

The complaint

Mr H complains about the quality of a car supplied to him on hire purchase by Volkswagen Financial Services (UK) Limited ('VWFS').

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.

Mr H says he had an issue with the car straight away and wanted to reject it. He said that instead he had to wait for a repair which took a long time due to a parts shortage.

Mr H says the car has now been repaired but he is not happy with the resolution which VWFS has offered him to reflect the issues to date.

Our investigator thought that VWFS had made a fair offer to put things right. Mr H disagreed and asked for the matter to be considered by an ombudsman for a final decision.

I issued a provisional decision as follows:

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.

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.

In January 2023 VWFS supplied Mr H with a second-hand car that was around 2 years old and had done around 16,710 miles at the point of supply. The dealer priced it at £32,499 which is less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered a degree of wear and tear. However, it was still a relatively new car, with low mileage that cost a significant amount of money– so the expectations would still be high regarding the level of quality expected.

It does not appear to be in dispute from either side that the car had an underlying fault requiring a significant repair. Therefore, I do not consider it necessary to go into a lot of detail regarding a finding on satisfactory quality. However, in brief:

From the information I have I am satisfied from an exceedingly early stage Mr H was having issues with the car – namely the assisted cruise control and lane assist functions were not working properly. Mr H says there was a continual warning to inform him these were faulty. He says that sometimes, in the absence of a fault light the car for no reason would suddenly brake or accelerate. Mr H also says he reported the initial issues within the first 72 hours of ownership – and based on his credible testimony and the lack of evidence to the contrary I think this is likely.

I am also satisfied that these issues required a new steering wheel. Something which would be unexpected on a car of this relatively early age and mileage. The evidence points to this not being a routine maintenance component or something fairly put down to reasonably expected wear and tear.

In summary, I am satisfied the car as supplied to Mr H by VWFS was not of satisfactory quality. Therefore, I turn to an appropriate remedy.

The issue of a fair remedy is the key matter in contention here. The CRA sets out appropriate remedies in particular situations so I have taken these into account when considering what is fair and reasonable. Along with the specific circumstances in Mr H's case. And where matters are unclear, I decide what I think is most likely on the balance of probabilities.

From the information I have been provided I am satisfied that Mr H wanted to reject the car at an early stage. In coming to this finding I note Mr H's credible testimony and things he has written to this service like:

'I reported the fault with the car within 72 hours of ownership which is why I feel I have grounds to return the vehicle for a refund'

The CRA says that a consumer is able to assert their right to reject goods that are of unsatisfactory quality in the first 30 days from taking possession (the short-term right to reject). From the information I have seen it isn't immediately apparent to me if Mr H's initial communication reporting the fault specifically rejected the goods. However, I note that he has said 'my complaint was ignored for several weeks' which took him outside of the 30 day rejection period. Had Mr H's initial concerns not been ignored – based on what he has said (and his actions in requesting rejection to the dealer/VWFS in the months that followed his initial report of the fault) I think Mr H would have asserted his short-term right to reject in the first 30 days. And based on the problems with the car – should have been allowed to reject it then.

So, in summary, looking at how Mr H appears to have been denied his short-term right to reject under the CRA it is arguable that VWFS should fairly take the car back now.

However, even if I were mistaken in regard to the short-term right to reject. I think there are other compelling reasons that Mr H should now be fairly allowed to reject the car.

From the evidence I have seen, including Mr H's credible testimony I am persuaded that Mr H primarily wanted to reject the car – both initially – and then when it became apparent that he wouldn't get a repair for a long time. VWFS acknowledge that Mr H had requested rejection in its response to his complaint. However, even if it could be argued that Mr H had requested a repair or replacement I think VWFS should have fairly recognised Mr H's rights under the CRA and given him the option to reject the car. I say this because although repair or replacement can be a reasonable remedy in some circumstances – it will not be if it is not carried out within a reasonable time or without significant inconvenience to the consumer. This is all set out in the CRA.

Here Mr H appears to have been told by the dealer that his repair would take months because the steering wheel was on backorder. And a repair was eventually carried out around 9 months later (in September 2023). It appears this was down to a parts shortage. However, this was not Mr H's fault and instead of being made to wait he should fairly have been given the option to reject the car at a much earlier stage – something I am satisfied he would likely have taken had he been given the opportunity.

