

The complaint

Mr K complains about the quality of a car he acquired under a hire purchase agreement with Volkswagen Financial Services (UK) Limited (VWFS).

What happened

In November 2019, Mr K entered into a hire purchase agreement with VWFS to acquire a new car. The cash price of the car was around £62,879. Mr K provided an initial payment of around £4,981, and monthly repayments on the agreement were around £759 over a 48-month period. To exercise the option to purchase the car there was a fee of £10 plus a final payment of approximately £33,013.

In summary, Mr K, said that he was experiencing problems with the start stop function on the car at the beginning of 2022, so at times after bringing the car to a stop he had to manually restart the engine. And later when he was driving on a motorway at a speed above 70 mph the engine stalled and due to this he had to pull over and restart the car. He was able to restart the car and drive home. He said this experience was very frightening, so he reported the fault to the dealership. But he said they didn't fix the car, as shortly after he got it back, he was driving about 30 mph and the engine stalled again. The car had travelled approximately 16,000 miles at that time. During this second visit in April/May 2022, the dealership fixed some parts, but Mr K said that this fault is still present in the car because the start stop function is starting to fail again. He believes that this is how the original problem started. So, he would like to reject the car and have his deposit and monthly payments back. Mr K believes that he should only be charged £0.45 for the miles he has travelled in the car.

In June 2022, VWFS wrote to Mr K. In this correspondence they said that in April 2022 Mr K took his car back to the dealership for further investigation. And they said that, on this occasion, the fault was attributed to the fuel pump sensor and connecting pipe seal. So, after the parts arrived, the work was completed on 20 May 2022. VWFS also said that the dealership carried out a road test before handing the car back and said that, to date, the fault has not re-occurred. So, they said, with regards to his request for car rejection, they are unable to uphold this element of his complaint.

In this correspondence VWFS also said that the dealership, as a gesture of goodwill, offered to exchange Mr K's car like for like, but that he declined this offer because of current lead times. So, they offered to exchange for a different model of car that they had in stock, but they said this was also declined by Mr K as the car was not a suitable model for him. And they said that Mr K also declined when they offered to buy back the car, subject to evaluation with full deposit.

VWFS went on to say that, due to the distress and inconvenience this situation has caused Mr K, they offered him a goodwill gesture of £300. And they said that, although he was provided a courtesy car, when his was being fixed, that car was of a lower specification. So, in recognition of that, they said they would refund him 20% of his monthly payments for the four-month period during which he was impacted; The total worth of the payments' refund totalling £607.55.

Our investigator thought that the car had developed a fault, but he was of the opinion that this fault had now been repaired under warranty. So, he thought that a fair resolution has been reached and VWFS's offer of redress is fair and reasonable in the circumstances provided. He did however ask VWFS to pay 8% simple interest on the 20% refund of monthly payments from the date the payments were made to the date of refund.

VWFS agreed with the investigator. But Mr K disagreed so, the complaint has been passed to me to decide.

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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. But I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

Mr K acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. VWFS is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality. The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr K entered into. Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered to be of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case, those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr K's case the car was new, with a cash price of around £62,879. So, I think a reasonable person would expect it to be of a higher quality than a cheaper and/or previously used car. I think it would also be reasonable to expect the car to last a considerable period of time before significant problems occurred, and it would be reasonable to expect it to be free from even minor defects shortly after it was acquired.

Mr K thinks that he should be entitled to reject the car.

VWFS say Mr K would only be able to reject the car if the repairs had failed. They are of the opinion that there is no evidence of this, as in April 2022 Mr K took his car back to the dealership for further investigation. And, they said, that on this occasion the fault was attributed to the fuel pump sensor and connecting pipe seal, so after the parts arrived the work was completed on 20 May 2022. VWFS also said that the dealership carried out a road

test before handing the car back and that, to date, the fault has not re-occurred. So, with regards to his request for a car rejection, they said they are unable to uphold this element of his complaint.

The CRA sets out that Mr K has a short term right to reject the car within the first 30 days if the car is of unsatisfactory quality, however, he would need to ask for rejection within that time. Mr K would not be able to retrospectively exercise his short term right of rejection at a later date.

