

The complaint

Ms K is unhappy with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services' (VWFS) offer to settle her complaint about the quality of a new car she acquired through a hire purchase agreement with it.

What happened

In August 2023 Ms K entered a hire purchase agreement with VWFS to acquire a new car from a dealership.

On 30 January 2024 while Ms K was driving on a motorway the car broke down. It was recovered to the supplying dealership which investigated the problem and found that the fuel gauge wasn't reading correctly. It said there was a delay waiting for parts and in April 2024 the fuel tank was replaced. The dealership supplied Ms K with a courtesy car while her car was being repaired. In mid April 2024 the dealership told Ms K her car was ready to be collected and she had to return the courtesy car.

Ms K didn't collect her car. On 26 March 2024 she'd written to customer services of the car manufacturer and said the car wasn't of satisfactory quality, it had been in for repairs for more than seven weeks and various parts had already been replaced without success. Ms K said under the Consumer Rights Act 2015 (CRA) she was able to reject the car and end the finance agreement.

The head of business at the dealership responded to Ms K on 27 March 2024. It wouldn't accept her request to reject the car.

Ms K stopped making the monthly finance payments at the end of March 2024 and complained to VWFS. She said she had no confidence in the car not breaking down again and wanted to reject the car.

VWFS' final response letter of 11 June 2024 told Ms K that under the CRA it had one opportunity to repair the car, which the dealership had done, and it wouldn't accept rejection of the car. VWFS offered Ms K a 'goodwill' refund of 50% of three monthly payments for the time the car wasn't available to her (30 January 2024 to 18 April 2024) totalling £652.53 and £150 for her distress and inconvenience. If Ms K accepted the offer it would deduct the £150 from the arrears she owed on the finance payments.

Ms K complained to us. In summary she said:

- The dealership's communication with her during the repair period was very poor. She was only told what was happening when she chased it and it had to replace several parts including the fuel pipe, fuel sensor and instrument cluster without any success before it found out what was wrong with the car.
- The communication from the dealership was bordering on 'blackmail or harassment' when it said if she didn't accept the car back she would be left with no car.

- The car was new and broke down within five months so she had safety concerns as she drives on the motorway daily for work. Her concerns were particularly stressful as she had a road traffic accident a few years ago which is why she bought a new car thinking it would be reliable.
- She cancelled her monthly finance payments after eight weeks of little communication from the dealership about the car's repair. Her credit rating is affected by her non-payment, which is unfair.
- She wants to reject the car and have the finance agreement cancelled, her deposit and all her monthly payments refunded less a reasonable payment for her usage from August 2023 to 30 January 2024 when the car broke down.

Our Investigator set out Ms K's rights under the CRA in the circumstances. She thought VWFS' offer was fair but the £150 distress and inconvenience payment should be paid directly to Ms K rather than be deducted from the outstanding finance arrears.

VWFS agreed to revise its offer as our Investigator recommended. Ms K didn't agree and wanted an Ombudsman to review her complaint. She added that:

- She had health problems due to the stress of this situation, which she detailed. VWFS underestimated her inconvenience and distress due to the faulty car and the poor then 'borderline hostile' communication from the dealership. She'd received multiple calls and letters to pay arrears on a car she hadn't used since it broke down.
- She couldn't accept the car back when the dealership said it was ready to collect because of the email from VWFS advising her to leave the car at the garage for further investigation.
- It wasn't the delay for parts that meant the repair took so long. Several parts of the car were changed unsuccessfully before the final repair happened as the problem was unexpected for a new car so the diagnostics took longer than expected.
- The dealership took away the courtesy car on 24 April, despite the ongoing investigation. VWFS knew she didn't have access to a car and her credit score was affected making it difficult for her to hire or buy another car. But VWFS made no effort to arrive at a resolution sooner. Not having a car to get to work had a massive impact on her and she had the stress of finding alternative transport daily which was expensive.
- She'd contacted Citizens Advice who told her she was within her rights to reject the car. The fault was likely to be present at the time she got the car, unless proved otherwise. She'd allowed the dealership one chance to repair the car but under section 24 (5C) of the CRA she could reject the car as the repairs weren't done in a reasonable time which caused her significant inconvenience during and after repair.

