

The complaint

Mr M complains that the car he acquired through a hire purchase agreement with Volkswagen Financial Services (UK) Limited (VWFS) wasn't fit for purpose.

What happened

Mr M entered into a hire purchase agreement with VWFS in October 2019 to acquire a used car. At the time of acquisition, the car was over three years old and had been driven just over 40,000 miles.

Mr M says that driving the car home from collection he noticed issues with the multimedia interface (MMI) and that the clutch was temperamental. He contacted the retailer and after an initial visit to the retailer he was told to take the car to another garage for repair. Mr M says that the clutch couldn't be repaired at that time and a health check was undertaken on the car. At this point Mr M says she was told the car wasn't safe to drive due to wear on the underside suspension arms and brushes. He says that given the limited time he had had the car and his mileage this issue was present at the point of supply and so the car wasn't fit for purpose.

VWFS says Mr M raised concerns about his MMI screen freezing in January 2020 and a software update was carried out to rectify this. Further issues were raised, and the car was booked in for inspection in February 2020, but Mr M wasn't happy with the courtesy car that was provided and so the car wasn't collected. It says Mr M didn't then make alternative arrangements for the inspection with the retailer. It says that even though the issues with the clutch and front brushes hadn't been confirmed it offered for Mr M's agreement to be voluntarily terminated but Mr M didn't agree to this. VWFS says that Mr M's monthly payments were collected between April and August 2020, but he made an indemnity claim on these payments and his agreement went into arrears. The September and October payments were returned due to the payment instruction being cancelled. VWFS says several letters were issued regarding the arrears on Mr M's account but as the situation wasn't rectified Mr M's agreement was terminated in October 2020.

Mr M said that the courtesy car provided in February 2020 was unsuitable for his needs and after this he tried to contact the retailer with no success.

Our investigator upheld this complaint. He said the health check carried out three months after Mr M acquired the car and after he had driven around 1,500 miles, stated the lower arm brushes needed immediate attention. He thought this showed the car wasn't of satisfactory quality at the point of supply. He noted the reasons why the inspection didn't take place in February 2020, but he thought VWFS could have done more to assist at this time. He acknowledged the timing, being at the start of the COVID-19 pandemic, but thought VWFS could have done more to follow up with Mr M. He said that as he didn't think the car was of satisfactory quality, the remedy would most likely be rejection but noted Mr M's desire to keep the car. Because of this he asked VWFS to reconsider its position and either allow the rejection of the car with Mr M being liable for the 6,000 miles of usage or for the car to be repaired and the agreement reinstated.

VWFS said that the agreement was terminated due to non-payment. It said that the car had been taken for a software update and a health check was completed following which the retailer arranged to collect the car and have it inspected. It reiterated the collection didn't happen because Mr M rejected the courtesy vehicle which it said was provided at the discretion of the retailer. It reiterated that the issues with the clutch and front brushes weren't confirmed. It said that if it was to re-instate the agreement Mr M would need to pay in excess of £6,000 in arrears for missed payments. It thought the best outcome was for the car to be collected and sold to reduce Mr M's liability.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- I agreed with our investigator that, on balance, the car wasn't of satisfactory quality at the point of supply. Mr M noticed issues with the clutch and the MMI on collection of the car. The issue with the clutch wasn't resolved and while I noted Mr M's comments about this, I also noted that I didn't have evidence confirming this fault. The MMI was confirmed to be faulty suggesting the car wasn't of satisfactory quality at supply. In cases such as this an acceptable remedy can be for the fault to be repaired and as the issue with the MMI was rectified I accepted this was a reasonable resolution.
- When the car was taken for repairs a health check was carried out. The report dated January 2020 stated that the registration plates were damaged / poor – illegally spaced and that the lower arm brushes were worn with the rear brush coming out of its casing. As this check took place only three months after Mr M acquired the car - and he had only driven around 1,500 miles - I thought it reasonable to accept that the issues with the lower arm brushes were present at the point of supply. Without further details of the registration plate issues I couldn't comment on those further.
- The car was due to be investigated by the retailer in February 2020. This didn't happen due to issues with the courtesy car. I agreed that VWFS wasn't required to provide a courtesy car and that this was an arrangement with the retailer, but I could also see why Mr M didn't allow the car to be taken when a courtesy car had been agreed and the one provided didn't meet his needs. Unfortunately, another inspection wasn't then arranged and with the onset of the Covid-19 pandemic arranging this became difficult. Mr M said he tried to make contact, but his calls weren't responded to. As VWFS was aware of the issue with Mr M's car I thought it could have done more to assist Mr M at that time. This didn't happen and Mr M then stopped making his payments and the agreement was terminated.
- VWFS gave Mr M warning about the termination of the agreement and it was Mr M's responsibility to maintain his payments even while he was in dispute about the car, but as I found the car wasn't of satisfactory quality at supply I upheld his complaint.
- I considered the appropriate remedy to this situation and thought Mr M should be allowed to reject the car. I noted the comments about wishing to keep the car but given the circumstances on his account and that the agreement was terminated due to missed payments I didn't think this was a reasonable remedy at this time.
- I said that VWFS should:
 1. Collect the car at no cost to Mr M;
 2. Terminate the agreement with nothing further to pay;

