

## **The complaint**

Mr M complains about the quality of a car he has been financing through an agreement with Volkswagen Financial Services (UK) Limited ("VWFS"), trading as Audi Financial Services.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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.

Mr M acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then VWFS, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr M. The car here was almost new and had only completed about 1,000 miles when it was supplied to Mr M.

The Consumer Rights Act (2015) is the relevant legislation. That says that goods should be durable, and I don't think that's been the case here. Mr M complained that the car would judder above 2,500rpm. The dealership have confirmed the problem exists and have clearly been unable to fix the car despite several attempts. I don't think a reasonable person would think a car had proven durable if after only about a year and a half it had developed a fault that prevented it from being driven without it juddering on reasonable acceleration.

The relevant legislation says that a business should have one opportunity to repair the car, but I think it's clear here that VWFS have had that opportunity. They have been attempting to fix the juddering since April 2021 and have replaced several parts but to no avail.

So, I think it is now fair for VWFS to allow Mr M to reject the car.

### **Putting things right**

VWFS should cancel the finance agreement and take the car back.

They'll also need to refund Mr M's deposit. I can see that Mr M disputes the amount of deposit he paid. It's clear that some of the money Mr M paid at the inception of the deal was used to pay off outstanding finance he had. I'm persuaded by the evidence provided that after that outstanding finance was paid, a deposit of £594.90 was made towards this agreement, that's the amount listed on the finance agreement and the amount I'm asking VWFS to refund. They'll need to add interest to that refund as Mr M has been deprived of that money.

I can see Mr M thinks the agreement was "*manipulated*" to "*hide discounts*" but that's not an issue that VWFS have been asked to look at and not something it would be fair for me to consider before they've done so. If that's something Mr M is still concerned about he should, in the first instance, make a complaint to VWFS about mis-selling of the finance agreement.

The relevant legislation explains that when goods are rejected the business are entitled to retain some of the monthly instalments in respect of the usage the consumer has had from the goods. Mr M's four-year hire purchase agreement allowed him to travel 41,833 miles over the course of the contract. He reported the problem with the car juddering in April 2021 and at that point he'd already completed over 50,000 miles and had used up his full mileage allocation. So, I think Mr M had fair use of the car until April 2021 and VWFS should therefore retain any finance instalments up until that time. There may be excess mileage charges due under the agreement and I'm not persuaded to tell VWFS to waive those as the car will have depreciated due to that excess mileage and it's fair VWFS are compensated for that depreciation.

After the juddering fault was reported VWFS tried to keep Mr M mobile with a series of courtesy vehicles. Whilst some of those were of a higher specification, in the main, I think it's fair to say that the courtesy cars provided were of a lower specification than the car Mr M was paying finance instalments towards. I'd agree with the investigator's suggestion that VWFS should refund, or waive, one third of the finance instalments paid, or due, from April 2021 in respect of the impaired use Mr M had from the car he was financing.

It's clear that Mr M has been inconvenienced by these issues. He's had to take the car back to the garage on several occasions and courtesy cars haven't always been of an equivalent specification e.g. they've been petrol cars or have had less seats. Mr M has also had to escalate his complaint to this service when I think it could have been resolved earlier. On the other hand, I can see that VWFS have provided courtesy cars to keep him mobile and that they did accept the investigator's recommendations that I'm now supporting. On balance, taking these matters into account I think VWFS should pay Mr M £500 to compensate him for the distress and inconvenience caused.

Mr M has explained that he's incurred some costs as a consequence of the car being of unsatisfactory quality. He's explained that he's kept the car insured and taxed in line with the terms of his agreement and that he's had to pay for petrol on occasion because the fuel card he benefits from only covers diesel. Whilst Mr M may have been paying insurance and road tax, I've not seen evidence he was paying those charges for the courtesy cars provided. This will have to a large extent at least; offset any costs he was incurring for those charges on his financed car. I'm not therefore asking VWFS to refund tax and insurance charges. I've not seen sufficient evidence of the petrol charges Mr M incurred either and on that basis I don't

think it would be fair to ask VWFS to refund anything towards petrol.

VWFS will need to remove any adverse reports they have made to Mr M's credit file, but if arrears on the account are not cleared 60 days after settlement then they may then begin to report arrears on the account again. If arrears remain VWFS should arrange an affordable repayment plan with Mr M for the balance.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Volkswagen Financial Services (UK) Limited to:

- End the finance agreement and take the car back.
- Offset the deposit of £594.90 plus 8% simple interest from the date of payment to the date of settlement, from the outstanding arrears.
- Offset one third of the monthly instalments from April 2021 until settlement from the outstanding arrears.
- Offset £500 compensation for the distress and inconvenience this matter has caused from the outstanding balance.
- Remove any adverse reports they have made to Mr M's credit file but if arrears on the account are not cleared 60 days after settlement of this complaint then they may then begin to report arrears on the account again. If arrears remain VWFS should arrange an affordable repayment plan with Mr M for the balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 May 2022.

Phillip McMahon  
**Ombudsman**