What I provisionally decided – and why

I made a provisional decision to allow both parties the opportunity to comment before I reached my final decision. I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.'

I've summarised the arguments above but I've read and considered all the evidence that has been submitted. My role is to consider whether VWFS responded fairly to Ms K's complaint. I'm sorry to disappoint Ms K but I think it did. I'll explain why, focusing on what I see to be the key issues.

Ms K has raised several issues about the dealership's service. But this Service can only consider complaints about 'regulated businesses' and 'regulated' and other specified activities as defined by the regulator's (the Financial Conduct Authority (FCA)) rules under which we operate. That means I can't consider Ms K's specific concerns about how the dealership communicated with her.

The hire purchase agreement between Ms K and VWFS is a regulated hire purchase agreement. So this Service is able to consider complaints relating to it. VWFS is the supplier of the goods under this type of agreement and is responsible for a complaint about Ms K's car's quality.

In considering what's 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.

Both parties have referred to the CRA and it is relevant to this complaint. The CRA says that under a contract to supply goods, there is an implied term that 'the quality of the goods is satisfactory'. To be considered 'satisfactory', the goods would need to 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. 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 car's history.

Where a fault occurs in the first six months of a car being supplied there's a presumption that the fault was present at the point the car was acquired. The head of business at the dealership's email of 27 March 2024 to Ms K suggests that the car's diagnosis log shows the fault became live for the first time after she acquired the car but I haven't seen any evidence in support. In any event VWFS hasn't disputed there was a fault with the car within the first six months of Ms K acquiring the car.

Given the nature of the fault on a car which was new I'm satisfied that the car was of unsatisfactory quality when it was acquired by Ms K. I've considered what remedies there are in the CRA and what would be fair and reasonable in the particular circumstances of Ms K's complaint.

Under the CRA Ms K would have the short term right to reject the car within the first 30 days of her acquiring the car, but that wasn't her situation. As she was outside of the first 30 days when the car broke down she had the right to repair or replacement of the car under the CRA.

Ms K says she can reject the car because the dealership failed to repair the car in a reasonable time and caused her significant inconvenience. She refers to section 24(5) of the CRA which says:

'5) A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations...

(c) the consumer has required the trader to repair or replace the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer'.

Section 23 (5) of the CRA says what needs to be taken into account when considering what's a reasonable time or significant inconvenience:

'5) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of –

(a) the nature of the goods, and

(b) the purpose for which the goods were acquired'.

The dealership had the car for repair from 30 January 2024, the day the car broke down, and had repaired the fault by 18 April 2024. So the repair took about two and a half months (2 months and 19 days). That was a long time for Ms K to have to wait for her car to be repaired but I don't think it was an unreasonable amount of time for the reasons below.

In considering the nature and the purpose of the car I think a car is a complex machine and the dealership's investigations into the fault before the final repair weren't unreasonable. Ms K says she was told by the dealership that it changed some parts on the car before fixing the fault. The evidence from the dealership is that it's normal for the manufacturer to recommend smaller repairs to a car when there's a fault, as sometimes these will fix the issue, before going ahead with more invasive repairs, in this case, the fuel tank replacement. I accept that evidence. In these circumstances I consider the smaller repair attempts before the final fix all as one attempt as the car was kept with the dealership throughout those investigations. I also accept there was a delay in being able to get parts (which is common) which accounts for some of the delay to repair.

The purpose of the car was to give Ms K transport. During the period of repair she had a courtesy car until her repaired car was ready to be collected.

I note Ms K first wrote to customer services of the car manufacturer at the end of March 2024 rejecting the car when it had been in for repair for about eight weeks, which wasn't an unreasonable timescale for the car's repair. And I don't think the two and a half months the dealership took to repair the car was an unreasonable amount of time in the circumstances.

