

## **The complaint**

Mr K complains about the quality of a car supplied to him by Volvo Car Financial Services UK Limited ("VCFS").

## **What happened**

Mr K acquired a new car under a hire agreement with VCFS in May 2023. Under the agreement, Mr K made an advance payment of £1,889.53 and he was required to make 35 monthly payments of £629.84. The car was supplied by a dealer I'll refer to as "D".

In March 2024, Mr K complained to VCFS and said he was driving down a dual carriageway whilst it was raining hard. He said the car went into limp mode and so he pulled over in the car. He said he was able to start the car again and so he drove three miles to work and called a manufacturer represented dealer. He says it told him it couldn't look at the car for eight weeks. He said as the warning lights had cleared and the car was operating okay, he was told it was okay to drive the car. Mr K said he drove it for the following six days but the car started running roughly. Mr K said he called a manufacturer represented dealer who recovered the car. He says once the car was recovered, he was told that there was water ingress in the car that wasn't covered by the warranty and he would have to pay for the repair which was around £420. The car was repaired, but it was still misfiring. Further diagnosis was required at a cost of £565 to understand what damage had been caused to the engine.

VCFS issued its response to Mr K's complaint in April 2024. It said Mr K's car had been involved in an accident where water damage was sustained. It said D couldn't find a mechanical issue with the car and the manufacturer confirmed that the problem was due to water damage. It said further diagnosis needed to be completed to understand the full extent of damage. It said there was no evidence to suggest that there had been a manufacturing fault or that the car was of unsatisfactory quality. It didn't agree to allow Mr K to reject the car and it said it wouldn't cover the cost of the repairs. It said it would review this if D said there was a manufacturing fault with the car.

Unhappy, Mr K referred a complaint to this service. He reiterated his complaint and said that the manufacturer refused to acknowledge that this was a warranty complaint. He also said that the hire agreement he signed was unclear and unambiguous. He said the agreement mentioned another lender, but this was in small writing. He said he was caught in a situation where VCFS was refusing to act on his behalf. Mr K said a luxury SUV should be able to drive in heavy rain, it was unsafe and it wasn't fit for purpose. To put things right, Mr K said he wanted the manufacturer to agree to repair the car and if it didn't agree to this, he wanted the agreement cancelled as he was deliberately misled about the lender and he wanted a refund of his rental payments whilst the car was off the road.

Our investigator looked into the complaint and said it seemed likely that there was a fault with the car. She said there was persuasive testimony from both parties to say that the air filter was replaced and the internal piping was drained due to water ingress. And following this, the car was still misfiring. Having said this, she said she didn't think the car was of unsatisfactory quality, as the fault occurred due to external factors rather than an inherent fault. She pointed out that Mr K had been able to use the car without any issues occurring for 10 months before the incident occurred. She also said that Mr K had contracted with VCFS and whilst another lender was mentioned, this was mentioned as it was part of a group of

companies involved with VCFS and the other lender was an administrator of the agreement. So, she didn't think VCFS had been unreasonable when explaining the other lender's role.

Mr K disagreed. He said:

- he wasn't aware that the repairing garage did any other work than to remove the air filter.
- He agreed to pay the additional £565 cost to have the car stripped down but the repairing garage said it wouldn't carry out a diagnosis until Mr K knew whether his insurer or warranty company would cover the work.
- Our investigator hadn't addressed his complaint that another lender was involved and the agreement only mentioned this on page five in small print. He said it wasn't clear, transparent and said this was deliberately misleading. He said this was important because the supplying dealer, the manufacturer and VCFS were disassociating themselves from each other and even blaming each other.
- When his insurer collected the car, the car started up fine despite the manufacturer telling Mr K that because he had continued to drive the car after it first went into limp mode, this could have made the problem worse. He said this wasn't his fault.
- He agreed the car he was supplied was of merchantable quality. However, the manufacturer said the warranty didn't cover water ingress and he disputed this. He said if he had driven through a flood, this might have been his fault. However, the incident in question involved very heavy rain in rush hour traffic and intense spray from a lorry. Mr K said other cars did not stop and did not have any issues. He said the car was a luxury 4x4 SUV and had high ground clearance. He said the manufacturer told him to continue driving the car and he simply cannot accept this was his fault.

