

## **The complaint**

Mr N complains about the quality of a car he has been financing through an agreement with Volkswagen Financial Services (UK) Limited (who I'll call VWFS).

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint Mr N, but I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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.

Mr N acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) (CRA) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then VWFS, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr N. The car here was a little over three years old and had already completed almost 55,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

I understand that Mr N's car experienced an engine fault in July 2023. That engine failure is not the subject of this decision. I believe that VWFS are now considering Mr N's complaint about that issue and will inform him of their decision in due course. This Service can only usually consider complaints after the business has had a chance to review them. If Mr N is

unhappy with the decision VWFS make on the engine problem he will be given rights by VWFS to then refer that complaint to this Service.

VWFS provided a final response to the complaint that I'm being asked to consider, on 23 April 2023. Mr N was unhappy that he hadn't been told the extent of previous warranty work before the car was supplied to him, and he was also unhappy with the car's cosmetic condition.

The relevant legislation explains every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory but not where there is, for instance, anything which makes the quality of the goods unsatisfactory where the consumer examines the goods before the contract is made, and that examination ought reasonably to have revealed the issue (CRA s9 (4) b). I think the cosmetic damage Mr N referred to in his complaint to VWFS ought to have been visible on his reasonable inspection of the car and I don't think VWFS were therefore, unreasonable to reject that part of his claim.

I don't think the fact the car had had previous warranty repairs suggested it was faulty at the point it was supplied to Mr N and he, therefore, didn't have a short term right to reject the goods. If the dealership initially accepted that return, as Mr N has suggested, but later retracted from that position, it wouldn't, therefore, be fair for me to suggest they were wrong to do so.

If Mr N was given a false statement of fact and if that false statement materially influenced him to enter into the contract, I may think the deal had been misrepresented to him. But I don't think the failure to disclose full service/warranty information could fairly be seen as a false statement. It was information that it's clear, given what happened subsequently, Mr N wanted to know, but it's not information that was falsely stated to him. And, even if I'm wrong about that, I can't see that Mr N has experienced any loss as a result of that issue. I've not seen that there have been any subsequent problems with the gearbox or flywheel which were the items that were the subject of the earlier warranty/service repairs.

Mr N's representative has explained that Mr N's first language is not English, but I don't think there is evidence that Mr N didn't understand the terms of the agreement he was entering into, and I don't think I've been provided with any evidence that would fairly lead me to conclude that he was disadvantaged by anything the dealership, when negotiating as agents of VWFS, had failed to clearly communicate to him.

I'm not, therefore persuaded that VWFS have done anything wrong here.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 18 April 2024.

Phillip McMahon  
**Ombudsman**