

The complaint

Mr W is unhappy with a car he acquired under a hire agreement provided by Volkswagen Financial Services (UK) Limited ('VWFS').

What happened

In September 2020 Mr W acquired a new car through a hire agreement with VWFS. Mr W paid an initial rental of £992.90 and was due to pay £303.36 per month for 24 months.

Mr W says the car had various issues with it. I've seen a copy of the vehicle history and can see it went in for repair at various times. I've summarised these below:

- November 2020 - gearbox warning light, SOS system fault, other warning messages
- May 2021 – gearbox error
- August 2021 – navigation system slow, speaker crackling
- December 2021 – infotainment not working, noise from speakers
- February 2022 – speaker crackling, infotainment going blank, battery warning

At these points repairs were carried out to the car.

In May 2022, Mr W says he was driving along a busy road when the car failed and he had to coast to a stop between lanes, which was very dangerous. It appears this was due to an issue with the gearbox. The car was recovered to a garage and Mr W then arranged for it to be moved to his home.

Mr W complained to VWFS. It issued its final response in June 2022. It said it was upholding the complaint and offered:

- £606 – equivalent to 10% of monthly rentals for 20 Months
- £450 for distress and inconvenience
- Return of the car with no charge and refund of monthly payments from May 2022
- Cost of transportation

Mr W was unhappy with this and referred the complaint to our service. He said he should get his initial payment back. He thought he should be reimbursed 20% of the repayments he'd made. He said he'd had to pay out for hire cars and VWFS had told him it would cover this cost. And he said he should be reimbursed the cost of moving the car to his home.

Our investigator issued an opinion and upheld the complaint. He said, in summary, that he thought most of VWFS' offer was fair. He said it was Mr W's choice to move the car, so it wasn't reasonable to reimburse this. He said he thought 10% of the repayments was reasonable to reflect what happened. And he said he didn't think VWFS had told Mr W it would cover the cost of the hire cars, so he thought it was enough to refund the monthly payments from when the car failed.

But, our investigator did say VWFS should reimburse a pro rata proportion of Mr W's initial rental that he paid.

Mr W was unhappy with this. He said, in summary, that he thought 20% was still fair and in line with another case at our service. He said he should get back the money for the hire cars, as he was told on the phone this would be covered. And he said VWFS should pay for the recovery of the car to his home.

The case was then passed for a decision.

There has been an ongoing dispute over the collection of the car. But Mr W has confirmed the car has now been picked up.

I sent Mr W and VWFS a provisional decision on 8 November 2022. My findings from this decision were as follows:

Mr W complains about a car supplied under a hire agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr W's complaint about VWFS.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – VWFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note here that the car Mr W leased was brand new. So, I think a reasonable person would expect it to be in excellent condition, with no faults or issues. And I think they would expect trouble free motoring for a significant period.

It doesn't seem to be in dispute here that the car wasn't of satisfactory quality when it was supplied. I say this as VWFS upheld Mr W's complaint and agreed to take the car back. But, for completeness, I think it's worth me very briefly commenting on this.

I don't think a reasonable person would've expected the issues Mr W's car had, in particular the significant failure in May 2022. So, I'm satisfied the car wasn't of satisfactory quality when it was supplied.

So, what I need to consider here is whether the offer VWFS made to Mr W was fair and reasonable to put things right, or if it needs to do anything further. There are various parts to this, and Mr W has set out what he thinks VWFS should do. So, I'll comment on these in turn.

Rejection of the car

Thinking about what the CRA says about the remedies available to Mr W given the car was of unsatisfactory quality, I'm satisfied he has a right to reject the car. I say this as Mr W has already previously given VWFS the chance to repair it.

By offering to collect the car VWFS has effectively agreed to this, which I think is fair and reasonable. I also think it's reasonable that the agreement is treated as Mr W having rejected the car from 7 May 2022 when it broke down, so he shouldn't be responsible for any repayments towards the agreement from this point.

I also agree with our investigator that Mr W should be refunded a pro rata amount of the unused part from his initial rental from when the car broke down.

Impaired usage

VWFS has offered to reimburse Mr W 10% of the repayments he made towards the agreement. Mr W believes 20% should be repaid.

I've carefully thought about this. I agree Mr W suffered from impaired usage of the car, as at times it was not performing as it should, particularly considering it was brand new.

But, I need to consider the specific circumstances here. Mr W covered around 19,000 miles in the car. So he had reasonable use of it. And, looking at the car's history, it does appear that for times of the hire period it was performing as it should. Thinking about this, rather than awarding a higher amount for the specific periods the car wasn't performing, I think pragmatically VWFS' approach here of offering 10% across the entire period is reasonable. So, I think this part of the offer is fair.

Hire cars

Mr W has shown he paid £559.72 to hire a car from 10 May 2022 to 31 May 2022. And he's then shown he paid £1,868.39 to hire a car from 31 May 2022 to 27 June 2022. Mr W confirmed he took delivery of a new car on 28 June 2022.

Our investigator thought it wasn't reasonable for Mr W to get these charges back. Mr W said he was told on the phone that VWFS would cover these costs.