Our investigator said the fault occurred after six months of Mr K being supplied the car and it was down to Mr K to provide supporting information to show that the fault wasn't present or developing at the point of sale. She said the warranty agreement was a separate agreement which wasn't covered by the hire agreement and so, she hadn't considered this.

Mr K reiterated his complaint and said that he had made an insurance claim at a high personal cost to him. He said the car had been repaired and returned to him in July 2024, but this had impacted his no-claims bonus, he had to make an excess payment of £550 and he had been without a car for months. He said to put things right, he wanted VCFS to refund a total of four months payments he made under the agreement whilst he didn't have use of the car and to pay £550 that he paid as an excess payment to his insurer to get the car repaired. Alternatively, he said VCFS could arrange to collect the car and end the lease without a penalty to him. He also said VCSF should make its agreements clearer.

As Mr K remains in disagreement with the outcome of the complaint, 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 K requested that an oral hearing was conducted so that I could better understand his complaint ahead of my final decision. However, having considered, matters I was satisfied that I had what I needed to determine the complaint and so did not consider it was necessary for a hearing and notified Mr K of this. In considering this final decision and having reviewed everything, I remain satisfied that an oral hearing is not necessary for me to determine Mr K's complaint

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

The finance agreement in this case is a regulated hire agreement. So our service is able to consider complaints relating to it.

The car was supplied to Mr K by a supplying dealer I'll refer to as "S". The car was sold by S to VCFS and VCFS hired the car back to Mr K. The car was manufactured by a company I'll refer to as "M". Whilst M produced the car and S supplied the car to Mr K, this service has no power to consider a complaint about the quality of the car against either M or S. So this decision will only focus on what VCFS did. I appreciate VCFS, M and S are all involved in the supply of the car, but I hope Mr K understands why I can't consider a complaint about the quality of the car against either of those parties.

The Consumer Rights Act 2015 ("CRA") covers hire agreements. Under a hire agreement, there are implied conditions that the goods supplied will be of satisfactory quality. Satisfactory quality is determined by what a reasonable person would expect. So the car's condition at the point of supply, should meet the standard a reasonable person would consider satisfactory, given its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this case, there is no dispute that Mr K was able to use the car as normal for ten months until an incident involving heavy rain. What I need to determine is whether Mr K not being able to use the car in the same way afterwards means that the car had a defect and therefore wasn't of satisfactory quality when it was supplied. If I think it was, I'll need to think what's fair, if anything, to put things right.

The car Mr K acquired was brand new and from a premium manufacturer. He was paying £629.84 a month for the car. Bearing this in mind, I don't think a reasonable person would expect the car to have any problems for a significant amount of time and I think they would have very high expectations for the quality of the car.

Mr K says on the day of the incident, there was heavy rain and he was driving down a dual carriageway in rush hour. He said a lorry splashed his car and this caused the car to go into limp mode. Mr K has said that no other car on the dual carriageway went into limp mode. He also said S told him to carry on driving the car as he had "*got away with it*" and following this, he drove the car for six days before noticing it was driving rough. After this Mr K says S told him that he may have caused further damage to the car by continuing to drive it. However, Mr K says he acted on the advice of S. Mr K says a luxury 4x4 SUV which is high off the ground should be able to withstand all weather and so this shouldn't have happened.

I've reviewed M's handbook for the car. It says:

- *"Engine damage can occur if water enters the air filter.*
- *If water enters the transmission, it reduces the lubricating ability of the oil, which shortens the service life of related systems.*
- *Damage to any component, engine, transmission, turbocharger, differential or its internal components caused by flooding, hydrostatic locking or oil shortage, is not covered by the warranty.*
- *In the event of the engine stalling in water, do not try restart - tow the car from the water to a workshop - an authorised [M name] workshop is recommended. Risk of engine breakdown."*

While I've considered what Mr K has said, I've not been provided with anything to corroborate the conditions of the road at the time. I accept the lorry was likely driving at

some speed as the road Mr K has described was a dual carriageway. However, I also have to consider the time Mr K says that this incident took place. I think it is reasonable to assume that a lorry driving along a dual carriageway, which is full of rush hour traffic, wouldn't cause a heavy splash, unless it drove through a large puddle or through a part of the road where substantial water had gathered. Bearing this in mind and what M's manual states, it seems likely to me that water from the lorry splash entered the air filter in the car which caused the subsequent damage to the engine.

