

## The complaint

Mr R has complained about a car he acquired under a hire purchase agreement with Volkswagen Financial Services (UK) Limited trading as Volkswagen Financial Services ("VWFS").

## What happened

In November 2022 Mr R acquired a used car under a four-year hire purchase agreement with VWFS. The car cost around £41,300. It was around two years old and had covered around 23,600 miles. Mr R made an advance payment of around £3,700. Monthly repayments were around £535 followed by an optional final payment of around £21,500.

Mr R said he reported concerns with the range he was achieving to the supplying dealer within a couple of days of acquisition. Mr R said he was told he'd achieve somewhere in the region of 150 miles per charge. He said between December 2022 and January 2023 he tried to get the car booked in, but the supplying dealer had a cyber-attack, so he wasn't able to. He said he took the car in to be tested in February 2023 and it was driven for 6 miles and no faults were found. Mr R also said the supplying dealer looked into other issues including an issue with the gear selector and the car getting stuck into reverse. The report I've seen says it couldn't find the issue with the drive selection. And it said it carried out a test but couldn't find an issue with the range. It said it found 140 miles of available range. But the report did say *Tested the fault memory and Hv battery issues are logged*.

Mr R said he booked it in again between March and April 2023. The supplying dealer said it couldn't find a fault with regards to the range. The notes indicate faults were stored in Hv charging system for infrastructure issues. It looks like there was TPI available which I think is technical product information, but this said the faults could be ignored as the concern was with charging point. I think the car was sent to a battery competence centre. It said it had conducted a full battery test and all the cells were within tolerance. It said the car was test driven and it achieved 140.3 miles with 11 miles of range remaining. It said technical data suggested the useable kWh is 64.7 as a safety net to prevent the car running to fully empty and damaging the battery. The full capacity is around 71kWh. It noted the car was advertised as having a range of 191 miles, but that these figures were established in test conditions rather than 'real life'. The supplying dealer said the mileage would dramatically differ based on ambient temperature, driving style and electronics in use. It said given Mr R acquired the car in Winter would mean he hadn't been able to achieve the expected range. It said the range would fluctuate with all electric vehicles.

Mr R also complained to VWFS. VWFS broadly said that as no fault had been found it wasn't going to uphold the complaint. It said the dealer had achieved a range of 170 miles (although this is disputed). It invited Mr R to get his own independent report carried out. Mr R referred his complaint to the Financial Ombudsman.

Mr R referred to sales material from the supplying dealer that said:

*In an electric vehicle (EV), the miles per kWh figure tells you how many miles the car will go on 1kWh, or unit, of electricity.*

*So, if your EV has a battery size of 50kWh and an efficiency rating of three miles per kWh, then on average it can travel 150 miles on a fully charged battery.*

Mr R said the car wasn't achieving what he was led to believe. So either there was a fault with the car, or it was misrepresented. Mr R said between October 2022 and March 2023 the range was 7% lower than it should have been (even taking into account the usable battery size). He said between 26 April 2023 and 16 May 2023 it was 8% lower than it should have been. And for a single charge in February 2023, it was 27% lower than it should have been. He also said the supplying dealer didn't explain that estimated range should be calculated using the usable capacity of the battery, as opposed to its actual full capacity.

Our investigator looked into things but didn't uphold the complaint. He said he hadn't seen enough to conclude Mr R was told he'd achieve up to 190 miles on a full charge. He said he'd not seen enough to show the mileage Mr R was achieving was incorrect – Mr R had said he was achieving between 110 to 120 miles per charge. He also didn't think there was sufficient evidence there was a fault with the car.

Mr R didn't agree. He said even if the figures from the supplying dealer's test drive were correct, the car still achieved 8% less than what it should have done. He said he discussed the range when acquiring the car and was told the actual mileage he'd achieve would be the efficiency multiplied by the battery capacity. He said this is the formula he'd used, and it aligns with information on the supplying dealer's website. He said there was no mention of usable vs full capacity which was misleading. He said the complaint was not about what was advertised i.e. the 190 mile range. He said the complaint is about what should be achieved against what he actually achieved. He said the car's recorded efficiency can fluctuate anywhere between 1.6miles per kWh to 2.7miles per kWh. So even with a usable battery figure (64.7kWh) he should achieve between 103 to 174 miles. He said the evidence he'd submitted of actual results should hold more weight.

