

## **The complaint**

Mrs D complains about the quality of a car she has been financing through an agreement with Volkswagen Financial Services (UK) Limited ("VWFS").

## **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 know it will disappoint Mrs D, but 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.

Mrs D acquired her 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 legislation is the Consumer Rights Act (2015). That 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 Mrs D. The car here was brand-new so I don't think a reasonable person would expect it to have any faults.

I think it's clear there have been significant faults with the software in this vehicle from the beginning. I've seen garage reports that show repairs being completed and it's clear the initial repairs were unsuccessful, and that Mrs D is still experiencing problems with the car.

The relevant legislation allows a business one opportunity to fix a fault present when the car is supplied, but if the fault persists they should allow the consumer to reject the car. VWFS approved that in October 2021 and I'd agree with their decision to do so.

## **Putting things right**

In those circumstances this service would usually expect the business to, end the agreement, collect the car, pay some compensation for the distress and inconvenience caused, refund the deposit, and refund the finance instalments paid. But the relevant legislation allows the business to retain some of the finance instalments to compensate it for the use the consumer has had from the vehicle.

VWFS have agreed to take the car back, end the agreement, pay £250 compensation, refund the deposit and refund half of the finance instalments Mrs D has paid.

Mrs D didn't have use of the car between for a couple of months in July/August and September/October 2021. I've also seen that she's had to take the car back to the dealership in 2022 and hasn't had full use of it as she's explained she's been plagued by software issues that affect things like the speedometer, warning lights, satellite navigation and connectivity. The dealership provided courtesy cars to keep Mrs D mobile whilst her car was with them being fixed, but it seems those cars weren't to the same standard as Mrs D expected. Taking all of that into account, however; I think VWFS's offer to refund half of the instalments paid is a very fair one. Whilst the car has been experiencing problems that I'm sure would have been annoying, it's still been driveable, and I think it's fair to suggest Mrs D has benefitted from the majority of its functionality.

There appears to have been some confusion over the deposit to be refunded. VWFS initially suggested that was £1,260 but the finance agreement explains that an advanced payment of £2,360 was made and I think that's what should be refunded to Mrs D, with interest as she's been deprived of that money.

Mrs D has experienced further inconvenience since the business offered her £250 compensation in August 2021. She's had further faults and has had to take the car back to the dealership and in those circumstances I would agree with our investigator's suggestion that VWFS should pay Mrs D a further £100 in compensation.

## **My final decision**

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

- Allow Mrs D to reject the car and end the finance agreement.
- Collect the car at no cost to Mrs D.
- Refund the deposit of £2,360 that has been paid and add 8% simple interest\* per year from the date of payment to the date of settlement.
- Refund the finance instalments, retaining half of those paid in respect of the use Mrs D has had from the car. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Pay Mrs D a further £100 to compensate her for the additional distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Mrs D's credit file in relation to this issue.

\*If HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must

give Mrs D a certificate showing how much tax it's taken off if Mrs D asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 14 September 2022.

Phillip McMahon  
**Ombudsman**