

The complaint

Miss S complains about the quality of a car supplied to her on finance by Volkswagen Financial Services (UK) Limited trading as Audi Financial Services ('AFS').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

On 21 April 2023 Miss S took out a hire purchase agreement for a car with AFS.

Miss S says that she had problems with the car and wanted to reject it. She complained to AFS about it in March 2024.

Miss S says that the manufacturer network offered her a part exchange which she accepted on 21 May 2024.

In its response to her complaint AFS offered to refund Miss S £600, in light of the fact the manufacturer had also offered £800 to resolve the matter.

Miss S says this is not sufficient as the terms of the new finance deal are less favourable to her. Namely there is an increased interest rate. Miss S wants AFS to reimburse her for this.

Miss S's complaint about the quality of the car came to this service. Our investigator concluded that AFS had acted fairly in the circumstances.

Miss S has asked for the matter to be considered by an ombudsman.

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.

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 with minimum formality.

I am aware that Miss S made a complaint to AFS about mis-sale of the car by the broker. Namely in respect of the position in regard to vehicle tax. This matter appears to have been dealt with in a separate response by AFS, but I considered it better dealt with separately to this matter for other reasons too. The parties have not objected so I am only dealing with the quality of goods issue here. The mis-sale complaint will be dealt with separately.

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. AFS 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.

The car supplied by AFS to Miss S was brand new. I think it’s fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.

Miss S says the car suddenly lost power on 26 January 2024 and stalled. She says it had about 5,000 on the odometer and was well looked after. She says the car was taken into the dealer for repairs and returned on 2 February 2024. Miss S says she didn’t get any paperwork for the work despite asking the dealer. However, her testimony is credible and AFS do not appear to dispute it. In its response to her complaint it appears to confirm that a replacement fuel tank module was supplied at this time.

Miss S says the car was still problematic after this. She says it started to ‘lag’ for several seconds. Miss S says the car went in to the dealer on 18 March 2024 and was returned on 30 March 2024, once again without any repair paperwork. This is not ideal, however, I note AFS says the issue Miss S identified was ‘confirmed’ and as a result the ECU was replaced. However, Miss S says the problem persisted so she declared the car SORN on 1 April 2024 and stopped using it.

From what I can tell, it would be unexpected to have power problems like this with a brand new car at this stage - which has been used normally and in the absence of excessive mileage. It appears the car as supplied to Miss S was of unsatisfactory quality – and I note that AFS does not appear to dispute this so I do not consider it necessary to go into a lot of detail on the matter here.

I have considered what a fair remedy would be in light of the provisions of the CRA. Although AFS would be afforded the opportunity to carry out a repair – after one attempt Miss S would have the right to reject the car. And I consider it clear that her actions are consistent with rejection – in that after the second attempt at repair she stopped using the car as she says it was still problematic. All things considered, I think that the final right to reject would be a reasonable remedy to the problems with the car.

However, I note rejection is not possible now as Miss S decided to part exchange the car in May 2024. And while I understand that Miss S was waiting on a response to her complaint from AFS – I don’t consider it should fairly be blamed for her decision to do this. If Miss S was not happy with what a part exchange deal would give her (in terms of the APR or otherwise) she could have chosen to forgo this and wait for the outcome of her complaint

(including any escalation of the matter to this service as necessary) or taken a more formal route like a court.

So I can't fairly say that AFS is responsible for what Miss S says are losses as a result of her decision to accept part exchange as an alternative way of rejecting the car. And even if I were to accept that AFS were at fault for this (which I do not) I note that any loss claimed by Miss S is not clear cut. Noting that she carried over her equity from the original agreement to the new agreement. And factoring in that while aspects of the agreement might cost more Miss S is not financing exactly the same model car. It appears to be a model '40' rather than '35' – and there is no indication from what I have seen that it has any prior mileage on it like the car Miss S traded in. So I don't consider it is comparing like with like here in any event.

With the part exchange issue aside – I note due to the issues with the car Miss S appears to have been out of the originally financed car (and with no courtesy car) for repairs for just under three weeks. Based on the agreed monthly rentals of £388 this is a pro-rated refund of about £290.

It also appears that since the issues started at the end of January 2024 – the times Miss S had the car to use were not trouble free as it was 'lagging' on acceleration. So for February and March 2024 I would expect AFS to refund around 10% of each monthly payment to reflect that impaired use. Which works out about £80.

I also note that Miss S stopped using the car on 1 April 2024 but the monthly £388 payment on 21 April 2024 was debited as normal. That amount mostly relates to use of the car in April. So it seems fair overall that Miss S gets back most of this payment.

I also think what has occurred would naturally have caused Miss S distress and inconvenience. She would have been inconvenienced having the car go in for more than one repair – then not having the car to use. And although I don't consider AFS should be liable for her decision to part exchange the car (as I have explained above) or for any poor communication by the dealer/manufacture in its dealing with AFS– it would still be frustrating for her to be waiting to hear what the outcome was for several weeks. While a degree of inconvenience is expected in everyday interactions this went over and above that and after considering our scale of awards I think that £250 is a fair amount to reflect the prolonged distress and inconvenience caused to Miss S.

My redress is not a science. But in total I have worked out that Miss S should get around £1,000 for what has gone on here. However, I note that the offer made by AFS in its final response combined with the amount offered by the manufacturer comes to £1,400 – which is notably more than what I would recommend here. So it stands to reason I would not be asking AFS to pay more here.

I note Miss S has confirmed elsewhere that she has received the £800 from the dealer and the amount she has now received from AFS is closer to £1,000 - which would mean she has received £1,800 in total in respect of resolving a complaint about the quality of the car. While there is a lack of clarity as to whether Miss S has received £1,400 or £1,800 it stands to reason that if she had received the higher amount I still wouldn't be asking AFS to fairly pay her any more.

I understand Miss S is likely to disagree with me here – however, she does not have to accept my decision and can consider seeking advice on a more formal avenue (such as court) for continuing her dispute in respect of the quality of the car.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 6 May 2025.

Mark Lancod
Ombudsman