

## **The complaint**

Mr P has complained about a car he acquired through a Hire Purchase agreement with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services ('VWFS').

Mr P said that from the day he collected the car there were software issues which meant he could only be recognised as a 'guest user' and so he couldn't use certain features. He says he was told to book a service a few months later, but software updates failed. As a result he's unable to check the car's charging status, change the charging settings, or manage climate control settings through the associated application, which shows a message saying 'vehicle not responding'.

He was told that further software recalls would fix the issues, but he says he's already given VWFS a chance to repair the issue so now wishes to hand the car back and have his payments refunded.

## **What happened**

Mr P acquired this car on 22 September 2023. When it was sold, it was two years and three months old, had covered 17,470 miles and cost £40,950.00.

Just over two weeks later, he emailed the dealership to arrange some paintwork that needed doing. He also raised a number of other issues, many of which related to the 'infotainment' system or app functionality.

A number of the things mentioned at that time don't seem to have been mentioned again since, so I won't detail them here. But the issues included; a child lock fault showing on the dashboard, the rear doors and windows couldn't be locked from the driver's control, only being recognised as a 'guest user' on the system and having limited functionality as a result.

Mr P says during a visit to the dealership the software issues were looked at but no one at the dealership knew how they could be resolved and he was told he should bring the car back later once there's a fix. A routine maintenance appointment was arranged for 7 February 2024.

The vehicle history notes I've been provided with detail an issue with the heating panel not working and the display flickering. The garage noted a TPI (Technical Product Information) code and included the note, 'postpone repair'. This indicates there was a known issue which couldn't yet be resolved. This note also explains that a software update was attempted, but it could not be successfully completed.

Mr P contacted the dealership on 11 February 2024 to say the app was no longer communicating with the car, and he was unable to see its charging status, make changes to the target charge, send climate control settings and he was presented with the error message 'vehicle not responding'.

The dealership responded to say they had started the recall but it was incomplete and it has affected the functionality of the app. They said they had to wait for technical advice and they'd update Mr P once they had an answer to the issue.

At this point Mr P asked to reject the vehicle because of the persistent faults and the attempt at resolving them had made things worse. Later on in the complaints process he was made aware that one of the software recalls had to be carried out at a battery centre and that two software recalls should sort the issue.

In responding to the complaint, VWFS said there was no manufacturing defect with the car. It was working as it should, there were no mechanical defects and Mr P had been able to use the car as expected.

It said this issue was restricted to a software update which could be resolved. It indicated that it required at least one opportunity to resolve the issue – and that an opportunity to repair might require a number of visits over a reasonable timeframe. So it rejected Mr P's complaint.

After the complaint was referred to our service one of our investigators thought the complaint shouldn't be upheld. They said while there was evidence of issues with the car, they didn't think it would be reasonable for the car to be returned. They thought the software issues weren't enough to say the car wasn't of satisfactory quality. VWFS had indicated that it would be possible to resolve the outstanding issues. They thought the software issues had a minor impact on the use of the car and allowing the software update would seemingly resolve the issue and would be fair in the circumstances.

While the complaint was with our service, Mr P raised an issue with water ingress in the vehicle's lights and he paid £50 for an inspection to be carried out on this.

Mr P disagreed with the investigator's view. He said the issues were significant and had been raised within a few weeks of acquiring the car. Mr P maintained that a further opportunity to resolve the issues wasn't fair. Since the investigator issued their view on the complaint, Mr P did subsequently allow a software update to take place on 5 August 2024. He says he allowed this because of safety concerns he felt couldn't be left unattended.

However despite this further opportunity to resolve the issues, Mr P made the dealer aware of an electrical fault being displayed on 2 September 2024.

A video on 4 September 2024 – seemingly sent to the dealership – shows the 'electrical system fault' and 'child lock fault' displayed on the dashboard. Both issues are displayed with the message 'please contact workshop'. Mr P says an app store is missing from the display and he demonstrates that the map in the navigation app is still not working properly.

