

The complaint

Mrs H complains about the quality of a new car that was supplied through a contract hire agreement with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (AFS).

Mrs H has been represented on this complaint, but to keep things simple I'll only refer to Mrs H in my decision.

What happened

In August 2021, Mrs H acquired a new car through a hire agreement with AFS. Mrs H paid an initial rental of £13,871.12, which meant her agreement was over 35 monthly rentals of £125.

Mrs H said that around 11 months later the car started to display electrical faults, so she brought it to a manufacturer garage who told her there was no fix available. Mrs H said the car was displaying intermittent operational issues with the SOS Function, pre sense collision mitigation, lane departure warning system, distance warning, main beam assist, adaptive light fault and cruise control.

In October 2022 Mrs H complained to AFS about the issues she was having. In November 2022 AFS issued their final response where they upheld the complaint and confirmed the issues were related to the model of car she'd acquired. In their final response AFS gave Mrs H the following three options to resolve her complaint; 1. keep the car and wait for the software update and receive a refund of £900, with a review of the outcome in 12 months if the update isn't available, 2. reject the car and receive a refund for the initial rental, 3. order another vehicle and keep the current car until the new one is ready, then transfer over to a new agreement.

Mrs H wasn't happy with the options AFS' proposed, so she referred her complaint to our service for investigation. Mrs H believed what AFS offered would leave her financially worse off, so she preferred to have a full refund or a replacement car.

In April 2023, AFS shared their business file on the complaint and at the same time advised us that Mrs H's car had received the software update that it required; however, that they were still willing to honour a reimbursement of £900.

In June 2023, Mrs H told our investigator that her car was returned to the dealership for repairs. Mrs H said the original issues were persisting and provided images of the faults on the dashboard. She also advised of further problems with an intermittent unlocking and starting fault.

Having reviewed all the information on file, one of our investigators recommended that Mrs H's complaint should be upheld. The investigator concluded that as the car wasn't of satisfactory quality the fairest outcome was a rejection of it.

Mrs H didn't accept our investigator's view. She confirmed that she wouldn't be going ahead with a rejection of the car due to her concerns about being at a financial disadvantage.

However, as our investigator's view remained unchanged Mrs H asked that her complaint be referred to an ombudsman for a final decision.

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've thought about all the evidence and information provided afresh and 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 relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The agreement in this case is a regulated hire agreement. As such, this service is able to consider complaints relating to it. AFS is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that AFS supplied Mrs H with a brand-new car. With this in mind, I think it's fair to say that a reasonable person would expect there to be no issues with the car, and that it could be used free from any problems for a reasonable period of time.

From the information provided, I'm persuaded there is a fault with the car. Mrs H has given detailed explanations and provided images of what the issues are. A pending software update to address those issues have been confirmed by AFS. AFS have also confirmed their attempt at fixing the issues, and their inability at present to resolve the current problems reported by Mrs H.

Neither party has disputed whether the car is of satisfactory quality. AFS has accepted our investigator's recommendation to reject the car, and Mrs H has made it clear in her correspondence that she believes the car wasn't supplied in a condition that was of satisfactory quality.

Having reviewed the information on file, and given the problems that occurred were in less than 12 months and on a brand-new vehicle, I'm satisfied that the car wasn't of satisfactory quality when it was supplied to Mrs H.

Having considered the car wasn't of satisfactory quality when it was supplied, and that neither party has disputed this, I've focussed my decision on what the fairest outcome would be to resolve the complaint.

Under the CRA if goods are not of satisfactory quality they do not conform to the contract. Section 19 of the CRA sets out certain remedies available to the consumer for goods that do not conform:

- (3) If the goods do not conform to the contract because of a breach of any of the terms described in sections 9, 10, 11, 13 and 14, or if they do not conform to the contract under section 16, the consumer's rights (and the provisions about them and when they are available) are—
 - (a) the short-term right to reject (sections 20 and 22);
 - (b) the right to repair or replacement (section 23); and
 - (c) the right to a price reduction or the final right to reject (sections 20 and 24).

In their final response, AFS gave Mrs H three options to resolve her complaint. Option one was a choice for a repair and a refund of £900 which in effect is considered a price reduction to account for the continued problems with it. Guidance notes under the CRA says:

If the consumer opts to keep the goods and require a reduction in price the question of what an appropriate amount is will depend on the circumstances and the remaining functionality of the goods.