Mr K purchased the car in November 2019. At the beginning of 2022, more than two years after the supply date, he said that he was experiencing problems with the start stop function on the car, so, at times, he had to manually restart the car after bringing the car to a stop. And later when he was driving on a motorway at a speed above 70 mph, the engine turned off and, due to this, he had to pull over and restart the car. And he said that shortly after the dealership had a look at the car and returned it to him, he again experienced the same fault. He said he was driving about 30 mph and the engine turned off again. The dealership fixed some parts, but Mr K said that this fault is still present in the car because the start stop function is starting to fail again and that this is how the original problem started. So, he would like to reject the car. It appears that Mr K didn't spot this fault within the first 30 days. Even if I accept there were faults which made the car of unsatisfactory quality, Mr K could only reject the car within the first 30 days, and only if he expressed his wish to do so. As he was unaware of the fault within the first 30 days, he couldn't possibly express his wish to reject the car within that time.

The CRA says that, if the car acquired wasn't of satisfactory quality, or not as described, then Mr K would be entitled to still return it after 30 days, but Mr K doesn't have the right to reject the car until he has exercised his right to repair. So, Mr K doesn't have an automatic right to return the car. For me to conclude that Mr K can exercise his right to reject the car, I would need to see that the car wasn't of satisfactory quality, because the faults he complains about were likely to have been present or developing at the point of sale, and that VWFS' one attempt at a repair has failed.

Considering the age and mileage of the car, and the faults Mr K experienced with the engine stalling, I think a reasonable person wouldn't consider it reasonable for the car to have a fault of such significance – in this case, stalling of the engine while driving. So, I don't think the car was sufficiently durable. For this reason, I do not think the car was of satisfactory quality.

In February 2022, Mr K's car was taken to the supplying dealership to get the fault sorted. At the time, the dealership attempted to fix the problem but shortly after Mr K got the car back from repairs, the issue recurred. This time Mr K was driving about 30 miles per hour when the engine stalled again. At this point, I think most likely, Mr K would have a right to reject the car because he exercised his right to repair and the fault with the car was still not fixed. But he took the car back to the supplying dealership again for repairs in April 2022.

The dealership diagnosed the car and this time the fault was attributed to a fuel sensor, which they replaced, and they also fixed an issue with a seal on the agent connecting pipe. The car was returned to Mr K in May 2022. But before the car was returned, the dealership diagnosed/tested the car and deemed that no faults were present. Mr K also said that the stalling of the engine while driving has not reoccurred again, so from the available evidence it seems that most likely this fault with the engine stalling has now been fixed. And considering that Mr K has accepted another attempt at repair and that repair appears to have been successful, I don't think it would be fair and reasonable for him to be able to now exercise his right to reject the car.

I have also considered that Mr K thinks that the fault is still present in the car because the start stop function is starting to fail again and he thinks that this is how the original problem started. He has also given our service evidence from other dealerships and statements from their experts which, he believes, proves that the engine stalling fault was originally to do with the battery of the car. So, I've considered all this evidence, but I'm still of the opinion that most likely the fault with the engine stalling while driving has now been fixed. I'll explain why.

Mr K has provided a list of current fault codes which he says are battery related faults – these are dated November 2022. He has also provided our service with a letter from a workshop manager of one of the other dealerships – this too is dated November 2022. The workshop manager's statement says that Mr K had both the fuel pump control unit and the fuel pressure sensor replaced, so he thinks that there would always be some type of engine warning light on the dashboard, as the fuel system goes through the ECU. But, he said, that based on all the evidence Mr K had shown him, this light never came on. Also, the workshop manager's statement says that, considering that the car never stopped faulting even when the repairs have been carried out, leads him to believe that this was not the fault the car is currently experiencing and should've been further assessed. The workshop manager concludes his statement by saying that, based on the evidence Mr K has provided him, the fault has never been fixed and considering that, even though both repairs have been done, the car is still dangerously cutting out.

