

The complaint

Mr L is unhappy about the quality of a car supplied to him by Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (“VWFS”) under a hire purchase agreement.

What happened

Mr L acquired a used car under a 47 month hire purchase agreement with VWFS in October 2021. The car’s mileage was around 5,500 at the time of supply and the car cost around £28,000. Under the agreement, Mr L made an advance payment of £3,182.46 and he was required to make 47 payments of £387.16, followed by a final payment of £12,611.25 if he wanted to keep the car. Mr L acquired the car from a dealership I’ll refer to as “D”.

Mr L says in January 2022, a regular warning light would appear across the car’s dashboard advising him to take the car to a garage. He says he took the car to D and was told there was a software issue and a fix would be available soon. He said he also told D there were a number of other quality issues with the car.

In February 2022, Mr L complained to VWFS and said D had been unable to resolve his complaint. In March 2022, Mr L told VWFS that D had agreed to buy back the car from him due to the faults with it, but this meant he would lose the deposit he paid. He asked VWFS if it had any proposals in light of the issues with the car and said he would accept 50% of the deposit as a resolution. In April 2022, Mr L returned the car to D. He also told VWFS that whilst he was prepared to accept 50% of the deposit previously, he now wanted the full deposit returned to him.

VWFS issued its response to Mr L’s complaint in April 2022. It said it accepted there was a known issue with the multimedia interface and a product enhancement fix had recently been released. It said it was entitled to one attempt to repair Mr L’s car within the first six months of supplying the car to him. It confirmed Mr L had settled his agreement directly with D and so, he wasn’t entitled to a refund of his deposit. It offered to pay Mr L £200 for the impaired usage during the five month period he had the car and a further £200 for any distress and inconvenience caused.

Unhappy with this, Mr L referred his complaint to this service. He reiterated his complaint.

Our investigator looked into the complaint but didn’t think VWFS had acted unfairly. He said whilst he thought there was a fault with the car when it was supplied, Mr L had since sold the car to D. He said VWFS said there was a fix available for the multimedia interface fault and so, D would have been able to repair this with minimal inconvenience. He said had Mr L not sold the car, he would have recommended that the car was repaired by VWFS, as it was entitled to. And so, he didn’t recommend VWFS took any action.

Mr L disagreed. He said the fault with the multimedia interface couldn’t be repaired. He said D was aware of the software fault and didn’t tell him. He said he was told the manufacturer would be issuing a fix in the future, but it hadn’t said when this would be. He said there was also an issue with the sat nav blinking and the brakes later started grinding. Mr L also said he had issues with the settlement of the agreement. Our investigator explained that D didn’t act as a credit broker when it took the car back and settled the agreement. Mr L said he understood this, but wanted an ombudsman to consider the complaint.

As Mr L disagreed, the complaint was passed to me to decide.

After the complaint was passed to me, I wrote to both VWFS and Mr L and explained that I was minded to uphold Mr L's complaint. As a result of this, VWFS made an offer to pay Mr L £967.90 plus 8% simple interest for impaired usage. This represented 50% of the five monthly payments Mr L made to VWFS. Mr L disagreed with this offer.

Mr L has mentioned issues around the settlement of his hire purchase agreement. However, as our investigator has explained, these aren't issues we can consider against VWFS. So, my decision won't comment on this point.

I issued a provisional decision on 20 April 2023, in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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 L was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

What I need to decide in this case is whether the car supplied to Mr L was of satisfactory quality. If not, I need to decide what, if anything, VWFS need to do to put things right.

The car supplied to Mr L was a used car – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The Supply of Goods (Implied Terms) Act 1973 says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

Mr L says the car first had issues in January 2022. This was around three months after it was supplied to him. Mr L complained about the warning lights appearing, the rubber seal on the doors peeling off, the multimedia panel frequently turning off, technical issues with the lane assist feature which he says nearly caused him three accidents and a grinding noise when the brakes are applied at low speed.

VWFS has said there are no job sheets for any of the times Mr L says he took the car back to D and so, it's unclear what was discussed. However, Mr L's actions in reporting the issues to VWFS in February 2022 and detailing the issues with the car, lead me to believe that it's more likely than not that Mr L did take the car back to D on a number of occasions. I've also seen an email chain between Mr L and D in which he detailed the issues with the car.

Having considered the issues with the car, I'm satisfied the car was not of satisfactory quality when it was supplied to Mr L. I'll explain why.

In this case, the car was only around a year old at the time it was supplied to Mr L and the mileage was relatively low at around 5,500 miles. So I think it's fair to say that a reasonable person would assume that the car would be free from any defects for a reasonable period of time.

However, the issues with the car appeared within three months of Mr L being supplied with it. Mr L has detailed the extent of these issues and I don't consider that a car that has consistent warning lights appearing and has issues with the multimedia interface which sometimes results in it turning off, to be a car which is free from minor defects. And I don't think a reasonable person would expect these issues to occur considering that the car cost around £28,000, it was around one year old and it had only travelled around 5,500 miles.

In addition, VWFS appears to accept that the car supplied to Mr L wasn't of satisfactory quality, as it has made him an offer to pay for the impaired use of the car whilst he had it. VWFS has also accepted that there was a known issue with the multimedia interface and

that the manufacturer was working on a product enhancement fix. It seems that all parties agree that Mr L's car was impacted by the issue with the multimedia interface. And so, for all these reasons, I'm satisfied that the car supplied to Mr L was not of satisfactory quality.