I've listened to the phone call in question here. Our investigator said he didn't think Mr W was given the impression the cost of a hire car would be covered. But, I disagree here. On the phone, when discussing the complaint the representative from VWFS said:

"We'll try to keep you mobile – if we can't we'll look at giving compensation for not having vehicle and inconvenience it has caused you"

Later in the conversation Mr W said:

"As long as somebody pays for me to be mobile I don't mind"

And VWFS' representative replied:

"Yeah of course"

So, I think on balance Mr W was given the impression VWFS would cover the cost of keeping him mobile. More importantly, given this situation arose from VWFS supplying Mr W with a car not of satisfactory quality, I don't think it's reasonable he's left out of pocket here.

I have considered whether Mr W mitigated any losses here – for instance by renting a cheaper car or using a cheaper company. But, from what Mr W said, the initial rental was set up by the dealer. And the car was the same make and model as Mr W had under the agreement. The second rental was taken with the same company for the same type of car. So, overall I think Mr W acted reasonably here.

That being said, I know Mr W wants the full cost of the hire cars to be reimbursed. As I've already said, I don't think it's reasonable for Mr W to pay towards the agreement past the point the car broke down. But, had nothing gone wrong, Mr W would've still been paying out

for a car.

Giving him the full cost of the hire cars back, in addition to him not paying towards the agreement, would put Mr W in a better position than he would've been had nothing gone wrong – as he effectively wouldn't be paying anything for this period. This betterment doesn't feel reasonable to me. So, VWFS should reimburse him the cost of these hire cars, but it can retain from this amount the pro rata amount that Mr W was due to pay under the agreement for the period in question.

Insurance premiums

Mr W believes he should get the insurance premiums for the car reimbursed from the time the breakdown happened. Our investigator didn't think this was reasonable.

I agree in part here. I again need to consider that giving Mr W the full cost of the insurance back would put him in a better position than he would've been had nothing gone wrong – as he was always going to pay out for this. And I don't think it's unreasonable for him to insure the car while the complaint was ongoing – particularly as it was being kept at his house.

But, that being said, had nothing gone wrong Mr W wouldn't have had to cover the cost of insuring two cars – which presumably he did once he took delivery of his new car on 28 June 2022.

I appreciate there was some disagreement over the collection of the car. But I think it's fair to say in the later part of this period Mr W was very keen for this to be collected and I can see there was a delay.

Thinking about things in the round here, I think it's reasonable that Mr W is reimbursed the cost of insuring the car under this agreement from the point he took delivery of his new car until the point this car was collected.

Mr W hasn't evidenced this cost yet, so VWFS will only need to pay this out on production of proof of premiums paid, such as an insurance schedule or similar.

Transport cost

Mr W has requested that he is reimbursed for the cost of transporting the car from the dealer to his house following the breakdown.

I've carefully considered this. But, it appears this was Mr W's decision. I can't see that he needed to do this, nor that VWFS asked him to.

It follows I don't think it's reasonable this is reimbursed.

Distress and inconvenience

I think it must have been frustrating for Mr W to have to deal with the issues the car had. And he's had to take time out to get it repaired. I can also see that breaking down on a busy road in the way he described must have been very distressing for Mr W.

Thinking about all of this, I agree with VWFS here that £450 is fair to reflect what happened.

I gave both parties two weeks to come back with any further comments or information.

VWFS didn't respond.

Mr W came back and initially said he was happy with the decision. But, he then asked to be reimbursed for his costs of preparing to take the case to court. And he sent some further information in about the cost of moving the car to his house and said this should be covered.

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 thought carefully about what Mr W said in his response to my provisional decision.

I appreciate Mr W was getting frustrated with the time it was taking to resolve his case. But, our service is a free alternative to the courts. Any costs he's paid towards a court were his choice to make. So, I don't think VWFS needs to reimburse these.

I've also carefully considered what Mr W said about moving the car to his house. But, on balance, I still think this was a cost he could've mitigated. So, again, I don't think this should be reimbursed.

I've thought about all of the other information and evidence again. Having done so, I still think this complaint should be upheld. This is for the same reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct Volkswagen Financial Services (UK) Limited to put things right by doing the following:

- Treat the agreement as though the car was rejected on 7 May 2022 with nothing further to pay
- Refund Mr W any repayments made to the agreement since this point*
- Refund Mr W 10% of all repayments made towards the agreement*
- Refund Mr W a pro rata proportion of the initial rental to reflect the car being rejected on 7 May 2022*
- Reimburse Mr W for the cost of the hire cars - £559.72 from 18 May 2022 and £1,868.39 from 31 May 2022* **
- Reimburse Mr W the pro rata cost of insuring this car from 28 June 2022 until it was collected* ***
- Pay Mr W £450 to reflect the distress and inconvenience caused
- Remove any negative information about this agreement from Mr W's credit file

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If VWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

** VWFS can retain from these amounts the pro rata cost of the monthly repayments for this period that would've been due under this agreement

*** Only on production of proof of premium by Mr W such as a valid insurance schedule

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 December 2022.

John Bower
Ombudsman