

The complaint

Mr S complains about a car supplied to him on hire purchase by Volkswagen Financial Services (UK) Limited trading as Audi Financial Services ('VWFS').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mr S says the car has electrical issues which started at an early stage. He says that a fault was found and an attempt at repair was made by a main dealer – however, the issues have continued.

VWFS maintained there were no faults with the car so were not willing to offer Mr S anything

A complaint was escalated to this service which our investigator partly upheld. She recommended that VWFS reimburse Mr S due to the issues he has had with the car – but directed VWFS to take further investigation into the current issues.

Mr S has asked for the matter to be considered by an ombudsman. I issued a provisional decision which said:

What I've provisionally 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. VWFS is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

VWFS supplied Mr S with a second-hand car toward the end of April 2023 that was less than one year old and had done around 4,000 miles at the point of supply. The dealer priced it at just under £40,000. The car was second-hand so a reasonable person would expect it to have suffered some wear and tear already. However, because of the low mileage, age and relatively high price I think there would still be high expectations as to the standard of quality – not far off from a brand new vehicle.

From what I can see Mr S complained at an early stage about the quality of the car. He says he first brought it to the dealer with issues in May 2023. I also note that VWFS accepts that he contacted it in July 2023 to report electrical issues and to say he felt unsafe driving it.

Mr S says that he was getting several unexpected electrical system related errors appearing on the dashboard relating to things like the headlights, tyre pressure and indicators. He also says the car was apparently braking for no reason.

Supporting what Mr S has said about intermittent electrical issues (along with his credible testimony) are 'service' notifications he received from the onboard computer via the manufacturer stating that defects had been identified with the headlights on the car. For example, I can see a notifications about this from June 2023 – before the main dealer took the car in for a diagnosis.

The main dealer took the car in August 2023 to diagnose the issue (at this stage it had done 8,744 miles). In the job sheet it is clear that the dealer found 'a random warning' appear on the car. It isn't clear the nature of this warning – but it stands to reason that this was the sort of thing Mr S was talking about in regard to systems errors. The dealer found the head unit of the car was 'defective' and replaced this.

I don't think electrical faults such as the one the main dealer diagnosed and repaired would be expected on a car of this relatively young age and mileage. I also note that Mr S reported the issues shortly after he received the car. Based on this I think it fair to conclude the car was not of satisfactory quality under the provisions of the CRA.

A remedy for non-conformity under the CRA in these circumstances can be repair. So I don't think it was an unreasonable thing to attempt in the first instance. However, Mr S has said the problems were not resolved by the repair and have continued.

I am satisfied Mr S has provided credible evidence that electrical issues and errors have continued since the repair in August 2023. For example, he has sent us several more 'service notifications' from September 2023, October 2023 and 2024 relating to headlight errors. He has also taken several pictures of other dashboard errors/negative status messages relating to headlights and assistive technology including emergency stop and braking. It all ties in with what he has been saying from an early stage – and prior to the repair attempt.

Mr S has admitted that when he initially got the car back after repair it appeared the frequency of the errors had decreased. However, I can see he has become increasingly frustrated by the persistence of intermittent errors, and their varying nature. He is understandably concerned about the safety of the car as a result. He has also said when he spoke to the dealer about these ongoing issues they said it is difficult getting these

diagnosed due to the fact they are intermittent and won't necessarily show up during an inspection.

VWFS has said the car went into the dealer in November 2023 in respect of addressing a recall issue and there are no ongoing faults. It isn't clear what this recall was about (and if it was related to electrical issues). But I don't think VWFS has shown persuasive evidence the issues Mr S is complaining about were thoroughly looked into and that the car has no ongoing faults. I think the information Mr S has provided and the history here shows this is not likely to be the case in any event.

Our investigator concluded that VWFS should be given a chance to inspect and repair the car as they had not had a chance yet in line with the provisions of the CRA. However, I am not reaching the same conclusion here. Mr S had the car inspected and repaired at a main dealer of the brand of car he has. Even if VWFS were to argue they were not involved in authorising repair I expect it would have arranged for a main dealer repair just like Mr S did. So I think it fair to conclude that (in line with the CRA) an attempt at repair has been carried out here – and Mr S can now exercise his final right to reject the car. I also note that due to the apparent difficulty diagnosing and repairing such an issue Mr S is likely to be caused further significant inconvenience, and would have the right to reject under the provisions of the CRA in any event.

I note that even after issues with the car arose Mr S has made two lump sum payments towards the finance totalling £20,000. However, while this might appear to be consistent with a desire to keep the car Mr S has explained he made these payments to reduce his credit commitments as he was in the process of making a mortgage application at the time. So I don't think this means he shouldn't be able to reject the car now. It does make my redress proposal more complex – I will explain how I think things should be fairly worked out.