He asked for the case to be reviewed by an ombudsman and I issued a provisional decision upholding the complaint. My provisional decision was as follows:

***'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 the complaint. I'm minded to reach a different outcome from the original investigator.*

*I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's*

*been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.*

*Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.*

*I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.*

*Mr P acquired the car through a Hire Purchase agreement with VWFS. Under this type of arrangement, VWFS became the supplier of the car and is responsible for any issues with the quality of goods provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.*

*Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.*

*While this was not a new car, it was only roughly two years old, had covered an average amount of mileage for its age and it cost around £40,000. You would not expect a car of this nature to be in the same condition as it would have been when it came from the factory. But nevertheless It was by no means an old car, it did not have a significant amount of use at the point of supply and it was sold for a relatively substantial sum. So I think it would be reasonable not to expect significant or persistent issues soon after supply, other than what I would consider to be wear and tear items commensurate with the age and mileage of the car.*

*I am satisfied Mr P has experienced issues with the car since acquiring it. Mr P has evidenced almost all of the issues he's complained of. The dealership has acknowledged a number of the issues and repair notes and emails from the dealership cite known issues or failed repairs. Mr P has provided posts from online forums which, while not directly evidencing the issues he's experienced, nevertheless tally with the issues he's described.*

*Mr P's correspondence with the dealership, supported by photographic evidence, portrays a vehicle that has persistent connectivity, software and electrical issues.*

*Visits to the dealership sometimes resolved issues and at other times did not. Other issues cropped up over time. But what's clear from the series of events is that there was a succession of electrical, software and connectivity issues that are demonstrative of goods that are not performing as expected.*

*Additionally, I would expect goods of this nature to be durable and there not to be faults that arise over time in the way they have here. A car of this age and level of use should reasonably be expected to be without significant issue, aside from normal maintenance issues, for quite some time. I would not expect the number of issues that have arisen in this case and to my mind this means the car is not sufficiently durable.*

*Based on his consistent testimony, and the acknowledgment of these issues by the dealership, I'm satisfied that the child lock fault has been present in one form or another since the first few weeks of Mr P's possessing the car.*

*Mr P made the dealer aware of this issue on 23 October 2023 at the latest. The software update in February 2024 failed and did not resolve this issue. The update that VWFS claimed would resolve the issue took place in September 2024 and this issue is still not resolved. Having faults of this nature would be irritating given the cost of the goods acquired. However, aside from that, the child lock issue alone is a significant safety risk. Mr P has also provided video evidence that the automatic locking of the doors is not functioning as it should be and the rear doors can be opened while the car is in motion.*

*Being able to safely use the child lock, and for the door locking mechanisms to be working as intended, is a key aspect of the safety features of the car. The potential harm that could stem from these safety features being faulty is significant. The evidence I've seen indicates these safety features are not functioning as intended. Mr P has said this has caused him a great deal of concern. I think this level of concern is understandable and reasonable in the circumstances and it's not fair for Mr P to have had to put up with this.*

*It can't be said that because this car wasn't brand new, these persistent faults are what a reasonable person would expect. While the fact it was used would've been reflected in the sale price, it was still £40,950 – a not inconsiderable sum – and most would likely consider this a premium vehicle.*

*A key aspect of satisfactory quality is durability. A car that was only a little over two years old when it was supplied, with average use for that time, should be sufficiently durable such that multiple software issues as outlined here would not arise so persistently. None of the issues raised here are wear and tear items and there's nothing to indicate that the issues at hand are what would reasonably be expected for a car of this age and use.*

*VWFS pointed out that there's no mechanical fault present. However that isn't what this complaint is about. Satisfactory quality can include a number of different factors, including appearance and safety.*

*Freedom from minor defects is an aspect of satisfactory quality too, bearing mind the age and use of the goods. If someone bought a car and the paint started uniformly peeling off soon after, there would be no mechanical defect. But nonetheless the car would not likely be considered of satisfactory quality. Similarly, if the speakers in the car didn't work, there would be no mechanical defect, but it's still a significant feature of the car that would reasonably be expected to be available to use without issue.*