I've considered all the above, but I've also considered that Mr K told our service that the stalling of the engine while driving has not reoccurred again and that only the start stop function is starting to fail again. I also considered that the workshop manager hasn't fully inspected the car and his comments are only based on evidence provided to him by Mr K. Furthermore, I've considered that the fault diagnostics, provided to our service by Mr K are from November 2022 and not done shortly after Mr K had the second repair right before the car was returned to him in May 2022. And in February, as well as in April and May of 2022, the car was diagnosed on both occasions by the supplying dealership with no faults being found or reported regard issues with the battery. So, it's possible that Mr K's car maybe experiencing faults to do with the battery now but, I think most likely, had the battery been at fault previously, this would've been evident from the diagnostics done at the time and especially during the repairs that were done right before the car was returned to Mr K in May 2022. Also, batteries are a serviceable item. Considering when Mr K acquired the car compared to when the battery fault was first reported, I don't think it would be reasonable to say that the car wasn't rectified after the last repairs.

Mr K also questioned why our investigator was focused on the fault codes in the repair history from the supplying dealership, as he said that these can be added or deleted. So, he has also alluded to the fact that during the repairs in February, April, and May 2022, codes may have been erased before being repaired. But repair shops reset codes once they replace a part, which they believe to have been causing the specific fault in the first place. And then the usual procedure is to diagnose again to check to see if any codes reappear. From the evidence available, I can see that this is what was done on Mr K's car. From the evidence provided, it doesn't seem that any faults reappeared after the second fix had been performed. Also, I've not seen any evidence that faults have been deleted from the history without being repaired.

Mr K has provided a call recording of him talking to the supplying dealership when they are offering to buy his car back from him. Mr K believes that what was discussed during that call is evidence that the car was still faulty after the second repair in April/May 2022. But there is not enough context on this call that would allow me to conclude that most likely the repairs done in April/May 2022 have not fixed the fault with the car's engine stalling. And overall, I don't think Mr K has demonstrated that the repairs previously completed have now failed, therefore giving him the right to reject the car. So, while I sympathise with the situation Mr K

finds himself in, I don't think it would be fair or reasonable to allow him to exercise his right to reject the car.

As I said above, most likely, the car was not of satisfactory quality at the time of supply and this matter caused Mr K a lot of distress and inconvenience when trying to resolve it. I think it was also very stressful for him when the car's engine stalled on the two occasions. And I know he had to bring the car to the supplying dealership more than once for repairs and he had to correspond extensively with them as well as with VWFS. So, I don't think he would've needed to do any of those things had VWFS supplied him with a car that was of a satisfactory quality at the point of supply. But I think VWFS offer of £300 in compensation fairly reflects the distress and inconvenience caused to Mr K.

Furthermore, while the car was being fixed, he was provided a courtesy car, but that car was of a lower specification. So, in recognition of that, VWFS have offered to refund Mr K 20% of monthly payments for the impacted four-month period; worth a total of £607.55. I think considering that Mr K's use of the car was impaired while the fault was present and the courtesy car he had was of a lower specification, VWFS's current offer, which now includes 8% simple interest added per year to the above refund of 20% from the date of each payment to the date of settlement, is fair and reasonable.

Mr K also mentioned that he was unhappy that VWFS didn't check with him before providing a financial statement which detailed what he owed on the agreement at the time. From listening to the call that Mr K provided, of him talking to the supplying dealership when they are offering to buy his car back from him, I can hear that the dealership does confirm that they did tell Mr K that they would be getting the settlement to see how much he owes on the car, so that they can tell him how much they could give him back. But I know that Mr K still feels that VWFS should've checked with him before releasing this information. So, I've considered this, but based on the circumstances presented to me, I think Mr K, most likely, would've allowed VWFS to release this information to the dealership anyways. This is because at that time he wanted to see what all his options were regarding returning of the car. Also, I've not seen that Mr K has lost out financially because of this. So, I don't think VWFS has to take any further action regarding this point.

My final decision

For the reasons given above I think Volkswagen Financial Services (UK) Limited's current offer is fair and reasonable. So, I think they should:

- Pay Mr K £300 in compensation for the distress and inconvenience caused if this has not yet been paid.
- Refund Mr K 20% of the agreement's monthly payments for the four months' duration, from February to May 2022, if this has not yet been paid. And add 8% simple interest per year to this refund, from the date of each payment to the date of settlement.

If Volkswagen Financial Services (UK) Limited considers tax should be deducted from the interest element of my award, they should provide Mr K with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 March 2023.

Mike Kozbial
Ombudsman

