

The complaint

Mr C is unhappy that a car supplied to him under a hire purchase agreement with Volkswagen Financial Services (UK) Limited (VWFS) as of an unsatisfactory quality.

What happened

On 18 March 2020, Mr C was supplied with a new car through a hire purchase agreement with VWFS. He paid a deposit of £21,971.75 and the agreement was for £59,883.25 over 49 months; with 48 monthly repayments of £666.03 and a final payment of £40,280.

Mr C said that he started to experience problems with the car shortly after taking possession of it – there were issues with the interior lighting and the air conditioning, damage to the rear bumper, the high beam assist didn't work, and there was a knocking noise from both the engine. While most of these issues were eventually resolved, the noise from the engine persisted.

Mr C raised his complaints with the supplying dealership and with VWFS. But VWFS said the engine noise hadn't been identified as a fault. However, they did offer him a goodwill gesture of £717 as he'd experienced other issues with the car. Mr C wasn't happy with this response, and he brought his complaint to us for investigation.

Our investigator said the car was inspected by two engineers, in June 2020 and September 2021, and they both agreed there was a knocking noise coming from the fuel injectors. Both engineers also agreed this wasn't a normal engine noise. The investigator believed this indicated a fault with the car, that had been present or developing when the car was supplied to Mr C. So, he thought this made the car of unsatisfactory quality.

As the supplying dealership had been given multiple attempts to fix the problem, the investigator said Mr C should be allowed to reject the car. And VWFS should refund Mr C's deposit and the money he'd paid for new wheels and tyres (plus statutory interest), as well as paying him £500 for the distress and inconvenience he'd been caused.

Mr C didn't agree with the investigator. He didn't think was fair that the car was in repair for a total of 13-weeks, and he was provided with *"an unsuitable smaller vehicle"* on every occasion. Especially as he said he was paying £715 a month to VWFS. He's calculated it cost him £1,840.30 while the car was being repaired. And he believes he should be compensated £2,000 for *"the stress and inconvenience my family and I have had to bare [sic]."* He's also said that he paid £3,840 for alterations to the car, and he thinks this should be refunded.

VWFS also didn't agree with the investigator. They said there was no proven fault with the car, so they don't believe they need to take any action. They also didn't agree with being asked to refund Mr C the cost of the new wheels and tyres, as it was his choice to replace these on the car.

I reviewed the case in full and, on 27 April 2022, I issued a provisional decision. In that decision I said:

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 C 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 that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that 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, it's for Mr C to show that it was present when the car was supplied. So, if I thought the car was faulty when Mr C 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.

I've seen a copy of the records from the supplying dealership. These show Mr C first raised the issue of the engine noise on 13 July 2020, when they recorded that the car had done just 16 miles. The dealership said the engine noise "sounds like fuel injectors pinking noise." However, after carrying out tests, they deemed this to be "normal operating noise."

The dealership kept the car and, on 24 July 2020 (when they recorded the mileage to be 3,158 miles) they calibrated the injectors and updated the software to try and fix the interior lighting issue (which Mr C says wasn't fixed until 24 August 2020, as it was a wiring loom problem). They then inspected the car on 1 September 2020; on 5 August 2021, when they chose not to do a road test; and on 4 January 2022, when they carried out tests and repairs.

The records also show that the dealership carried out a warranty repair for an unrecorded problem on 16 March 2021 (7,301 miles); that they investigated a sporadic fault with the self-levelling suspension sensor on 22 March 2021 (7,491 miles); that they investigated a noise from the suspension and brakes on 5 August 2021 (12,897 miles); and they dealt with an issue with a wheel and the rear bumper on 4 October 2021 (12,871 miles).

While I don't think the mileage recorded by the dealership can be relied upon, as the mileage they recorded for 4 October 2021 is lower than the mileage they recorded for 5 August 2021, and the recorded mileage jumped from 16 miles to 3,158 miles between 13 and 24 July 2020 while the car was in their possession; I'm satisfied their records show an ongoing problem with the engine noise, which they investigated on at least four occasions.