Ms K has had significant inconvenience but I can't fairly say that's due to the actions of the dealership and/or VWFS being unreasonable for the reasons given below.

I understand how inconvenient not having a car would have been for Ms K's work. But when the dealership wanted her courtesy car returned it was reasonable as her car was repaired and ready to collect. I don't accept Ms K's suggestion that she couldn't collect her repaired car because VWFS' email to her of 24 April 2024 advised her to leave the car at the dealership during the investigation of her complaint. She says that email said:

'If your vehicle has not yet been to the Dealership, please arrange to have this booked in at the earliest opportunity in order to help us investigate your concerns'.

Ms K's car was already at the dealership and had been repaired so the fault was known and fixed. I don't think Ms K could reasonably understand the email to mean that she couldn't collect the car when it was fixed.

Ms K's decision to stop paying the monthly finance payments has been significantly inconvenient for her as it's affected her credit score. She says she stopped the payments because of the poor communication from the dealership. But from what she's told us it did

tell her what was happening with the car, even if she had to chase for the information. The dealership had been clear to Ms K at the end of March 2024 that it wouldn't accept her request for rejection of the car.

VWFS' final response letter was clear that it didn't accept Ms K's rejection. That letter says Ms K complained to it on 24 April 2024 so its final response of 11 June 2024 was within the eight weeks the FCA rules say a business must respond to a consumer's complaint. So I don't think VWFS delayed in responding to Ms K's complaint. Also, she had already complained to us before complaining to VWFS (as the dealership's March email gave referral right to us). I don't think VWFS is responsible for the significant inconvenience Ms K has experienced as a result of her decision to stop making the monthly finance payments.

I don't doubt this has been a very stressful situation for Ms K and I understand why the car breaking down knocked her confidence in the car and she was concerned it would break down again. If she'd collected the repaired car and it had broken down again then she would have had remedies depending on those circumstances, but that didn't happen and I don't make my decisions on what might have happened.

Overall I think VWFS acted fairly and reasonably when it refused to accept Ms K's rejection of the car.

I think VWFS' offer as revised - a refund of 50% of three monthly payments totalling £652.53 to recognise the loss of use of her car during the time of repair (when Ms K was supplied with a courtesy car) and £150 compensation paid direct to Ms K to acknowledge her distress and inconvenience for the same - is fair and reasonable.

For Ms K's information, she can put a notice of correction on her credit file to explain why she stopped making the finance agreement payments. It's information a prospective lender should take into account (but that doesn't mean they have to lend)'.

Responses to my provisional decision

VWFS accepted my provisional decision. Ms K didn't agree and sent us legal advice she'd received. The legal advice concluded that there was no requirement for Ms K's significant inconvenience to have been caused by the unreasonableness of VWFS. And VWFS taking 79 days to complete the car's repair was unreasonable and prejudicial to Ms K, resulting in her significant inconvenience and enabling her to reject the car.

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.

In considering what's 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. But this Service is an informal alternative to the courts and we decide cases on a fair and reasonable basis.

I've considered the legal advice Ms K provided in response to my provisional decision and reconsidered all the evidence. I'm not going to respond to all the points in the legal advice as I'll focus my findings on the key reasons for my final decision.

I note Ms K's legal adviser thinks VWFS repaired the car under the warranty and dealt with Ms K's complaint to it accordingly, but that's not what Ms K's complaint to us is about.

Fundamentally I need to decide whether it was fair and reasonable for VWFS to consider that Ms K couldn't reject the car and it's the CRA that's relevant to this complaint.

Given the nature of the fault on a car which was new I'm satisfied that the car was of unsatisfactory quality when it was acquired by Ms K. I understand that she expected a brand new car of this make to be reliable and durable. Even so, faults with new cars do unfortunately happen. But Ms K didn't have the right to reject the car under the CRA as the car didn't breakdown within the first 30 days of her acquiring the car. As the car's breakdown happened after that period, under the CRA, she had the right to repair or replacement of the car.

