought on 30 January 2021 – £476.39
- Road tax bought on 28 April 2020 – £132
- Road tax bought on 29 October 2020 – £132
- Road tax bought on 30 April 2021 – £95.84 (Mr M has already received a part rebate, which is why this is less than the 2020 renewal cost)

We asked Mr M to provide evidence of the costs he says he incurred. Having looked at the various receipts invoices and transactions from his bank statement, I'm persuaded Mr M incurred the costs and paid for them himself. I've also concluded that Audi should have allowed Mr M to reject the car in March 2020. And I've accepted Mr M didn't have any day to day use of the car from that date. Had Audi allowed Mr M to reject the car in March 2020, I don't think it's likely Mr M would have incurred insurance, road tax and the extended warranty fees. So, I think it's fair for Audi to refund the costs Mr M has told us about.

There are some costs that Mr M asked us to consider, which I don't think would be fair to ask Audi to refund. Mr M says he needed to replace the tyres on the car, before he sold it and he bought a warranty in January 2020.

Although I accept Mr M bought the warranty only a few months before he stopped using the car, I think he benefitted by some of the cover it provided. And I think changing tyres on a car is a reasonable expense to expect over the course of a year. In all the circumstances, I don't think Audi needs to provide a refund for cost the 2020 warranty or the tyres.

I also think that Mr M was without the use of the funds needed to pay the fees I've said should be refunded. So, I think Audi should also add interest at an annual rate of 8% simple to costs I've itemised, from the date they were paid, to the date when this complaint is settled.

### *The sale of the car by Mr M*

Mr M has told us he sold the car in August 2021 for £32,500. Audi have explained that Mr M settled the hire purchase agreement in May 2021, by paying £19,632.25.

Mr M also says he sold the car for less than the market value. But, I don't think that matters, because it doesn't effect the overall settlement which Audi should pay to him.

Generally, when a customer is allowed to reject a car, because it is of unsatisfactory quality, the fair outcome is that the car is returned to the lender. The customer normally then receives a refund of the deposit, and a refund of repayments for the time the car wasn't able to be used. As the car has been sold, the first part of this outcome won't be possible.

So, I've considered what would be fair in Mr M's case. After Mr M repaid the borrowing with Audi, he was left with a balance of £12,867.75 from the sale of the car. I've already concluded that Audi should refund Mr M's deposit of £4,879 and fourteen repayments of £548.36 from March 2020 until the loan was settled in May 2021, which amounts to £12,556.04.

In all the circumstances, I think Mr M has already received an amount from the sale of the car, which is slightly greater than the deposit and the repayments I've said Audi should refund. Having considered everything, I think it's fair for Audi to deduct £12,867.75 from the total settlement I've found they should pay to Mr M.

### *The distress and inconvenience*

I can see from what Mr M has explained throughout his complaint that he's experienced inconvenience. I also accept that the impact on him has been distressing.

Mr M needed to take his car to three different garages, he had legitimate concerns about the car's safety and he maintained his repayments to the agreement. Mr M also had the worry of sorting out an alternative means of transport.

I've considered what he's said about the impact on him further. I agree that Audi have caused Mr M distress and inconvenience. But, after thinking about everything, I still think an award of £500 is fair and reasonable.

### **Putting things right**

For these reasons, Volkswagen Financial Services (UK) Limited trading as Audi Finance should:

1. rework Mr M's hire purchase agreement as if Audi had allowed him to reject the car in March 2020 and had ended agreement, at no cost to him;
2. refund the deposit of £4,879 to Mr M;
3. refund the repayments under the hire purchase agreement from March 2020 to the date of settlement;
4. refund the £1,328.06 Mr M paid for insurance, road tax and an extended warranty;
5. remove any adverse information about the hire purchase agreement, recorded with credit reference agencies from March 2020 to the date of settlement;
6. add interest on the amounts in parts two, three and four of this settlement, at an annual rate of 8% simple from the date the payments were made, to the date of settlement;
7. deduct the amount of £12,867.75 from the total settlement, in respect of the payment Mr M received when he sold the car; and
8. pay Mr M £500 for the distress and inconvenience caused.

Audi must pay these amounts within 28 days of the date on which we tell them Mr M accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Audi deducts tax from any interest they pay to Mr M, they should provide Mr M with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and require Volkswagen Financial Services (UK) Limited trading as Audi Finance to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 January 2022.

Sam Wedderburn  
**Ombudsman**