Mr C provided a video of the car, recorded in August 2021, which shows a distinct engine noise. He's also provided a report from an independent engineer, dated 14 September 2021, when the car had done 12,689 miles. This report covered all the issues with the car Mr C was complaining about, and said:

- there was a pronounced interior rattle caused by poorly fitted plastic trim, which the engineer said related to when the interior wiring was fixed;*
- that Mr C's video indicated "a very loud noise akin to injector noise" but "the dealership recalibrated the injectors which appears to be successful" and "during the entire examination whether idling or being driven no unusual noises were heard";*

- *there was an intermittent noise when driving in the straight-ahead wheel position, but an “inspection of the visible steering components revealed no problems”;*
- *the passenger mirror was faulty, and didn’t dip when reverse was selected; and*
- *there was a fault with the keyless entry system.*

The engineer also said they there were no identified faults with the suspension warning lights, brakes, oil leaks, or exterior lights. And, with regards to the car lacking power, there was “a discernible difference in power delivery is evident when changing between various driving modes suggesting the system is functioning correctly.”

Based on what I’ve seen, I’m satisfied there was a problem with the car when it was supplied to Mr C. I say this because, in July 2020, the dealership said there was a noise from the fuel injectors. Although they said it was a normal operating noise, they still took action to fix this. Mr C remained unhappy, and in September 2020 the independent engineer said the video Mr C had supplied indicated the noise from the injectors that couldn’t be replicated under test conditions. Which would indicate an intermittent issue.

What’s more, the dealership fixed a problem with the interior ambient lighting, which was caused by a fault in the wiring loom. However, as confirmed by the independent engineer, the trim wasn’t refitted correctly after repair, which has caused a pronounced interior rattle. So, it would be reasonable for me to conclude that this repair wasn’t carried out to a satisfactory quality.

In addition to this, there are problems with the passenger door mirror not dipping when reverse is selected, and with the keyless entry system not working properly.

Mr C was supplied with a brand-new car. So, I’d expect the car to be of a satisfactory quality, and free from any defects. I’ve also taken into consideration the price of the car, as the more expensive the car, the fewer very minor issues I’d expect to be present.

As stated above, there were issues with the car that are either still intermittently present since supply or were fixed but not to a satisfactory standard. In addition, it’s reasonable for me to conclude that the issues with the mirror and keyless entry were either present or developing when the car was supplied, or that they developed within the first 18-months Mr C was in possession of the car. And, if it was the latter, this brings into question the durability of the car.

So, taking all the above into consideration, I’m satisfied that the car wasn’t of a satisfactory quality when supplied. And, as the dealership have attempted to repair the faults on more than one occasion, then Mr C should be allowed to reject the car.

After being supplied with the car, Mr C paid £3,840 for dechroming and wrapping of the trim, replacement decal badges, tinted windows, and replacement alloy wheels and tyres. And he thinks the cost of this should be refunded to him. However, I disagree. While the investigator has said these alterations may reduce the value of the car, I haven’t seen that VWFS were asked about, or agreed to, the alterations.

As the car was supplied on a hire purchase basis, it remains the property of VWFS until the final payment has been made. And, in the meantime, Mr C is renting the car. So, I’m satisfied that Mr C should’ve obtained authority from VWFS for making any physical changes to the car. And, as he didn’t, I don’t think that VWFS should have to pay for these.

It's my understanding that Mr C is still in possession of the original alloys and tyres that came with the car. If this is the case, then he should be given the opportunity to put these back on the car before it's returned. And he can then reuse or dispose of the new alloys and tyres he's purchased as he sees fit.

Mr C has also explained the issues he's had with the courtesy cars he was provided with. And that they were too small for his use. He's said this has cost him £1,840.30, but he hasn't explained how these costs were actually incurred or provided any evidence of paying them.