Mr K says the car went into limp mode and as he was able to restart it, he drove three miles to work and then called S. The handbook says the car shouldn't be restarted when it stalls as a result of water ingress and instead it should be towed to a workshop due to risk of engine breakdown. Mr K says that S told him to continue driving the car. Whilst I don't dispute this, it's unclear whether the damage to the engine had already occurred before Mr K continued to drive the car, as it seems water had already entered the internal piping at the time of the incident. Following this, either because Mr K continued driving the car, or because the water took some time to get into the engine, the car started misfiring. There is no supporting information to show what conclusively happened. No independent opinion has been provided to show why the issue occurred.

I have no doubt that the car in question should be able to withstand all reasonable weather types. There's no doubt that the car seemed able to withstand the heavy rain Mr K has described took place on the day. The question is whether the car should have been able to withstand the heavy splash from the lorry that drove alongside it.

Having carefully considered the information provided to me, I'm satisfied that whilst the incident led to the car developing a fault, I'm sorry to say that I don't think that it developing this fault means that the car was of unsatisfactory quality. The car appeared to have no issues until the incident in question and but for that incident occurring, I think it's more likely than not that the car wouldn't have had an issue with the air filter for a substantial amount of time. I appreciate that Mr K says the car should have been able to withstand a heavy splash from a lorry given the type of car it was and the amount he paid, but I'm not persuaded that the car was designed to withstand a splash so great, that it caused water to enter into the air filter through the air filter cover box and caused water to go into the internal piping, causing subsequent damage to the engine.

I appreciate this is likely to come as a disappointment to Mr K and I understand his strength of feeling. Mr K has said he doesn't think anyone believes him when he says that the incident occurred. However, I'm persuaded by his testimony that the incident did occur and that the car was splashed by a lorry. What I'm not persuaded about is that what subsequently happened as a result of this, means that the car wasn't of satisfactory quality after the incident occurred. I'm satisfied that an accident occurred and I don't think the car was designed to withstand the heavy splash that occurred. And the fact that it did not withstand this, does not mean that the car was of unsatisfactory quality.

Having said this, to date, no independent opinion has been provided and neither has any further commentary from the repair garage been provided to confirm why the issue occurred and whether in another parties' professional opinion the fault should have occurred after the incident. If Mr K wishes to obtain this information, he is entitled to do this and VCFS has said it will review this information. Mr K should provide any further information obtained to VCFS in the first instance.

*Did VCFS act unfairly or unreasonably in any other way?*

I understand Mr K's unhappiness with the lack of clarity between M, S and VCFS as they all seem to have had a hand in the sale or supply of the car. As I've explained earlier in this decision, I can only consider the actions of VCFS.

Mr K is unhappy that he wasn't told another lender was involved with VCFS. I've looked at the agreement and the terms and conditions. Page five of the terms Mr K reviewed, which is

page one of the terms of the hire agreement, confirm that another lender is part of the VCFS group of companies. The lender's name isn't mentioned on the hire agreement itself but it does refer to the group of companies in the section underneath the signature box.

This service has contacted VCFS and it has confirmed that Mr K's contract is with VCFS and the other lender was simply an administrator of the policy. I can see Mr K's dealings have been with VCFS and when Mr K asked for a copy of VCFS's consumer credit licence, VCFS directed Mr K to the regulator's website.

I understand why Mr K feels he has been misled. However, I don't think the agreement is misleading. The terms of the agreement clearly state that the other lender is part of a group of companies. It also states under, *"USE OF YOUR INFORMATION...15.1.1... Please note that where necessary, we will pass your query to [other lender name], who will contact you about your query or we may refer you directly to [other lender name] DPO or customer services department, as appropriate"*. However, this only refers to data processing and all other references relate to VCFS, including the VCFS being the business that Mr K has contracted with for the purposes of hiring the car. I can see that VCFS has acknowledged and responded to Mr K's complaint, not the other lender.

I appreciate Mr K says that VCFS shouldn't be able to operate in this way. However, as this service has already explained to Mr K, which he has accepted, the Financial Conduct Authority is the regulator and it isn't the role of this service to tell a business how it should operate or what information it is required to include in its agreements.

It follows that I'm not asking VCFS to take any action to resolve Mr K's complaint.

### **My final decision**

My final decision is that I do not uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 February 2025.

Sonia Ahmed  
**Ombudsman**