It might be argued by VWFS that Mr H has now 'accepted' repair so cannot reject the goods. But based on what has occurred here and what Mr H has said I am not persuaded that Mr H really wanted a repair. Or that he made that decision in a fully informed way. He has said that 'there was no alternative offered'. I think this is credible as I have not seen where rejection was offered as an option. Had Mr H been offered the opportunity to reject by VWFS (as I think he fairly should have been here) I think he would have taken it.

I think it is also worth noting the evidence here indicates that even when the steering wheel was replaced there were still further issues with the steering wheel buttons requiring further repair. Therefore, it is also arguable that Mr H has the final right to reject the vehicle under the CRA in any event due to the multiple attempts to repair the car to date.

All things considered – I think Mr H should fairly be allowed to reject the car now if he wants to in accordance with his legal rights afforded by the CRA. And which he was unfairly denied to date.

Because time has moved on Mr H appears unsure about what he wants to do and has suggested he might wish to keep the car and get compensation instead. I note that the CRA does allow other remedies including damages. However, I note that VWFS has made an offer of £1068.30 which appears to effectively grant Mr H a 25% price reduction for the period he was having issues with the car (as resolved by the eventual steering wheel fix). And it has also agreed to pay an additional £300 compensation.

I note Mr H is unhappy with the offer made by VWFS so I don't see any benefit in pursuing this avenue further. I say this noting that any damages I were to recommend would be unlikely to exceed the offer made by VWFS here noting that the issue has not stopped Mr H from using the car. And I know that Mr H has mentioned other more generous offers that he says were made to him by the dealership that were not honoured – however, I don't think this is something that I can fairly tell VWFS to honour in the circumstances.

So I turn to rejection as a fair way to put things right. If Mr H accepts my decision then VWFS should take the car back with no further rentals due and end the finance agreement. Mr H should have his deposit refunded too.

Mr H has had use of the car and covered notable mileage so my starting point is he doesn't get a refund of his rentals. However, I note that from January 2023 to September 2023 Mr H was using the car but was unable to properly use the lane assist/cruise control features on the car until the steering wheel was fixed. So he was paying for a product he didn't have the full benefit of. Therefore he should get some money back for this impaired usage. I don't think this is a science but I think the features while nice to have are not essential to the operation of the car. Therefore, I think a refund of 10% of each monthly payment from January 2023 to the end of September 2023 would be fair to reflect this.

I also note the car was in for repairs for about a week in September 2023 – however, Mr H was given a courtesy car which means no rentals are fairly due back for this period.

I note that Mr H has been caused distress and alarm by the issue with the car (and what he says about it braking/accelerating unexpectedly when he was trying to use the particular features and then the persistent warning lights even when he turned the feature off). He has clearly been caused aggravation over an extended period having to wait for the repairs to take place too. He got a young car with a major issue and it seems clear the parts were backordered and repairs would take a while. I think VWFS could have acted sooner to resolve matters. While an award for distress and inconvenience is not a science – I think here Mr H should be paid £300 compensation for what has gone on.

If Mr H wishes to negotiate an alternative settlement with VWFS and reject my decision he is free to do so. However, I consider my decision to be fair and reasonable in light of the particular circumstances and the provisions of the CRA.

My provisional decision

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

- *Take back the car at no cost and end the finance agreement with no further rentals due;*
- *refund Mr H his advance payment of £4,891.67;*
- *refund Mr H 10% of each monthly rental made from January 2023 to September 2023;*
- *pay 8% simple yearly interest on each refund from the date of payment to the date of settlement; and*
- *pay Mr H £300 for the distress and inconvenience caused to him by this matter.*

If VWFS chooses to deduct tax from my interest award it should provide Mr H with a certificate of tax deduction.

Both parties agreed with my 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.

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.

Putting things right

VWFS should do as I have directed below.

My final decision

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

- Take back the car at no cost and end the finance agreement with no further rentals due;
- refund Mr H his advance payment of £4,891.67;
- refund Mr H 10% of each monthly rental made from January 2023 to September 2023;
- pay 8% simple yearly interest on each refund from the date of payment to the date of settlement; and
- pay Mr H £300 for the distress and inconvenience caused to him by this matter.

If VWFS chooses to deduct tax from my interest award it should provide Mr H with a certificate of tax deduction.

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

Mark Lancod
Ombudsman