Section 23 of the CRA says:

- '(1) This section applies if the consumer has the right to repair or replacement ...*
- (2) If the consumer requires the trader to repair or replace the goods, the trader must-*
 - (a) do so within a reasonable time and without significant inconvenience to the consumer'.*

VWFS took 79 days to repair Ms K's car (I understand the car was repaired by 18 April 2024, not by 27 April 2024 as detailed under 'agreed facts' in the legal advice Ms K received. Even if 27 April 2024 was the correct date my decision remains the same). What's a reasonable time isn't a matter of fact, but of opinion. In my provisional findings I set out what section 23 (5) of the CRA says needs to be taken into account when considering what's a reasonable time or significant inconvenience, *'(a) the nature of the goods, and (b) the purpose for which the goods were acquired'*.

I've considered Ms K's legal adviser's opinion as to why 79 days to repair the car wasn't within a reasonable time, but I remain satisfied that it was within a reasonable time. I still think it's reasonable for me to say the car is a complex machine and the dealership's investigations into the fault before the final repair weren't unreasonable. Ms K's legal adviser says diagnostic codes would have been used to find the likely fault and provide the repair process. But, even if so, there's still the evidence from the dealership that it's normal for the manufacturer to recommend smaller repairs to a car, as sometimes these will fix the issue, before going ahead with more invasive repairs, in this case the fuel tank replacement. I'm not persuaded that it was unreasonable for the dealership to have made smaller repair attempts before the final fix, nor that it's unreasonable to consider all as one attempt as the car was kept with the dealership throughout those investigations.

Ms K's legal adviser says that a delay in obtaining parts is not common and/or not to be taken into account when considering a reasonable time for a repair, but I disagree. The shortage of car parts or delay in being able to obtain parts has been widely publicised. The repair to the car could only be done when the dealership had the necessary part/s so it would be unfair not to take that into account when considering if the repair happened within a reasonable time.

I said in my provisional decision that Ms K has had significant inconvenience - her brand new car had broken down, it had taken longer to repair than she wished and her credit rating has been adversely affected by her decision to stop paying the monthly car finance payments. On the other hand, the dealership provided Ms K with a courtesy car until her repaired car was ready to collect. I've explained why I don't think Ms K could reasonably understand that she couldn't collect the car when it was fixed. I think the car was repaired within a reasonable time. Ms K made the decision to stop paying for the car finance payment

knowing the dealership had been clear that it wouldn't accept her request for rejection of the car, and she hadn't at that time complained to VWFS. I can't fairly say Ms K's significant inconvenience was due to the actions of the dealership and/or VWFS.

Ms K's legal adviser refers to EU case law which concluded that the meaning of significant inconvenience to a consumer should be viewed objectively - as would dissuade the average consumer from asserting their rights. But Ms K wasn't dissuaded from asserting her right, she used her right to repair to ask VWFS to repair the car. When the repair wasn't finalised as quickly as she wished she told VWFS she wanted to reject the car. I don't think the case law means VWFS had to accept that request.

Even if I accepted that under the CRA there's no requirement for Ms K's significant inconvenience to have been caused by the dealership and/or VWFS being unreasonable, I still have to decide whether VWFS was fair and reasonable to not agree to Ms K's request to reject the car in all the circumstances. For the reasons I've set out in my provisional findings and these findings I think VWFS acted fairly and reasonably when it refused to accept Ms K's rejection of the car.

VWFS' offer as revised - a refund of 50% of three monthly payments totalling £652.53 to recognise the loss of use of her car during the time of repair (when Ms K was supplied with a courtesy car) and £150 compensation paid direct to Ms K to acknowledge her distress and inconvenience for the same - is fair and reasonable.

My final decision

My final decision is that Volkswagen Financial Services (UK) Limited trading as Audi Financial Services has made a fair and reasonable offer to settle Ms K's complaint as follows:

- a refund of 50% of three monthly payments totalling £652.53 to recognise the loss of use of her car during the time of repair and
- £150 compensation paid direct to Ms K to acknowledge her distress and inconvenience for the same.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 17 April 2025.

Nicola Sisk
Ombudsman