

The complaint

Mr G complains about a car acquired through a Hire Purchase agreement with Volkswagen Financial Services (UK) Limited ('VWFS'). He says the car has had electronic faults within the first few months. It has been into the dealership on multiple occasions but it's still not fixed. He says the car isn't of satisfactory quality as a result.

What happened

Mr G acquired the vehicle through a Hire Purchase agreement entered into in January 2022. When the car was supplied in February 2022, it was three years and nine months old, had covered 30,199 miles and cost £28,500.

The car had been into the dealership for services and minor repairs, but I'll focus on the visits to the dealership that concern the issue Mr G is complaining of.

The vehicle history shows an issue with the start-stop and cruise control was being investigated early in November 2022. At this point the car had covered 50,168 miles, which was very nearly 20,000 miles since supply.

Further inspections were carried out to investigate the start-stop and cruise control issues, including in December 2022, January 2023, March 2023, May 2023, September 2023, and January 2024. On many of these occasions the fault codes were noted, but once the fault code was cleared the fault could not be recreated. On one occasion the car was kept by the garage for several weeks and the fault couldn't be reconstructed.

Since the issue was being investigated in November 2022, the car had accrued at least an additional 20,000 miles. The vehicle history shows that by February 2024 the mileage was recorded as 74,978 miles.

Mr G seems to have first contacted VWFS in January 2024 about the attempts at repair, and as there didn't seem to be any answer on how to repair the issue he should collect the car and return the courtesy car he had.

When VWFS responded to the complaint it said the mileage and time since acquiring the car indicated that it wouldn't be responsible for faults that had now arisen. They'd found that as the fault was intermittent, the dealer hadn't been able to replicate the fault. But that if it did come back Mr G should get back in touch.

Mr G said he had raised the issue much sooner with the dealership than when VWFS had said the issue arose. And the dealer had confirmed the car was faulty. So he was concerned with how VWFS had considered the complaint.

VWFS said ultimately there wasn't evidence of there being an inherent manufacturing defect. As the dealer hadn't been able to replicate or diagnose the issue complained of, it didn't think it was responsible.

The investigator thought the amount of use the vehicle has had indicates the car was of satisfactory quality. And that there wasn't enough evidence to say there was a fault that would've been present or developing at the point of supply.

Mr G said the dealership agreed that the car wasn't fit for purpose – and that he should pursue a complaint against VWFS. He said the multiple attempts at repair meant he was now entitled to a price reduction or to reject the car. And that the dealer's repeated attempts at repair indicate that they are responsible for the issue.

He said the car was more expensive than comparable cars and that he would have expected the parts to last at least ten years. He said the investigator focussing on issues at the point of supply wasn't relevant as he reported the issues outside of thirty days, giving him the option of a price reduction or repair.

He hadn't been given any of the diagnostic reports and was concerned that our service hadn't been given all the information about the diagnostic reports that had been carried out. However the multiple attempts at repair indicated there was a persistent fault with the car.

He said the price of the car compared to a new one isn't relevant. He said the issue of the car being merely roadworthy wasn't what he was complaining about, but more that the car wasn't as described because of the fault which he's provided photos of as evidence.

Mr G asked for the case to be reviewed by an ombudsman and so it has been passed to me to issue 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.

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Mr G acquired the car through a Hire Purchase agreement with VWFS. Under this type of arrangement, VWFS became the supplier of the car and is responsible if the goods aren't of satisfactory quality when supplied. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

As I've outlined above, when the car was supplied it was three years and nine months old and had covered 30,199 miles and cost £28,500. And when considering satisfactory quality, this age and use prior to supply must be taken into account.

That's not to say that all cars of this age and use are of satisfactory quality even if they have faults. But that age and use will mean that parts may have experienced more wear and tear and issues could arise more quickly, than a less old, less worn example.

If a fault arises, consideration must be given to the amount of use at the point of supply, and how long after supply the fault arose.

It's clear there is some kind of fault because of the repeated fault codes and the evidence Mr G has provided showing the error message on his dashboard. There have clearly been a number of inspections of the vehicle and on the majority of these the dealership has been unable to recreate and diagnose the fault in question. The dealer has outlined unresolved start-stop/cruise control issue being discussed with manufacturer.