*So focusing on mechanical defects artificially narrows the aspects that contribute to the quality of goods. Mr P has had a significant amount of use from the vehicle, but I'm satisfied that this use has been impaired by the issues presented.*

*Mr P also says this issue impacted his work and has caused a great deal of stress. Like the investigator, I do have doubts about the extent to which the issues highlighted here would have impacted Mr P. However, I don't doubt that this would've caused frustration, especially given the persistent issues encountered.*

*In summary, I intend to issue a final decision along the following lines.*

*Mr P raised software, connectivity and electronic issues within the first few weeks of having the car. As far as I can see, he did not exercise, or attempt to exercise, his short-term right to reject the goods at this stage.*

*Issues of this nature persisted for a number of months, with multiple attempts at resolving them. Mr P requested to reject the goods in February 2024 after the first attempted software update failed.*

*This update could not be completed successfully, the issues remained and new problems arose. This attempt to restore the car to a condition where it was working as it should have been, would to my mind constitute an attempt at repair.*

*Even if an attempt at repair might require multiple visits within a reasonable amount of time, as VWFS has claimed, I can't see that Mr P was given any indication that the software issues could be resolved until mid-to-late May 2024. So it's not clear that repairs could have been carried out within a reasonable amount of time in any event – and all the while Mr P continued his requests to reject the goods.*

*The failed attempts at repair indicate this is not an issue that can be straightforwardly resolved, so I don't think further attempts at repair would be fair in any event. However, I'm satisfied that Mr P was entitled to reject the goods when he requested to in February 2024 because of the persistent faults without repair at that point.*

*VWFS should take back the car at no cost to Mr P and end the finance agreement with nothing further to pay. It should refund Mr P's deposit and the cost of the inspection he had carried out. In the circumstances I think Mr P should be refunded 10% of his monthly payments because of the loss of enjoyment and not having use of all of the car's features. VWFS should pay 8% interest on the refunded amounts.*

*Mr P has been able to use the car a significant amount, and beyond the mileage he was due to cover under the agreement. This excess mileage has been a persistent concern of Mr P's and had he been able to hand the car back sooner he would've covered less miles. Nevertheless, I have had to factor this level of use into the overall award I've made.*

*This complaint is about VWFS's responsibility as a credit provider and the supplier of the goods through the Hire Purchase agreement. It is responsible for the quality of the goods provided, but I can't hold it responsible for the service issues Mr P has experienced with the dealership. However I think that being provided with goods that haven't been of satisfactory quality, not being able to resolve those issues without significant difficulty and having to keep the car when he had the right to reject it, would have had an impact on Mr P. VWFS should pay him £150 to reflect the distress and inconvenience caused by this.'*

## **Responses to the provisional decision**

Neither side disagreed with the facts as they were laid out or the overall outcome reached. VWFS accepted the provisional decision. Mr P responded, with a letter from representatives he'd engaged. His representatives said Mr P agreed with the provisional decision, but had further comments on what needed to be done to put things right.

Mr P wanted the date of the return of the car to be specified and the funds to be paid at the point of handing the keys over (or ideally before) to allow him to replace the car.

He also asked that any payments taken before the agreement is cancelled and the car taken back should be refunded in full. Otherwise, he agreed with 10% of the payments being returned.

He thought the compensation for the distress and inconvenience caused should be higher. He provided records of trying to meet with the dealership's Head of Business and trying to have the car looked at and a courtesy car arranged. He thought £750 would be more fitting.

He also said he had to seek legal advice during the complaint and these fees came to £612 which he thought should also be awarded to him.

### **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.

Having considered everything provided, along with the responses to the provisional decision, I have come to the same overall conclusions about the quality of the car for the same reasons as set out in my provisional decision. So I won't repeat those here.

In terms of Mr P's response to the provisional decision, I will take the points he's raised in turn.