I've gone on to consider what VWFS needs to do to put things right.

Mr L no longer has the car. I've seen an email from D from early March 2022 in which D says the manufacturer are releasing a software issue to deal with the sat nav issues and warnings appearing on the car's dashboard. However, D said it wasn't willing to accept rejection of the car because a quality enhancement was being worked on. D said they would accept to buy back the car, but this would mean that D would pay the settlement figure to VWFS so Mr L could exit the agreement. It didn't refund Mr L's deposit. Mr L returned the car to D in April 2022.

VWFS has confirmed that the product enhancement fix only became available in September 2022. This was around eight months after Mr L reported the issues to D. VWFS has said it doesn't think Mr L acted unreasonably by returning the car to D, given that the product enhancement fix wasn't available at the time. I agree with this. However, VWFS has also said it wouldn't have accepted rejection of the car and would have simply offered Mr L a goodwill gesture for the loss of enjoyment.

However, I don't think this is reasonable. I say this because Mr L provided D and VWFS with an opportunity to repair the car when he first returned it in January 2022. Mr L waited for a fix to become available, but this didn't transpire and so, he returned the car in April 2022. This was three months after he reported the issue. At this point, it was clear a fix wasn't going to be available – and a fix wasn't available until September 2022 – and so, I don't think Mr L acted unreasonably by returning the car.

I'm satisfied that Mr L was entitled to reject the car when the faults with the multimedia interface weren't repaired within a reasonable time. I think this is a proportionate and fair remedy given all the circumstances. This means that VWFS should refund the deposit Mr L paid when he entered into this agreement and it should pay him 8% simple interest on this amount.

VWFS says the issue didn't impact Mr L's use of the car, but it also acknowledges that there were ongoing multimedia interface issues, which impacted Mr L's use of a number of functions in the car. Mr L has explained how he used the car for business use and would often have clients in the car. He said the warning sounds would go off, the sat nav and the multimedia interface would stop working and this was embarrassing due to clients being in the car. He also said he had to stop at the side of the road to check his phone for directions to his destination, due to the sat nav turning off and he had to stop to continue calls when the multimedia interface stopped working.

Having thought about this carefully, I'm satisfied that Mr L's use of the car was impaired whilst he had it. VWFS has made an offer to reimburse Mr L 50% of the five monthly rentals he paid for the car. However, I think VWFS should instead reimburse 25% of the five monthly rentals Mr L paid instead. This is because Mr L was still able to drive the car and make use of it to travel to destinations. However, he was unable to use some of the functions of it. I think a 50% reimbursement for impaired usage in the circumstances is excessive and so I'm recommending 25% of the five monthly rentals Mr L paid.

I also think that Mr L has been distressed and inconvenienced as a result of the issues with the car. This includes having to make trips back to D to try and rectify the issue on what appears a number of occasions, he's detailed that there were issues with the lane assist which he says nearly caused an accident on three occasions and he was told there would be an imminent fix for the car, but this didn't transpire. I consider these issues would have caused Mr L some distress and inconvenience and these issues only occurred as a result of the faults with the car. And so I think VWFS should pay Mr L £200 to compensate him for any distress or inconvenience caused.

My provisional decision

My provisional decision is that I intend to uphold Mr L's complaint. I'm minded to instruct Volkswagen Financial Services (UK) Limited to put things right by doing the following:

- *Pay Mr L's advance deposit payment of £3,182.46;**
- *Pay Mr L 25% of all the five monthly rentals he paid;*
- *Pay Mr L 8% simple interest on these amounts from the date of each payment until the date of settlement;**
- *Pay Mr L £200 for the distress and inconvenience caused; and*
- *Amend any adverse information reported to credit reference agencies about this hire purchase agreement.*

**If any of the advanced deposit payment is made up of funds paid through a dealer contribution, then Volkswagen Financial Services (UK) Limited trading as Audi Financial Services is entitled to retain the proportion of the deposit that is made up of the dealer contribution."*

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 L accepted my provisional decision.

VWFS also accepted my provisional decision.

As Mr L and VWFS have accepted my provisional decision, it follows that there is no reason for me to reach any different conclusion than set out in my provisional decision.

Putting things right

For the reasons given in my provisional decision which I have outlined above, Volkswagen Financial Services (UK) Limited trading as Audi Financial Services should:

- Pay Mr L the advance deposit payment of £3,182.46;*
- Pay Mr L 25% of all the five monthly rentals he paid;
- Pay Mr L 8% simple interest on these amounts from the date of each payment until the date of settlement;**
- Pay Mr L £200 for the distress and inconvenience caused;*** and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

*If any of the advanced deposit payment is made up of funds paid through a dealer contribution, then Volkswagen Financial Services (UK) Limited trading as Audi Financial Services is entitled to retain the proportion of the deposit that is made up of the dealer contribution.

**If Volkswagen Financial Services (UK) Limited trading as Audi Financial Services considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

*** If Volkswagen Financial Services (UK) Limited trading as Audi Financial Services does not pay this £200 compensation for inconvenience and distress within 28 days of the date on

which we tell it Mr L accepts my final decision, then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

My final decision

For the reasons I've explained, I uphold Mr L's complaint. Volkswagen Financial Services (UK) Limited trading as Audi Financial Services should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 31 May 2023.

Sonia Ahmed
Ombudsman