Our investigator still didn't think he'd seen enough to uphold the complaint, so the complaint was passed to me to decide.

Mr R wanted to reiterate he was told by the dealer he could multiply the battery capacity (which was described as 71.1kWh) by the efficiency displayed in the car and that would be the minimum he'd achieve. He said during the test drive the car was around 2 miles per kWh so his understanding was that on a single charge he'd achieve at least around 142 miles (2 X 71.1). He explained this was the information provided on its website which should be reasonable to assume is the guidance given to the sales staff. He said had he known the car sometimes wouldn't have achieved 100 miles on a full charge he wouldn't have acquired it. He said if the reduction in range was as a result of something like driving style he'd accept it, but from the car's efficiency output as per the calculations he said that wasn't the case.

He also supplied a diagnostic check he had carried out I think in September 2023 that showed fault codes for the information electronics (navigation database malfunctioning) and the high-voltage battery charger (faulty communication and signal damping log malfunction).

Mr R wanted to highlight three main points:

- The marketing of the car was incorrect because the usable capacity was 10% less than the battery size.
- The miles per kWh figures he'd supplied prove the car doesn't achieve the range it should.
- It was not true the supplying dealer found no faults. Faults had been found.

I issued a provisional decision that said:

*I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr R and VWFS that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Mr R acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.*

*I think section 56 of the Consumer Credit Act 1974 is also relevant here. This provision has the effect of deeming the supplying dealer to be the agent of VWFS in any antecedent negotiations. So VWFS is responsible for the antecedent negotiations the supplying dealer carried out direct with Mr R. I think the negotiations were antecedent because they preceded the relevant conclusion of the agreement. The scope of 'negotiations' and 'dealings' is wide. And 'representations' covers statements of fact, contractual statements and other undertakings.*

*Mr R's account of what he was told when he acquired the car seems detailed and credible. It's clear the achievable mileage was very important to him. I think it would have been a key part of the discussions he had with the supplying dealer. He says he test drove the same model for around 30 miles and achieved 2miles per kWh in November so based on what he was told, and the marketing material from the supplying dealer, he said he was led to believe he'd achieve around 142 miles on a single charge in similar conditions with range improved in better weather. This was based on the full battery capacity of around 71kWh. But it's not in dispute that, even putting the alleged underperformance to one side, the estimated range should be calculated using the usable capacity of around 65kWh. This seems to be backed up by what the manufacturer and supplying dealer told Mr R. But he was only notified that a few months after he acquired the car. Based on what I've seen, on balance, I don't think this was made clear to Mr R verbally by the supplying dealer, or in writing when looking at the guidance it publishes. So I think he wasn't adequately informed by the supplying dealer as part of the negotiations. And this is something VWFS is responsible for under section 56.*

*Moreover, I'm conscious there's evidence of faults with the car. I say this because of the following evidence I've seen:*

- *The inspection carried out when the car had covered around 25,500 miles said Tested the fault memory and Hv battery issues are logged.*
- *Mr R had diagnostics carried out and three fault codes were found as I've highlighted in the background.*
- *VWFS said an infotainment system error was reported in early 2023. Repairs were carried out in October 2023.*
- *Mr R told us in November 2023 he had further diagnostics test run and said it found details of the following fault codes:*
  - *Information electronics module No Communication (121 counts)*
  - *High-voltage battery charger Sequence error during operating mode setting Intermittent (123 counts)*
  - *Vehicle electrical system configuration implausible (74 counts)*
  - *Signal damping log Malfunction (76 counts)*

- Hybrid/EV Battery Charging Voltage High Intermittent (192 counts)
- Databus missing message (36 counts)
- Intelligente Ladefunktion fehlerhafte Kommunikation (76 counts)
- Mr R has complained of other faults in relation to gear selection and adaptive cruise control issues.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr R entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory, fit for their intended purpose and as described. VWFS is the “trader” for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

