

The complaint

Ms M is unhappy that a car supplied to her under a conditional sale agreement with Volvo Car Financial Services UK Limited was of an unsatisfactory quality.

What happened

In March 2023, Ms M was supplied with a new car through a conditional sale agreement with Volvo. She paid an advance payment of £21,746.75 and the agreement was for £21,746.75 over 36 months, with monthly payments of £604.08.

Ms M experienced problems with the car's electrics and, in October 2023 when the car had done less than 3,000 miles, it went back to the supplying dealership for repair. However, mainly due to the required parts being on back order, the car wasn't repaired until 29 February 2024. While the car was awaiting repair Ms M had been provided with a courtesy car, which she returned to the dealership on 5 March 2024. But Ms M initially refused to collect the repaired car as she had no confidence in it. She eventually asked for the car to be returned to her at the end of August 2024, this was done on 24 September 2024.

Ms M was unhappy with the car and how long it was taking to repair, so she complained to Volvo on 19 February 2024, asking to be able to reject the car. Volvo responded on 25 March 2024, explaining they didn't uphold the complaint as the car had now been repaired and was ready for collection. Ms M wasn't happy with what'd happened, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, even though there had been a delay in repairing the car, the issue had now been resolved. So, Ms M wasn't entitled to reject the car. However, the investigator said that Ms M should be refunded 25% of the payments she made while the car was in for repair, as the courtesy car wasn't like-for-like; that she should be reimbursed for the tax and insurance she paid on the car during this same period, as the car wasn't available to her; that Volvo should ensure that Ms M wasn't liable for the warranty repair invoice that had been sent to her; and that she should receive £200 compensation for the distress and inconvenience she'd been caused.

Volvo accepted the investigator's opinion, but Mrs M didn't. She asked for a *"warranty certificate or report confirming the repairs and the vehicles safety."* She also asked that the refund of 25% of the payments and the reimbursement of the tax and insurance is extended to June 2024 as Volvo didn't provide an independent inspection on the car when requested, and because they delayed in providing information requested through a Data Subject Access Request (DSAR). She also thought the £200 compensation should be increased.

Ms M also raised an additional complaint about how Volvo dealt with the DSAR and, after this information was received, there was some information Volvo held about her that she felt to be incorrect. Finally, Ms M said that Volvo were now trying to charge her over £11,000 for the courtesy car.

The investigator explained that we weren't able to instruct Volvo to provide a warranty certificate, but if there were ongoing problems with the car caused by an unsuccessful repair,

then Ms M would have the right of rejection. The investigator also explained that Volvo would need to have an opportunity to deal with the complaint about the DSAR and courtesy car charges before we were able to get involved.

After further extensive comments from Ms M, her complaint was reviewed by a second investigator, who issued a revised opinion. The second investigator said the car supplied to Ms M wasn't of a satisfactory quality as it wasn't sufficiently durable – it was unreasonable to expect a car of that age and mileage to have an issue with the electrics. However, as the car has now been repaired, Ms M doesn't have the right of rejection.

The second investigator recommended that Ms M was refunded 75% of the payments between 1 and 24 September 2024, when Ms M was waiting for the car to be returned to her, but there was a delay in doing so. The second investigator also recommended that the compensation was increased to £300.

Volvo accepted the revised opinion, but Ms M didn't. She felt she was entitled to reject the car because it took an unreasonable time for the repair to be completed, and the repair was only completed after she'd requested rejection. She also thought Volvo were jointly liable for the dealership's actions.

Ms M also didn't think the £300 compensation was reasonable as she was continuing to pay for the car (including the road tax and insurance) while it wasn't in her possession. And she spent nearly £12,000 hiring a car as a result of this. She's also concerned that, if she wanted to sell the car, she would be required to disclose "*safety critical repairs*" which would reduce the value of the car up to 30%. This is in addition to the "*over 100 hours*" she's spent dealing with this complaint.

As Ms M didn't agree with the second investigator's opinion, this matter has been passed to me to decide.

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 done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Ms M was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Volvo are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Volvo can show otherwise. So, if I thought the car was faulty when Ms M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Volvo to put this right.

In this instance, it's not disputed there was a problem with the electrics on the car supplied to Ms M, nor that this fault made the car of an unsatisfactory quality when it was supplied to her. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Volvo should do to put things right.

Putting things right

Ms M has argued that she should still have the right to reject under the CRA due to the length of time it took for the car to be repaired. And because she had already asked to be able to reject the car.

Section 24(5) of the CRA says *"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract."* This is known as the single chance of repair. The CRA is also clear that, only if the single chance at repair fails, then Ms M would have the right of rejection under section 24(5).

Given this, as the single chance of repair was still in progress, Ms M didn't have the right to reject the car just because she requested this on 19 February 2024.