Firstly, considering what is fair and reasonable Mr S should be able to reject the car. VWFS should take it back at no further cost to him, and refund his deposit. It should end the agreement and ensure there is no adverse reporting on his credit file in respect of it.

Mr S has used the car throughout so should pay for it. Therefore, subject to the refund for impaired use (discussed below) VWFS is entitled to keep the monthly rentals from the start of the agreement up to the point the car is handed back. However, the payments that VWFS charged Mr S for these got significantly impacted by the lump sum payments Mr S made. It reduced the monthly payments after June 2023 to £138.42. The value of the monthly use of the car was originally set at £689.19 so for the purposes of calculating fair redress under my decision here that original contractual amount is the monthly fee VWFS can charge Mr S for his use of the car until the date of settlement.

However, after calculating what the monthly use would be up to the date of settlement VWFS should refund any remaining credit balance on the agreement to Mr S resulting from his overpayments to date. It should also pay 8% simple yearly interest on this credit balance to Mr S from the date of payment to the date of settlement.

Mr S has been using the car but his use of it has been impaired by the issues he has had intermittently. So I think he should also have a refund for impaired use of the car. It is not a science calculating this – but I think due to the intermittent nature of the issues (and periods of less instances post August 2023) it won't be a high amount. I think that 10% of each monthly payment to the date of settlement (based on the original contract rate of £689.19) should be refunded to reflect the historic and ongoing issues, plus interest.

I also note Mr S has been caused a degree of distress due to the ongoing issues. He was understandably worried about the safety of the car. I think VWFS could have been more

helpful here. I note VWFS in its response to his complaint did not appear to acknowledge the major repair that was carried out to the car in August 2023 – or that Mr S reported the electrical issues very soon after supply. I also don't think it was as supportive regarding his concerns about safety (in light of the history – and the numerous error messages he was receiving post the repair attempt) as it could have been. I have considered this and the impact on Mr S and think it is fair to award £200 for the distress and inconvenience caused.

My provisional decision

I uphold this complaint and direct Volkswagen Financial Services (UK) Limited trading as Audi Financial Services to:

- *Take back the car at no further cost to Mr S – end the agreement and ensure no adverse reporting appears on his credit file in relation to it;*
- *refund Mr S's deposit of £3,274;*
- *after calculating the payments due for Mr S's monthly use from the start of the agreement to the date of settlement (based on the original contract rate) refund Mr S any remaining credit balance resulting from his overpayment;*
- *refund Mr S 10% of each monthly payment made to the date of settlement (based on 10% of the original monthly contract rate) for impaired use;*
- *pay 8% simple yearly interest on refunded amounts from the date of payment to the date of settlement; and*
- *pay Mr S £200 compensation for distress and inconvenience.*

If VWFS considers it necessary to deduct tax from any interest award it should provide Mr S with a certificate of tax deduction.

I asked the parties to respond. Mr S accepted my decision.

VWFS asked me to confirm the mileage of the car and to note that it had already paid Mr S £338 in accordance with our investigator's view.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below.

VWFS does not appear to have disagreed with my decision – but it has asked a couple of questions. It has asked for the current mileage of the car but not explained why it needs this. It has also had more than a reasonable opportunity to enquire about this before now. I don't deem it necessary to delay this matter any longer so am finalising my decision.

VWFS has said it paid Mr S £338 in accordance with our investigator's view. It has asked if it can deduct this from the redress due in the PD. It makes sense that if VWFS has paid this already as part of settlement for this complaint then it can deduct this from the redress due under my ruling. It is not the intention of this service to compensate a consumer twice for the same matter.

Putting things right

VWFS should put things right in accordance with my direction below.

My final decision

I uphold this complaint and direct Volkswagen Financial Services (UK) Limited trading as Audi Financial Services to:

- Take back the car at no further cost to Mr S – end the agreement and ensure no adverse reporting appears on his credit file in relation to it;
- refund Mr S's deposit of £3,274;
- after calculating the payments due for Mr S's monthly use from the start of the agreement to the date of settlement (based on the original contract rate) refund Mr S any remaining credit balance resulting from his overpayment;
- refund Mr S 10% of each monthly payment made to the date of settlement (based on 10% of the original monthly contract rate) for impaired use;
- pay 8% simple yearly interest on refunded amounts from the date of payment to the date of settlement; and
- pay Mr S £200 compensation for distress and inconvenience.

If VWFS considers it necessary to deduct tax from any interest award it should provide Mr S with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 November 2024.

Mark Lancod
Ombudsman