In Mr R’s case, the car supplied was used and had covered around 23,600 miles. There’d be different expectations than if it was a brand-new car. But I’m conscious the car cost over £41,000 and it was [around] two years old, so I don’t think the reasonable person would have expected it to be supplied with any significant issues.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it’s established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Like our investigator pointed out, I’m required to consider what happened up to the point VWFS issued its final response in July 2023, because these are the events it had the chance to consider. I’m conscious it issued another final response more recently in relation to the infotainment repair. It offered Mr R 25% of his monthly payments back for the six-week period his car was impacted which totalled £201.12 and it offered £100 compensation. While these events don’t specifically relate to the complaint I’m looking at, I’m going to propose I consider everything holistically because it helps build up a true picture of what’s happened. If either party has any strong objections to that, they can let me know in response to this provisional decision.

With regards to the satisfactory quality, I don’t have all the evidence that would be helpful. I don’t have sufficient evidence of the alleged faults in relation to gear selection and adaptive cruise control. Mr R has only given us details of the more recent diagnostics in November 2023 as opposed to the actual job card/invoice. But I don’t think he’d have made them up. I don’t have all the job cards and evidence relating to the infotainment repairs. Given the more recent final response – that fault doesn’t seem to be in dispute. But I do have evidence it looks like there was historical Hv battery issues were logged. And I do have evidence fault codes were highlighted on the diagnostics Mr R had carried out. While I appreciate that wasn’t carried out by a manufacturer dealer, VWFS hasn’t explained why they should be discounted. I think I should take them into account.

I’ve thought about the complaint as a whole. Mr R is complaining the car isn’t achieving the range he was led to believe, or that it should be when taking into account the information he’s been given from various parties. Mr R is well aware he’d not achieve the range that is advertised which is carried out in laboratory conditions. But he’s also put forward compelling arguments that indicate there could be some sort of problem with the range he’s actually

managing to achieve. He's sought help from the supplying dealer; the manufacturer; and VWFS. He's supplied driving statistics he downloaded from the car from February 2021 to September 2023. He's given us various details of the range he managed to achieve on a substantial number of trips. I can't clearly answer his concerns by saying electric car ranges vary, and that they can be impacted by things like temperature; other electrical items being used; and driving style for example. It's also not clear I can answer the complaint by simply saying batteries degrade over time. After checking how to calculate the range, Mr R resets the trip computer and takes the actual figures for the journey to see how the car is performing. So, as far as I know, these figures aren't affected by other things such as the weather and the other electrics used because the figures are the actual efficiency rating that's been confirmed for the trip. And there consistently seems to be a deficit. While the deficit is generally around 10%, from what I've seen, combined with not being able to use the full capacity of the battery, the deficit in range begins to add up and become more substantial. Moreover, VWFS said the supplying dealer achieved a range of 170 miles, but I've not seen this anywhere in the inspections or documentations. It doesn't seem correct.

When putting everything together, on balance, I don't think Mr R was adequately informed about the real-life range he'd be able to achieve. He ought to have been clearly informed that the range is based on the usable battery, and that the battery would not perform the same if it was new (if that's the cause of the reduction in range). He complained within a couple of days of being supplied the car. Had he been adequately informed I don't think he'd have acquired the car. That in itself would be sufficient to uphold the complaint. But in addition to that, there's also evidence there are faults with the car. There have been repairs carried out. And Mr R says there's still fault codes present. He's also supplied evidence that some of those faults may affect range and/or performance. I don't think the reasonable person would have expected those sorts of faults within the first year or so of acquisition given the car [was around] two years old when it was supplied, it had only covered around 23,600 miles and it cost more than £41,000. So in addition to being misled prior to entering into the agreement, there could be grounds to say Mr R has a valid right to seek rejection as well. Once again, I appreciate some of these issues manifested after VWFS sent its initial final response letter, but it seems practicable to consider everything under this complaint, rather than direct Mr R to raise further complaints. And for the reasons I've given, I think there are grounds to uphold the complaint, even based on what happened leading up to the first final response because the events happened at the point of supply.

