

The complaint

Mr M complains about the car supplied by Volvo Car Financial Service UK Limited (VCFS). He says the car isn't of satisfactory quality.

What happened

Mr M entered into a hire agreement with VCFS in March 2022. VCFS supplied Mr M a brand-new car. Mr M made an advance payment of £3,239 and this was due to be followed by 47 monthly hire payments of £325.80. The car broke down in September 2023 and Mr M says a garage's diagnostics showed the front strut mounting required replacing as this had been broken. Mr M then contacted another dealer who confirmed there was a known issue with the model of the car and the part was currently unavailable. Mr M says he was told the new parts were being updated and designed and a recall will be due. The part needed to repair the car was still unavailable when this complaint was brought to the Financial Ombudsman Service.

Mr M says this broken component makes the car noisy when driving particularly when turning at low speed and this has caused him embarrassment. Although the manufacturer says the car is safe to drive, Mr M doesn't believe it is and wants to reject the car and recover all payments he's made.

When he complained to VCFS in June 2024, it didn't respond to the substance of his complaint as it said it wasn't able to give a comprehensive answer. VCFS reiterated the point that the manufacturer had said the part will be available towards the latter part of the year.

One of our investigators looked at what both parties said and agreed with Mr M that the car wasn't of satisfactory quality. Our investigator recommended that Mr M's complaint should be upheld and recommended redress for Mr M. Our investigator thought Mr M could exercise his right to reject the car and end the agreement with nothing further to pay. Our investigator also said VCFS should pay Mr M a refund of his deposit pro rata and 5% of his monthly hire costs for the months he's used the faulty car, she also recommended VCFS paid Mr M £300 for the trouble upset and refund the cost of the diagnostic test he paid for.

VCFS agreed to the investigator's recommendations, but Mr M didn't. He said the recommended redress didn't go far enough and he should be entitled to his full refund as he hadn't been able to use the car without fault. He also said 5% of his monthly rental costs were too low and the trouble and upset he suffered isn't fully considered with the amount recommended. Mr M has said he won't be able to reject the car without receiving a refund of his full deposit as he won't be able to afford a replacement car without it.

As the complaint remains, it has been passed to me an ombudsman for a 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 this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a regulated consumer credit agreement which means we're able to look into complaints about it.

I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However, I'm going to concentrate here on what I consider is key to reaching a fair and reasonable outcome overall.

The heart of Mr M's complaint is that the car isn't of satisfactory quality and that he has grounds to reject the car and receive a refund of the monies paid towards the agreement. So, what I need to decide here is whether the car supplied to Mr M was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right. The Consumer Rights Act 2015 ("CRA") covers the agreement in this case and under this agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The car Mr M acquired was brand new. Bearing this in mind, I don't think a reasonable person would expect the car to have any problems for a reasonable amount of time and I think they would have high expectations for the quality of the car.

In this case, neither party appears to dispute that the car had faults. I'm satisfied, having reviewed all the supporting information, that the car was of unsatisfactory quality at the time it was supplied to Mr M.

The outstanding issue for me to decide is whether VCFS has done enough to put things right.

Given the acknowledged fault with the car and the extended delay in being able to repair it, Mr M is within his right to reject the car. Mr M can end the agreement early and return the car.

Mr M spent £20 on a diagnostic test which he has provided evidence to demonstrate. I think he is entitled to a refund of this cost, and he wouldn't have incurred it had the car not had a fault that required further investigation. As stated above, it is a new car and Mr M was within his rights to have high expectations of the car.

I also think Mr M has suffered trouble and upset in the loss of expectations of a reliable and durable car over a decent period of time. The fault in the car has also caused Mr M embarrassment and I can understand that he'll feel let down by VCFS particularly as he'd been led to believe the replacement part would have been made available but that didn't happen.

I understand Mr M has raised upset caused to other parties impacted by the issues with the car but as the investigator already explained, I'll have to focus redress on the impact it had on Mr M directly as the agreement is with him and not another party.

Mr M has argued that car isn't safe to drive and VCFS has left him in an unsafe car. I appreciate Mr M's sentiment but as he's identified, he isn't an expert in this area and there's information from the manufacturer acknowledging the fault but clearly stating the fault doesn't make the car unsafe. Due to the manufacturer's expertise here, I'm persuaded by what it has said.

That means Mr M has had use of the car, although with an impairment, which hasn't been unsafe or undrivable. I acknowledge the inconvenience of the noisy car and the impact that has had Mr M explaining to other people about it. However, I need to take into account he still had access and use of the car and so it is fair that pays for this.

Each case is looked at on its own merits and while Mr M has referred to other final decisions, I must look at the facts of this case when coming to my decision and based on the circumstances here and the fact that Mr M had use of a driveable and safe car, I think a 5% discount on his monthly rental costs is fair. I say this because by September 2024, Mr M had over 18,000 miles on the odometer of the car. This suggests he had decent usage out of the car despite the noise it was making.

Mr M paid a deposit towards his rental car and while I'm aware that he wants the full deposit amount refunded, I don't think that's fair in this case. The deposit amount paid took into account his rental payments for the entire period of the agreement and in the event that the agreement ends early, any refunds on the deposit amount should take into account the months Mr M has had use of the car.

I understand Mr M says he can't reject the car without receiving the full deposit. My role is to determine what is fair and reasonable in all the circumstances of this case and having considered all the available information, I think the fair way to put things right here is for Mr M to reject the car, return it to VCFS and bring the agreement to an end with no further monthly payments. VCFS would also need to take the steps to refund payments outlined above to Mr M.

Putting things right – what VCFS needs to do.

As VCFS has supplied a car that is of unsatisfactory quality, it needs to put things right for Mr M. To put things right, VCFS should:

- End the agreement with nothing further to pay.
- Collect the car at no further costs to Mr M.
- Provide a refund on Mr M's deposit on a pro-rata basis from the date of the initial agreement to the date of settlement.
- Refund a 5% of each monthly rental payment Mr M made to reflect the impairment with the car.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Refund the £20 cost of the diagnostic check Mr M incurred.
- Pay Mr M £300 for the trouble and upset caused.
- Remove any adverse about the agreement information from Mr M's credit file.

My final decision

For the reasons given above, I uphold Mr M's complaint and direct Volvo Car Financial Services UK Limited to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 February 2025.

Oyetola Oduola
Ombudsman