

The complaint

Mr D complains that the car he acquired financed through a hire purchase agreement with Volkswagen Financial Services (UK) Limited, trading as Audi Financial Services ("VFS"), wasn't of satisfactory quality. He also complains that he is paying for a car he no longer possesses.

What happened

In July 2023 Mr D acquired a used car financed through a hire purchase agreement with VFS. The car was four years old and had 44,000 miles on the clock. Mr D said he noticed problems with the car after two weeks including marks and scratches on the vehicle and a knocking noise. Mr D said he was given three options: replace, repair or reject. Mr D said the dealer couldn't repair the problem with the suspension. He said he requested to reject the vehicle and he returned the car in November. But, he said, the dealer didn't send the cancellation form and so he is still paying for the finance. He complained to VFS.

In its final response VFS said it wouldn't accept rejection of the vehicle as there is nothing wrong with the car that would render it of unsatisfactory quality. It offered to refund his rental payments for the three months the car had been with the dealer equating to £839.97 and it offered £50 in recognition of the distress and inconvenience. It outlined the options Mr D had to end the contract.

Mr D didn't agree and brought his complaint to this service. He said he wanted to reject the vehicle and get a full refund.

Our investigator concluded that there wasn't enough evidence to say that the car was not of satisfactory quality when it was supplied. Mr D wasn't satisfied and asked for a decision from an ombudsman. He said the investigator's view was based on lack of evidence of a faulty car but, he said, he's currently paying for a car that's no longer in his possession. He said the car has been returned as faulty, the dealer accepted it back but hasn't sent the cancellation letter to VFS to stop the car finance.

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 realise this will come as a disappointment to Mr D but having done so I've reached the same conclusions as the investigator for the reasons I've outlined below.

Mr D's agreement is a regulated consumer credit agreement, and our service can consider complaints against it. As the supplier of the car VFS is responsible for the quality of the car and the Consumer Rights Act 2015 implies terms into the agreement requiring the car to be of satisfactory quality. Whether it was of satisfactory quality at that time will depend on several factors including the age and mileage of the car and the price that was paid for it. The car that was supplied to Mr D was four years old and had covered approximately 44,000 miles.

Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time. But exactly how long that time is will also depend on several factors.

While I'm not disputing Mr D's testimony that there are or were issues with the vehicle I've not seen any evidence that there are any current problems. I've seen texts between various parties where issues are mentioned but I've not seen any diagnostic reports from garages or independent inspections provided by either party indicating there are faults currently, specifically in relation to the knocking noise. I've seen photos of scratches to the car. Mr D was given the opportunity to inspect the car prior to acquiring it and it would be a reasonable expectation that he would check the exterior and interior for cosmetic damage.

If I am to allow Mr D to reject the car it's not enough that I be persuaded there's a fault. I must also be persuaded the fault was present or developing at the point of sale and wasn't as a result of reasonable wear and tear, taking account of durability. Again I haven't seen any evidence that this was the case. So I'm not persuaded the car wasn't of satisfactory quality at the point of sale and I don't believe it would be fair or reasonable for me to allow Mr D to reject the car.

Mr D has told this service he no longer has possession of the car and he is no longer the registered keeper. He provided a copy of the confirmation from the DVLA. He said he returned the car together with keys and the log book. He said the dealer accepted the car back as faulty and hasn't sent the cancellation to VFS. I've seen a copy of a letter to Mr D, dated 14 June 2024, from the broker. It states

"Additionally, we note that your vehicle remains at our dealership. It is important to remove the vehicle promptly, as it will continue to deteriorate from lack of use. Any purported right to reject the vehicle must be directed to Audi Financial Services. We are not authorised to accept a vehicle rejection on behalf of your finance company. I urge you to contact Audi Financial Services so they can respond to your concerns if they have not already done so."

In response to our investigator's enquiry the dealer said there was no discussion with Mr D regarding returning the car. It said

"The customer called in November 2023 to advise that the vehicle had been involved in a previous accident and there was knocking noise. However, we cannot see any fault was logged and unless the vehicle displayed a fault no job card would have been created. Before the customer handover we painted the bonnet and took delivery. The customer returned and stated that he was unhappy with the repair and we arranged to collect the vehicle to carry out the appropriate repairs. Customer then took delivery of the vehicle and states he was unhappy. We were satisfied with the condition of the vehicle."

Also in response to our investigator's enquiries VFS said the vehicle has been abandoned at the dealership and it advised Mr D he is still liable for the finance. It said no one has agreed with the rejection of the car.

As I mentioned above I'm not disputing Mr D's testimony. My job is to come to what I think is a fair and reasonable outcome based on the evidence available to me, taking account of the relevant laws, rules and industry practice. In this case Mr D and VFS fundamentally disagree about whether the car has been rejected. Where evidence is missing or conflicting, I'll look at

what's available and the surrounding circumstances – to decide what I think is most likely to have happened.

Unfortunately I wasn't there when Mr D took the car back to the dealer and there are no contemporaneous notes of what happened when he did. So it's not clear to me the circumstances that allowed Mr D to leave the car with the dealer. There is no paperwork confirming any party (the dealership, broker or finance company) agreed that the vehicle could be rejected. I've not seen a receipt from the dealer accepting the car back. There is no paperwork that supports rejection of the vehicle such as inspections confirming any faults present. So I'm not persuaded the dealer allowed the car to be rejected. Nor am I persuaded that it would be fair or reasonable for Mr D to be allowed to reject it.

Mr D has said the vehicle is no longer registered in his. He appears to have notified the DVLA that there is a new keeper while still being responsible for the finance. In its final response letter VFS outlined the options available to Mr D to terminate the contract. As the car isn't in his possession and if Mr D continues to not want the car it would be prudent for him to make contact with VFS to discuss these options as soon as possible.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 January 2025.

Maxine Sutton
Ombudsman