On balance, I think Mr R wasn't adequately informed about the range he'd be able to achieve, there are unresolved faults with the car some of which might be impacting the range, or there could be a combination of both of those things.

Therefore, based on what I've seen, I'm going to propose the complaint is upheld and Mr R should be able to return the car. I've thought about a fair way to do that. I think VWFS should refund Mr R's deposit with interest. But I'm not going to propose he's given a refund of his repayments. The CRA says a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure. I've thought about what a fair deduction would be and have taken into account relevant guidance on what fair usage should be, such as the guidance set out in the "Consumer Rights Act: Guidance for Business" published by the Department for Business, Innovation and Skills. I've been mindful of the following elements of the guidance which would be relevant to this complaint such as that fair usage should reflect the use the consumer has had from the goods. Deductions shouldn't be made for the time the goods were being repaired or having faults assessed. Considerations can be made for all relevant information when assessing how much use the consumer has had and what level of deduction would be appropriate to reflect this and relevant information can include, for example, the type of goods, the intended use, expected lifespan etc.

*As a starting point, in the particular circumstances of this case, I think the monthly repayment towards the hire purchase agreement is a reasonable figure to use for a month's worth of use of the car. I think VWFS can fairly retain the monthly repayments in recognition of the use Mr R had of the car. I don't think Mr R's use of the car has been impaired as such, so I'm not going to propose the monthly repayments are reduced. But I think the matter has caused a degree of distress and inconvenience to Mr R. I don't think his concerns were fully understood. He's had to attend inspections, and have repairs and diagnostics carried out. He told us he was delayed in being able to get the car inspected initially due to issues with getting things booked in with the supplying dealer. He's had time without the car while inspections and repairs were carried out. He's had to charge the car more regularly than he wanted. And it must have been really frustrating to have not achieved the range he expected while he had the car. I'm not aware Mr R paid for repairs or diagnostics himself. If he has, I think he should be refunded those sums, but he'd need to supply evidence in response to this provisional decision. With regards to the inconvenience caused, I'm going to propose VWFS pays Mr R £500. And I think it should also honour its more recent offer in relation to the infotainment repairs totalling £301.12.*

VWFS accepted the decision. Mr R broadly accepted it but wanted to highlight he thought his use of the car had been impaired. He said when the car was in for repair for 6 weeks, he was given an inferior courtesy car that he wasn't allowed to take his dogs in. He also said he was forced to use his partner's car for journeys which should have been achievable in the car he'd acquired under the agreement with VWFS. Mr R requested a partial refund of his repayments for the impaired use. He asked for 20%. He also asked some questions around what would happen if the decision were accepted.

### **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'd like to thank the parties for their responses. I can understand why Mr R has requested a percentage of his repayments to be returned but, for the reasons given in my provisional decision, I don't think his day to day use of the car was impaired due to the charging issue. I don't agree a refund should be given for the same percentage the battery seemed to underperform. Aside from what I've highlighted in the background, the car still drove as expected. But I agree the matter caused some overall inconvenience, which is why I made the compensation award.

With regards to what happens if Mr R accepts the decision, VWFS would generally be required to carry out the directions within four weeks of acceptance. I think it would be fair for Mr R to pay for the use he had of the car i.e., up to when it's collected. If he decides to accept this decision, he should speak to VWFS about whether he can cancel the direct debit before the next payment is due; whether the car will be collected on a truck; and to arrange a suitable time for collection.

For the reasons given above, I'm not going to depart from the conclusions I reached in my provisional decision.

### **Putting things right**

To the extent not done so already, I direct VWFS to:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr R;
- refund Mr R's £3,707.05 deposit;

- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay Mr R £301.12 in relation to the infotainment repair complaint;
- pay £500 compensation;
- remove any adverse information from Mr R's credit file in relation to the agreement.

If VWFS considers it is required to deduct tax from my interest award it should provide Mr R a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and direct Volkswagen Financial Services (UK) Limited trading as Volkswagen Financial Services to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 May 2024.

Simon Wingfield  
**Ombudsman**