Mr C has also said the smaller courtesy car caused stress and inconvenience to his family. While I don't doubt that this was the case, the agreement was in Mr C's sole name. So, I'm only able to consider the impact the smaller courtesy car had on him, and not on others. Having done so, I'm in agreement with the investigator that having a smaller car than he was paying for, for an extended period, would've caused Mr C some trouble and inconvenience. And I think the £500 recommended by the investigator is reasonable in these circumstances.

However, if, as part of his comments on my provisional decision, Mr C can provide evidence of the £1,840.30 having the smaller courtesy car has cost him, along with proof of payment, then I'll also be asking VWFS to refund this to him.

Therefore, I'm minded to ask VWFS to:

- end the agreement with nothing further to pay;*
- collect the car, at no cost to Mr C;*
- refund the £21,971.75 deposit Mr C paid;*
- apply 8% simple yearly interest on the refund, calculated from the date Mr C paid the deposit to the date of the refund[†]; and*
- pay Mr C an additional £500 to reflect the trouble and upset he's been caused.*

[†]HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr C a certificate showing how much tax they've taken off if he asks for one.

Responses

VWFS said they felt the evidence they'd submitted showed there was no inherent fault with the car, and they didn't understand how I could conclude that the car should be rejected. However, they also said they had no additional evidence to provide and, as such, accepted my provisional decision.

Mr C said that he'd worked out it'd cost him £1,840.30 for the 11 weeks the car had been in for repair, when he'd had a courtesy car that wasn't a like-for-like. And he explained why he'd chosen the car he did, as it was suitable for his family.

Mr C also said that he'd paid for the modifications to the car, and that it wasn't his fault that the car turned out to be faulty. He didn't think these modifications had damaged the car, and that the car could be restored to its original condition. So, he didn't think it was fair that he should bear the cost of the modifications now the car is being returned.

Finally, in addition to the £1,840 and the costs of the modifications, Mr C thought he should also be compensated £2,000 for *"the stress and inconvenience my family and I have had to bare [sic] throughout the whole dilemma."*

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.

Based on what I've seen, I'm satisfied the evidence shows faults with the car that were present when it was supplied, or that had developed within 18-months of the car being supplied. Given this, I remain satisfied that the car was either insufficiently durable or was not of a satisfactory quality when supplied. And, as such, Mr C should be allowed to reject it.

I've noted Mr C's comments about the £1,840 costs he's said he incurred because of unsuitable courtesy cars being provided. In my provisional decision I gave Mr C the opportunity to submit evidence of these costs. But, as he hasn't done so, I won't be asking VWFS to reimburse Mr C for this.

Mr C has also referred to the modifications he's had done to the car. As I explained, these were done without the authority of VWFS. While Mr C believes the car can be returned to its original condition, there will be a cost involved in this. So, as the modifications were unauthorised, I don't think it's fair that VWFS both reimburse Mr C for the work he'd had done, and then bear any costs for the car to be restored. So, I won't be asking VWFS to reimburse Mr C for this. And, as I said in my provisional decision, Mr C should be given the opportunity to put the original wheels and tyres back on the car before it's returned. And he can sell or reuse the wheels and tyres he paid for if he wishes.

Finally, I've already addressed Mr C's request for £2,000 within my provisional decision. And Mr C hasn't provided anything to show that he was personally caused any additional distress or inconvenience that I was previously unaware of. As such, I won't be recommending any increase in the compensation.

Putting things right

So, given the above, VWFS should:

- end the agreement with nothing further to pay;
- collect the car, at no cost to Mr C;
- refund the £21,971.75 deposit Mr C paid;
- apply 8% simple yearly interest on the refund, calculated from the date Mr C paid the deposit to the date of the refund[†]; and
- pay Mr C an additional £500 to reflect the trouble and upset he's been caused.

[†]HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr C a certificate showing how much tax they've taken off if he asks for one.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 June 2022.

Andrew Burford
Ombudsman