I don't think it's practical for me to set a specific date on which the car should be returned. This would entail arrangements between Mr P, VWFS and a third party to collect the car, and so I can't be specific about this. But the settlement should be completed within four weeks of this decision being accepted and the parties should make suitable arrangements for bringing this about within that time, including setting a return date for the vehicle.

I don't think it's fair for VWFS to refund any payments in full for months where Mr P has been able to use the vehicle. However if VWFS doesn't settle the complaint within four weeks of this decision being accepted, any payments taken after that should be refunded in full, so long as a return date has been arranged. However, hopefully this won't be necessary. In response to the provisional decision, VWFS indicated it's ready to get the next stages of settlement started.

I can see from the correspondence provided that Mr P had difficulty meeting with the Head of Business at the dealership and arranging a suitable courtesy car in order for outstanding issues to be looked at. These emails are recent – from the end of August 2024 to the middle of October 2024. Though some reference is made to contact prior to those dates.

I can see how some of this correspondence and the attempts to pursue this would likely have been frustrating. But I can't hold VWFS responsible for the ongoing service from the dealership. I can only fairly hold VWFS responsible for actions it's liable for - its responsibility for providing a car that wasn't of satisfactory quality. And I think the issues outlined here represent the actions of the dealership that I don't think VWFS is directly responsible for.

I also consider the fact this complaint was at an advanced stage and I can't see to what extent VWFS was included in these conversations, in order to mitigate or remedy any issues it may have been responsible for. So I don't think I can fairly hold VWFS responsible for this. Even so, I acknowledge Mr P should have been able to reject the car sooner. However, in terms of the overall situation, I don't see the evidence provided demonstrates inconvenience over and above what I had already envisaged as part of the overall award I've made.

I can see Mr P's legal representatives said he had to seek legal advice three times in relation to the complaint, costing him £612. I understand Mr P may have opted to seek legal advice in relation to the complaint however this doesn't automatically mean it's a cost VWFS is responsible for.

Our service is an informal alternative to the courts set up partly to avoid the cost and formality of pursuing legal action. As a result our service does not normally make awards covering the cost of legal advice. I don't see that taking legal advice was an unavoidable

requirement of pursuing this complaint. I also can't see that the complaint escalated in such a way that seeking legal advice was a reasonable consequence of how things developed. So I don't think it's fair for me to say VWFS should cover this cost.

### **Putting things right**

As outlined in my provisional decision, I'm satisfied Mr P is entitled to reject the goods because of the persistent faults without repair.

VWFS should take back the car at no cost to Mr P and end the finance agreement with nothing further to pay. Mr P's deposit and the cost of the inspection he had carried out should be refunded.

Mr P should be refunded 10% of his monthly payments because of the loss of enjoyment and not having use of all of the car's features. VWFS should pay 8% simple interest on the refunded amounts.

Mr P went beyond the mileage he was due to cover under the agreement. Had Mr P been able to hand the car back sooner he would've covered less miles. However, it's still fair that there's an acknowledgement of this additional use. Had Mr P covered less miles, the percentage refund of his payments would have been higher. The excess mileage here has already been incorporated into the overall award I've made.

Considering the issues VWFS is responsible for, it should pay him £150 to reflect the distress and inconvenience caused.

### **My final decision**

My final decision is that I uphold Mr P's complaint against Volkswagen Financial Services (UK) Limited trading as Audi Financial Services.

VWFS must:

- take back the car and end the agreement with nothing further to pay
- refund Mr P's deposit
- refund 10% of his monthly payments and the full cost of the inspection
- refund in full any payments taken more than four weeks after the decision is accepted as long as a return date has been arranged
- pay 8% simple interest on the above refunds from the date of payment to the date of settlement\*
- pay Mr P £150 to reflect the distress and inconvenience he's had with these matters
- pay the compensation within 28 days of the date on which we tell it Mr P accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple\*

\* If VWFS considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 January 2025.

Scott Walker  
**Ombudsman**