However, I've also considered section 23(2) of the CRA, which says *"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."* Ms M contacted Volvo on 19 February 2024, asking to be able to reject the car, and giving them two-weeks to respond to her complaint. However, Volvo's regulator, the Financial Conduct Authority, allows them up to eight weeks to respond to a complaint, so I don't think that Volvo not responding until 25 March 2024 – approximately four weeks after receiving the complaint – means that Ms M has the right to reject the car because her two-week deadline wasn't complied with.

I appreciate there was a delay in the car being repaired, and this was mainly due to the availability of parts. And this would be frustrating to Ms M. But she was provided with a courtesy car for the period of time the car was awaiting repair and, while this was not a like-for-like car, she was still kept mobile. So, I'm not satisfied Ms M was significantly inconvenienced in the way she would've been if, for example, no courtesy car was supplied, or if the courtesy car was entirely unsuitable e.g., it was a manual car and Ms M only has a licence allowing her to drive an automatic car.

As such, and while I appreciate this will come as a disappointment to Ms M, I'm not satisfied she has the right to rejection under section 23(2)(a) of the CRA, and I won't be directing Volvo to allow her this right.

Ms M has been able to use the car while it's been in her possession. And while it was being repaired, she was also provided with a courtesy car to keep her mobile. Because of this, I think it's only fair that she pays for this usage. So, I won't be asking Volvo to refund any of the payments she made while the car was being repaired.

With regards to the road tax and insurance Ms M paid on the car supplied by Volvo during this period, I haven't seen anything to show me that Ms M also had to pay this for the

courtesy car as well. This means that, if I were to ask Volvo to reimburse Ms M these costs, then Ms M would essentially have 'free motoring' and she would be put in a position of betterment, something that wouldn't have happened had the car supplied by Volvo not been faulty. So, this isn't something I'll be asking Volvo to pay.

What's more, the car was available for Ms M to collect and use after the repair had been completed and she returned the courtesy car on 5 March 2024. However, Ms M refused to accept the car. Had Ms M collected the car, and it transpired that the issues with the electrics hadn't been satisfactorily repaired, she would've been entitled to reject the car. But this wasn't the case, and I've seen nothing to show me that the repairs were unsuccessful.

When considering matters such as this, this service looks for complainants, as far as is reasonably possible, to mitigate any losses they may incur. And, for the reasons stated above, it would've been reasonable for Ms M to collect the car in late-February / early-March 2024. In refusing to do so, Ms M still remained liable for the payments to Volvo, as well as for the road tax and insurance, as the car was repaired and available for her to use.

She instead chose to hire a separate car. While this was her choice, I don't think it was reasonable for her to do this in circumstances where she had a repaired car awaiting collection. As such, she failed to reasonably mitigate her losses. So, I won't be asking Volvo to refund any of the payments she's made, or cover any costs she's incurred, after the car was repaired and while Ms M was refusing to accept it.

When Ms M asked for the car to be returned to her, there was a delay of around three weeks before this happened. While I appreciate this was, in part, caused by the dealership wanting to check the car after it had been standing for so long, and for the need to complete a service that was due, it still took too long for the car to be returned to Ms M.

The second investigator recommended that Volvo refund 75% of the equivalent payment for the period 1 to 24 September 2024 as compensation for this delay, and Volvo accepted this recommendation. As checking the car and completing the required service were necessary in the circumstances, I'm satisfied this is reasonable and I see no compelling reason not to adopt it as part of my final decision.

Ms M has also raised the issue that the repairs to the car will reduce the sale price by up to 30%. However, she's unable to provide any evidence of this and she says it would cost her £750 to get the car valued. While I understand Ms M's concern, this is an electrical fault that was successfully rectified over a year ago, with no evidence to support an ongoing issue.

I'm unaware of any legislation that requires Ms M to declare this as a 'safety critical repair', nor am I satisfied that, if at some point in the future Ms M were to consider selling the car, that this would have such an impact on the car as to severely reduce the sale price – the sale price is affected by a number of different factors, but mainly the age, mileage and condition of the vehicle. A successful non-accident related repair some years back rarely has any major impact.

As such, I won't be asking Volvo to compensate Ms M for any future speculative loss she may possibly incur.

Finally, I think Ms M should be compensated for the distress and inconvenience she was caused by the issues with the electrics on the car. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended Volvo pay Ms M an additional £300, to recognise the distress and inconvenience she was caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Ms M would've felt by having a fault occur in a brand new car, and for the time it took this repair to be completed. So, this is a payment I'm directing Volvo to make.

Therefore, if they haven't already, Volvo should:

- refund the equivalent to 75% of the payment Ms M paid for the period 1 to 24 September 2024;
- apply 8% simple yearly interest on the refund, calculated from the date Ms M made the payment to the date of the refund[†]; and
- pay Ms M an additional £300 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (Volvo must pay this compensation within 28 days of the date on which we tell them Ms M accepts my final decision. If they pay later than this date, Volvo must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires Volvo to take off tax from this interest, Volvo must give Ms M a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Ms M's complaint about Volvo Car Financial Services UK Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 16 April 2025.

Andrew Burford
Ombudsman