Goods should be of satisfactory quality, fit for purpose and as described at the point of supply. However, simply because there is a fault doesn't automatically mean that the car was not of satisfactory quality at the point of supply.

The greater the amount of time and the more use of the car from the point of supply, the less likely an issue would be present or developing at the point of supply.

If an issue arises within a short period after first acquiring a car then it's quite likely it was an issue at the point of supply and it likely makes the goods not of satisfactory quality at the point of supply. Where goods do not 'conform to the contract' in this way, the CRA gives consumers 30 days to exercise their 'short-term right to reject' the goods in these circumstances.

Mr G has mentioned the fault having been raised more than 30 days since supply – meaning he has the right to a price reduction or rejection of the car following failed repairs. However this isn't exactly what the CRA says.

Before having any of the rights outlined in the CRA, it's necessary first to establish whether or not the goods 'conformed to contract'. As far as this complaint is concerned, 'conforming to contract' would essentially mean the car being of satisfactory quality, fit for purpose and as described.

Where the short-term right to reject has expired, consumers whose goods do not 'conform to contract' do have a right to repair or replacement – or, if that doesn't work out, a right to a price reduction or rejection.

Outside of the short-term right to reject, goods that don't conform to contract within six months of them being supplied are taken to have not conformed on the day of supply, unless there is evidence to the contrary. That means that if it's established that goods aren't of satisfactory quality, fit for purpose or as described within the first six months of supply, then there's a presumption that was the case at the point of supply. However this doesn't apply where it's established the goods were of satisfactory quality at the point of supply.

The assessment of satisfactory quality has to incorporate the fact the car had already covered 30,199 miles at the point of supply. In these circumstances it would be reasonable to expect the car wouldn't be as durable or reliable as a newer car. And issues with the car

would reasonably be expected to happen much sooner than with a car that hadn't been used as much.

With that being the case, I also need to consider the substantial mileage the car accrued since it was supplied. I haven't seen any evidence to show the faults being raised until November 2022. This was nine months after the car was supplied, during which time the car had been driven nearly 20,000 miles, on top of the 30,199 already travelled at the point of supply.

This level of use would be relatively high if spread over two years, and so when concentrated within nine months, this amounts to considerable use of the car.

This level of use is significantly greater than average, and would therefore cause a significantly greater degree of wear and tear. And, given the age and previous use of the car, this wear and tear would have had an even greater impact. But that's not the same thing as it not being of satisfactory quality.

Mr G has said that parts should reasonably be expected to last for 100,000 miles. If I accepted that, I would essentially have to conclude that all motor vehicles needed to be fault free up to 100,000 miles, regardless of any servicing requirements or the way the car had been driven, in order to be of satisfactory quality. I don't think it would be fair for me to say that. However I do think it's reasonable to say that a car of this level of use may experience faults the more it's used and repairs may be required as a result.

I would not expect a car with this level of use prior to sale to be able to cover almost 20,000 miles if it wasn't in reasonable condition at the point of sale. As such I would not conclude the issues complained of here happened prematurely given the nature of the goods provided.

In this complaint I'm considering VWFS's responsibility as the supplier of the goods – and I don't think the issues as presented indicate the car was not of satisfactory quality at the point of supply. Durability is an element of satisfactory quality but for the reasons I've set out, I'm not persuaded, looking at the age and mileage travelled, the car was not sufficiently durable. I haven't seen anything to indicate that Mr G made the dealer aware of a particular purpose for the car that this issue would impact – nor have I seen any explanation since for why this particular issue meant the car wasn't fit for a particular purpose. Nor have I seen the goods aren't as they were described.

I've considered the overall quality of the car, bearing in mind all the factors relevant within the CRA. I don't think it's unreasonable to conclude in any event the car was of satisfactory quality, given this issue only arose after the car had covered 50,168 miles, 20,000 of which Mr D covered since the car was supplied, and the car has since covered more than an additional 20,000 miles.

I acknowledge that there has been some struggle to have the issue at hand repaired and that it's been with the dealership a number of times. While there doesn't seem to be a repair for this issue currently, and while Mr G may eventually pursue those repairs, that's not something VWFS would be responsible for.

My final decision

My final decision is that I reject Mr G's complaint against Volkswagen Financial Services (UK) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or

reject my decision before 20 December 2024.

Scott Walker
Ombudsman