

The complaint

Mr A complains about a car supplied to him under a hire purchase agreement taken with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services ('Audi'). He says he was expecting the car to be brand new with five miles recorded on the odometer, but this wasn't the case.

What happened

Around January 2022 Mr A says he saw an advert for a car online, with a dealer I'll refer to as 'N'. He says the car was advertised as new, with five miles on the clock.

Mr A entered into a hire purchase agreement with Audi to acquire the car. The car cost £66,300. Mr A paid a deposit of £8,000 with the rest of the funds provided under a hire purchase agreement with Audi.

Mr A says once he got the car home, he was shocked to see the next day that it had a recorded mileage of around 3,900.

Mr A complained to N. He said the car had been misrepresented to him and believed it was worth £3,000 to £4,000 less than he'd paid for it.

N issued a response to Mr A's complaint. In summary, it said there had been an administrative error. It said the price of the car had been reduced by £700 before Mr A acquired it because of this. It explained the finance agreement Mr A took showed the mileage of the car as 1,500. It said it would offer Mr A £300 to apologise for the mistake with the mileage. And it explained it had made Audi aware of the situation, so the mileage allowance under the agreement could be calculated correctly.

Mr A was unhappy with this and referred the complaint to our service. We then made Audi aware of the complaint. Audi emailed Mr A in September 2022 and said N had offered a preferential 'buy back' on the car to Mr A but he declined. It also said Mr A could've declined to take the car when he collected it. Audi then issued a final response the next day. This contained a copy of N's response above. And Audi said it would also offer £300 for the distress and inconvenience caused.

Mr A was unhappy with this, so our service began to investigate. Our investigator issued an opinion and didn't uphold the complaint. She said, in summary, that the advert Mr A saw said errors may occur in the details contained. She said Mr A should've known from the paperwork at the time he acquired the car that it wasn't new and had a mileage of 3,688. And she said she didn't think Mr A had financially lost out because of what happened.

Mr A disagreed. He said Audi normally allows people to return a car within 28 days if they aren't happy, but this option wasn't given to him. He said he still thought the car was misrepresented. And he provided an advert for a car that he said showed a "*massive price difference*" to what he paid.

Our investigator said this didn't change her opinion. So, the case 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.

Mr A complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit agreements such as this as a lender is a regulated activity. So, I'm satisfied I can consider Mr A's complaint about Audi.

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 – Audi here – has a responsibility to make sure the goods match a description.

As well as the goods being as described, I'll also consider if the car was misrepresented to Mr A as he says. To be misrepresented, this means Mr A would've been given a false statement of fact about the car, that induced him into entering into the agreement when he otherwise would not have.

Mr A says he was told the car was brand new, and had covered five miles. I think these are slightly different issues, so I'll consider these in turn.

New vs used

Mr A says he expected the car to be 'brand new'. So, I've thought about this along with the evidence from the time.

I've seen a copy of the advert Mr A says he saw for the car. This does say the mileage of the car is "5 miles" – which I'll come onto below. It says the car was registered in 2021, as opposed to being unregistered. I've also considered, although I appreciate this may not have been too obvious, that the car's front registration plate has been replaced with one advertising the manufacturer's used car scheme. I've also noted that the advert says:

"Every effort has been made to ensure the accuracy of the information above, however, errors may occur. Do not rely entirely on this information but check about items which may affect your decision to purchase."

Thinking about this, I accept that being advertised with such a low mileage would give Mr A the impression this car was new. But, given the disclaimer and the other points above, on its own this isn't enough to make me think the car was described as 'new'. So I've considered what else Mr A would've seen at the time.

I've considered here what Mr A saw before he entered into the agreement. I've seen two order forms, both of which describe the car as "used". And on the agreement Mr A signed the car is also recorded as "used".

There's very little evidence of conversations that took place at the time. But, I think it's unlikely the car was described to Mr A as 'brand new' by N.

Thinking about all of this, I think it's most likely the car was not described as "new". It follows that this means I don't think on this point that the car was misrepresented to Mr A, nor that the car didn't meet a description given.

Mileage

Mr A says he thought the mileage of the car was five. And, as above, I can see that in the advert he saw this is what is recorded. But, again, I need to consider the disclaimer on the advert as I've set out. So, I need to think about what else Mr A would've seen.

I should say here that N, and Audi, both accept that there were discrepancies in the mileage recorded. The key thing I need to consider is *when* Mr A would've been aware of the actual mileage of the car. He says this was the day after he acquired it. Audi told our service that N explained the true mileage of the car to Mr A before he acquired it.

I've considered the agreement Mr A signed. This records the mileage as 1,500 – which all parties accept was incorrect.

But, I've also seen a document Mr A signed *before* he entered into the agreement. This was a "*vehicle order form*" that records the mileage as 3,688.

It appears Mr A collected the car two days after he signed the finance agreement. I've also seen a "*used qualifying invoice*" signed by Mr A on this day that recorded the mileage as 3,688. And I've seen a "*used vehicle supplementary invoice*", again signed by Mr A, that also records the mileage as 3,688.

So, I accept the car was advertised as having covered five miles – albeit with a disclaimer to not rely on the information. And I'm satisfied the mileage was recorded as 1,500 on the credit agreement – which is incorrect. But, taking everything into account, I think on balance it's most likely Mr A was made aware of the correct mileage of the car before he acquired it, and on the day he collected it. It follows that I'm not persuaded that the mileage was misrepresented to Mr A or that the car was not as described.

I do appreciate this is somewhat finely balanced. So, it might be worth explaining that even if I concluded Mr A was told the wrong mileage, I haven't seen enough to make me think he's lost out here. Mr A says the car would've cost significantly less due to the higher mileage. But I haven't seen enough to persuade me that this was the case.

I say this as I'm satisfied the car was described as 'used'. I haven't seen enough evidence to show, given the car wasn't new, that the mileages involved here would've significantly affected the value.

I've considered the screenshot of another car advert Mr A provided. But, this isn't dated. And I can't see what the full specification of the other car is. So, this doesn't change my opinion.

All that being said, I do still think Audi did something wrong here. It isn't in dispute that errors were made with how the car was advertised to Mr A and what was recorded on the credit agreement. I think this situation would've caused Mr A some distress and inconvenience. Audi has offered to pay Mr A £300 to reflect this. I think this is fair and reasonable under the circumstances.

Audi has also confirmed it has updated Mr A's credit agreement to reflect the correct mileage at the point of supply to make sure he is fairly charged for the mileage used.

Finally, Mr A says he should've been given the option to hand the car back within 28 days. He's sent a screenshot of what appears to be N's website that he says shows this. But, I haven't been provided with any other evidence here. And I can't see this forms part of the agreement with Audi – so I'm not going to make any findings about this. That being said, it

might be worth pointing out to Mr A that the screenshot explains a car can be exchanged, not returned, and only if a “*demonstrable fault*” occurred.

My final decision

Volkswagen Financial Services (UK) Limited trading as Audi Financial Services has made an offer to pay Mr A £300 to reflect what happened.

My final decision is that this offer is fair and reasonable under the circumstances of this complaint.

So, I instruct Volkswagen Financial Services (UK) Limited trading as Audi Financial Services, if it hasn't already done so, to pay Mr A £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 June 2023.

John Bower
Ombudsman