I'm satisfied this was a reasonable offering under the CRA. However, as the goods, in this case being a vehicle, was purchased through a finance agreement, rather than in one transaction, Mrs H in effect was purchasing the car over the term of the agreement. As such a fair calculation of a price reduction would have to take into consideration the future fix of the issue which in this instance can't be fairly determined.

In addition, Mrs H has also advised in her most recent correspondence with the investigator, that the car has been brought into the garage in October 2023, so a further attempt could be made at fixing the issues.

Option two was to reject the car. Where goods do not conform to the contract, the CRA makes no provisions for providing a like for like contract, for example for another vehicle, so I'm satisfied this option was also in line with the remedies under the CRA. And option 3 enabled Mrs H to remain mobile whilst awaiting another vehicle, and then entering into a new contract. I think this was also reasonable in the circumstances.

In her emails to the investigator Mrs H pointed out that if she was to reject the car she'd be at a financial disadvantage. A quotation for new car provided by Mrs H shows a monthly repayment of £399 over the same term. So, Mrs H believes a fair resolution would include:

1. Compensation to recognise the problems she's experienced
2. AFS to restart the agreement on the same terms with a new car that is free from any fault; or
3. A full refund with AFS buying the vehicle back

Besides a degree of compensation to acknowledge any distress and inconvenience caused, I don't think the options given by Mrs H are completely reasonable in the circumstances. For example, the CRA makes no expectations of a business to amend the payment terms of future purchases based on goods that did not conform to a previous contract. And a full refund doesn't take into consideration the usage Mrs H has had of the car (albeit impaired to some extent).

I acknowledge Mrs H's strength of feeling that she'll be financially worse off if she decided to acquire the same model of car on a new agreement. However, whilst I'm not disputing what Mrs H says, my decision concerns what has actually happened rather than what might have happened under future circumstances. I don't think it's fair to instruct AFS to compensate Mrs H for something which may occur. In the circumstances I think it's reasonable to expect that Mrs H is put in the position she would have been had she not entered into the contract as far as is reasonably possible.

By offering a rejection of the car, Mrs H will be in a position where, having made deductions for usage, she'd be free to acquire a different vehicle, without any record of the agreement on her credit file.

All things considered, I'm satisfied in the circumstances of this complaint that it's most appropriate to instruct AFS to facilitate a rejection of the car.

Putting things right

As I've concluded that Mrs H's car wasn't of satisfactory quality when it was supplied to her, and that a rejection of the car is the fairest and most appropriate remedy in the circumstances; I'll be instructing AFS to end the agreement, remove it from Mrs H's credit file, ensuring no adverse information exists in relation to it.

AFS should collect the car at no cost to Mrs H, refund to Mrs H the unused portion of her deposit and compensate Mrs H for the impaired usage she's had of the car, as it hasn't been performing as it should have. I'm in agreement with the investigator that a 10% refund is reasonable for the impact this would have had on Mrs H.

I'll be instructing AFS to refund 10% of the monthly repayments from July 2022 when the fault first occurred to the date of settlement. This is in addition to 10% of the pro rata proportion of the initial rental for the same period.

I think it's fair to say that Mrs H has been unreasonably inconvenienced by the inherent issues with her car, for example with having to go back and forth to the dealership and being concerned that the safety features of the car might not have been functioning properly. All things considered, I'm satisfied that £400 in compensation is a fair recognition of the distress and inconvenience caused here. So, I'll be instructing AFS to pay this to Mrs H.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Volkswagen Financial Services (UK) Limited trading as Audi Financial Services to:

- collect the car at no additional cost to Mrs H
- end the hire agreement and remove it from Mrs H's credit file
- refund to Mrs H on a pro rata basis the unused portion of the initial rental
- refund to Mrs H 10% of the monthly rentals from July 2022, and 10% of the pro rata

- proportion of the initial rental for the same period
- pay Mrs H £400 in compensation for any distress and inconvenience caused

Volkswagen Financial Services (UK) Limited trading as Audi Financial Services should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 December 2023.

Benjamin John
Ombudsman