

The complaint

Mr R complains that a car he obtained through a hire purchase agreement with Volkswagen Financial Services (UK) Limited ("VWFS") is of unsatisfactory quality. He wants VWFS to accept his rejection of the car and provide him with a full refund.

The complaint is brought on his behalf by a solicitor. For ease, I will refer to everything as if it's been said by Mr R.

What happened

Mr R obtained a new car using a hire purchase agreement with VWFS in September 2020.

He says that almost immediately he had difficulties with the car's screen and multimedia interface ("MMI") and with the rear reading light. He said the digital dashboard and the main screen kept blacking out whilst the car was being driven.

He took the car back to the supplying garage in February 2021 and the garage completed a software update but could find no other fault. Mr R said the fault remained and he returned the car to the garage again in June and in September. The supplying garage couldn't replicate the fault. It inspected the car again in October 2021 and on this occasion identified a fault and ordered a replacement infotainment system. But, after this was fitted, Mr R said he continued to experience problems, most notably with the screen blacking out whilst he was driving.

He complained to the supplying garage and said he wanted to reject the car. The garage said he needed to complain to VWFS. VWFS upheld his complaint but didn't accept Mr R's rejection of the car. It said it couldn't take any further action because the garage had instructed solicitors.

Our investigator recommended that the complaint should be upheld. But neither party agreed with the compensation she'd recommended, so the complaint was passed to me.

My provisional decision

I agreed with the investigator that the complaint should be upheld. I explained why and I set out what I thought VWFS needed to do to put things right. I said:

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The hire purchase agreement is a regulated consumer credit agreement. As such, this service can consider complaints relating to it. VWFS is the supplier of goods under this agreement and is responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there's an implied term that "the quality of goods is satisfactory". As such, in order to uphold this complaint,

I would have to be persuaded that the car wasn't of satisfactory quality and so a breach of contract has taken place.

In deciding whether a car is of satisfactory quality, some of the factors to consider are its age and mileage when it was supplied, and how long after supply the fault(s) materialised.

I am not going to repeat the detail of the timeline of events here. In summary, the car was brand-new when it was supplied. So it's reasonable to expect it to be fault-free for a reasonable period of time. Mr R reported a fault within a few months of the car being supplied and, despite it being returned to the garage on at least four occasions and a part being replaced, I'm satisfied from the evidence Mr R's provided that the fault remains. In the circumstances, I find the car wasn't of satisfactory quality when it was supplied.

The supplying garage failed in its attempt to repair the fault. In the circumstances, I find VWFS should accept Mr R's rejection of the car. And it's told us it agrees to this.

Whilst VWFS has agreed Mr R can return the car, without the need to make any further monthly payments, both parties disagree with the compensation he should be paid. I've considered this carefully.

Deposit

I find it's fair that VWFS refunds the deposit Mr R paid, plus interest. The hire purchase agreement shows a deposit of £967.61; Mr R has provided an extract from his bank statement which shows he paid £750 to the supplying garage; and VWFS says Mr R paid a deposit of £222.61.

VWFS told us that although Mr R paid £750, some of this went towards the settlement of his existing finance agreement. And that the figure shown on the hire purchase agreement includes a contribution from the supplying garage. I'm satisfied from the figures VWFS has provided to us that Mr R contributed £222.61 to the deposit and this is the sum he should be refunded.

Monthly payments

Mr R has had use of the car and I find it's fair that he pays for that use. I think the monthly payments he's made fairly reflect the use he's had of the car.

But, he obtained a brand-new car and he reasonably expected it to be fault free. Whilst the fault didn't stop him driving the car, it has clearly spoiled his enjoyment of it. And, when the screen blacked out whilst he was driving, he couldn't see the dashboard, including the speedometer, which could have impacted his safety.

Taking all this into account, I think it's fair that VWFS refund three months' payments – a total of £956.67 – to compensate Mr R for his lack of enjoyment of his new car.

Charges on termination

VWFS says that when the car is collected, it will be assessed for damage and excess mileage. I don't think it's fair or reasonable for Mr R to be charged for any resulting costs.

I say this because he was supplied with a car which wasn't of satisfactory quality. He's had to continue to drive it for much longer than he should have done because the supplying garage failed to fix the fault and then VWFS failed to accept his rejection of the car – until it responded to our investigator's view of the complaint. I've already explained that Mr R should pay for his use of the car; it's not fair or reasonable that he should be charged anything further. When the car is collected, I find that Mr R should not be subject to any further charges.

Distress and inconvenience

Being supplied with a car which wasn't of satisfactory quality has caused Mr R distress and inconvenience. He had to return it to the supplying garage on several occasions. Mr R also told us that, when the car was in the garage, he had to pay for a hire car. Although the cost of this was fairly minimal, I find he should have been provided with a courtesy car.

I appreciate Mr R is disappointed by the £250 compensation recommended by our investigator. But, having carefully considered this, and taking into account that he was still able to drive the car, I think £250 is fair and reasonable for the distress and inconvenience he's been caused.

Mr R accepted my provisional decision. But he asked if the most recent monthly payment – paid on 25 November – could also be refunded.

VWFS said it had no further comments to make.

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.

Mr R has asked that his most recent monthly payment be refunded, taking into account my conclusion that he shouldn't have to make any further monthly payments. And I don't find that to be unreasonable.

Aside from that, as neither party has provided any new evidence in response to my provisional decision, I don't find any reason to depart from my earlier conclusions.

My final decision

My final decision is that I uphold this complaint. Volkswagen Financial Services (UK) Limited should:

1. Terminate the agreement, at no further cost to Mr R. He should not be charged any further monthly payments, or any charge for excess mileage, or damage/refurbishment charges.
2. Refund the monthly payment made on 25 November 2022 and, if paid, the payment due on 25 December 2022.
3. Collect the car at no cost to Mr R and at a convenient time for him.
4. Refund the deposit Mr R paid of £222.61 plus 8% simple interest per year from the date it was paid to the date of settlement *.

5. Pay Mr R £956.67, being three months payments, to reflect his loss of enjoyment of the car.
6. The agreement should be recorded as settled on Mr R's credit file or removed altogether.
7. Pay Mr R £250 compensation for the distress and inconvenience caused.

* HM Revenue & Customs requires Volkswagen Financial Services (UK) Limited to take off tax from this interest. Volkswagen Financial Services (UK) Limited must give Mr R a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 January 2023.

Elizabeth Dawes
Ombudsman