3. Refund the deposit paid;
 4. Refund any payment made from the time the car wasn't able to be used.
 5. Remove any adverse information from Mr M's credit file.
- In regard to point 4 above, I noted that Mr M said that when the issues with the lower arm brushes were identified he was told the car was unsafe. However, he continued to make use of the car (mileage increased to around 46,000 miles). Mr M said he used the car for a while thinking the issues would be resolved quickly but he stopped when he realised this wasn't the situation. The car then went into storage and he used hire cars and borrowed a car from a family member. Therefore, in this case I thought it reasonable that the payments Mr M made until March 2020 were retained by VWFS, but that Mr M wasn't liable for any payments beyond this time.
 - Mr M paid for hire cars however as I wasn't holding him liable for any payments beyond March 2020, I didn't expect VWFS to cover the cost of hire cars as well.
 - Mr M has also said the car had to be put into storage as there wasn't space for it to be kept at this home while not in use. I found these costs should also be refunded.

Following my provisional decision, Mr M provided an invoice showing the costs of having his car transported to and from storage and 115 weeks of storage facility to be £7,968. This was presented to VWFS which said the storage charge was very high and it thought Mr M should have surrendered the vehicle after the termination of his agreement rather than put it in storage and claim the storage costs from VWFS. It said Mr M's actions meant it suffered a double loss as it wasn't able to recover the vehicle and re-sell it and it was being asked to pay storage costs.

VWFS also noted that the invoice was from a company that was linked to Mr M.

I issued a second provisional decision to address the issue of the storage charges.

- Mr M explained that he wasn't able to keep the car at this home once he started to need to use other vehicles. We would expect the consumer to take reasonable steps to ensure the car is well looked after while a resolution is being investigated. In this case Mr M had the car transported to a storage facility. I found this showed he took reasonable steps to ensure the car was well looked after.
- The storage facility was provided by a family member. I understood why VWFS raised this, but I didn't find that it made a difference regarding the outcome. The facility was provided, a VAT invoice was supplied and as we were not disputing that the car was kept at the storage facility, and therefore taking space, I thought it is reasonable that charges were applied. Mr M had said this was the cheapest and most flexible approach available to him.
- I noted VWFS' comments that a signed contract should be provided but I found that the invoice already supplied was sufficient evidence of the transport and storage costs incurred. I did however find it reasonable that Mr M provide proof of payment before any refund was provided.
- While I found that storage costs should be refunded, I also considered the comments by VWFS about it suffering both the cost of not having the car returned and the additional storage costs. Mr M's agreement was terminated on 23 October 2020. While I appreciated that Mr M was in dispute about the car at this time and for an

extended period after, by this time he had received VWFS' final response and therefore I thought it would have been reasonable to have considered at this point the return of the vehicle. This would have mitigated his ongoing costs of storing the car and also enabled the sale price at that time to be secured.

Therefore, in regard to the storage costs, I thought Mr M should be refunded the cost for the weeks from when the car went into storage until end October 2020 (to allow for time to bring the car out of storage) as well as the cost of transporting the car to and from the storage facility. This would be equivalent to 20 weeks of storage costs plus the £200 transport costs. I calculated this amount to be £1,584 (inclusive of VAT).

I didn't receive any new information in response to my second provisional decision and so my conclusions haven't changed.

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.

When making a decision I consider each complaint on its individual merits. I take relevant regulations into account, but my decision is based on what I find fair and reasonable given the unique circumstances of the complaint. Where the evidence provided is incomplete or contradictory, I will make my decision based on the balance of probabilities - that is what I consider most likely to have happened given the information provided and wider circumstances.

In this case I do not find that the car was of satisfactory quality at the point of supply and so I have recommended action to be taken as a result of this. I have further considered the issue of the storage costs and while I agree that these should, in part, be covered, I also think that Mr M was required to take action to mitigate the costs and based on this I think storage costs for 20 weeks should be refunded.

Putting things right

Volkswagen Financial Services (UK) Limited should:

1. Collect the car at no cost to Mr M;
2. The agreement has been terminated and so any outstanding balance should be cleared.
3. Refund the deposit paid by Mr M;
4. Only hold Mr M liable for payments up to March 2020 and waive all other payments;
5. Refund storage costs of £1,584, subject to Mr M providing proof of payment.
6. Remove any adverse information from Mr M's credit file.

Items 3 and 5 are subject to interest at a rate of 8% simple from the date of payment to the date of settlement.

My final decision

My final decision is that I uphold this complaint. Volkswagen Financial Services (UK) should take the actions set out above in resolution of this complaint.

Limited Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 January 2023.

Jane Archer
Ombudsman