

## **The complaint**

Mr S is unhappy that Volkswagen Financial Services (UK) Limited ('VWFS') attempted to collect the final payment due under a hire purchase agreement he had with them.

Mr S has been represented during part of the claim and complaint process by Ms W, a professional representative. For ease of reference, I will refer to any comments made, or any action taken, by either Mr S or Ms W as "Mr S" throughout the decision.

## **What happened**

In September 2021, Mr S was supplied with a new car through a hire purchase agreement with VWFS. He paid an advance payment of £20,824 and the agreement was for £66,745; with 23 monthly payments of £457.81 and a final payment of £63,636.25 (including a £10 Option to Purchase fee). Mr S made the first payment on 2 October 2021, with the final payment, referred to as the balloon payment, due on 2 September 2023.

In August 2023, the car developed a fault with an engine mount and it was returned to the supplying dealership for repair. This repair wasn't completed until 31 October 2023, and Mr S collected the car on 17 November 2023. However, the repair wasn't successful, and the car needed to go back for further repair, which was successful.

VWFS wrote to Mr S on 4 August 2023, to advise him that the next payment due was the balloon payment. This letter also explained the options Mr S had, including that, if he wanted to refinance the balloon payment, he would need to contact them about this no later than 21 days before the end of the agreement. The letter also made it clear that, if they didn't hear from him, they would collect the balloon payment on 2 September 2023.

Mr S didn't respond to this letter, so VWFS attempted to collect the balloon payment on 2 September 2023. However, this attempt failed. VWFS have reported, and continue to report, the failure to make the contractual balloon payment to the credit reference agencies.

VWFS were contacted by the manufacturer on 6 September 2023, as Mr S had complained to them. VWFS advised the manufacturer that the balloon payment had been due on 2 September 2023. Mr S then contacted VWFS on 12 September 2023, advising them that he was out of the country and that he didn't want the balloon payment to be collected due to the issues he was currently having with the car – he didn't want to pay this until the car had been successfully repaired. However, VWFS explained that the payment was now due, and needed to be paid in line with the agreement Mr S signed.

VWFS offered Mr S a goodwill gesture of £712.03 – 30% of three monthly payments and an additional £300 payment for the distress and inconvenience Mr S had been caused – due to the problems he was experiencing with the car. Mr S didn't accept this offer, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Mr S didn't contact VWFS about the balloon payment until after the collection of this had already been attempted. They said that VWFS were contractually obliged to make this attempt, so the investigator didn't think VWFS had done anything wrong

by doing so. Furthermore, the investigator thought VWFS had acted reasonably by offering the £712.03 given the issues Mr S had had with the car around the time the agreement came to an end. So, the investigator didn't think VWFS needed to do anything more.

Mr S didn't agree with the investigator's opinion. He said the investigator had focussed on VWFS's right to take the payment, and not that the car had never been fit for purpose – he said that he'd had repeated issues with the car since it had been supplied to him (although he didn't specify what these issues were).

Mr S also said that it was his intention to refinance the balloon payment, but he's now found himself in a position where this option is no longer available to him as VWFS don't offer refinancing of a balloon payment after the date that payment falls due.

The investigator explained that, as Mr S had complained about VWFS taking the balloon payment, and not any ongoing issues he'd had with the car, this is why the investigation focussed on this. Mr S was still unhappy, as he didn't think the investigator had correctly assessed the law, and he asked that this matter be passed to an ombudsman to decide.

The investigator issued a revised opinion, which included Mr S's complaint about the quality of the car supplied to him. They said that, although there had been an issue with the engine mount, which made the car of an unsatisfactory quality due to its lack of durability, this had now been successfully repaired. And Mr S was provided with a courtesy car while the car supplied to him was awaiting repair. So, the investigator maintained their view that the £712.03 offered by VWFS for this was reasonable in the circumstances.

The investigator also maintained their view that VWFS had acted reasonably in relation to the balloon payment, both regarding attempting to collect this, and recording that it hadn't been paid on Mr S's credit file. So, they didn't think VWFS needed to do anything more.

As Mr S remains unhappy, 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. Mr S was supplied with a car under a hire purchase 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, VWFS 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 confirm 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 VWFS can show otherwise. So, if I thought the car was faulty when Mr S 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 VWFS to put this right.

### Quality of the Car

In this instance, it's not disputed there was a problem with the engine mount on the car, nor that this fault was present when the car was supplied to Mr S. As such, I'm satisfied the car wasn't of a satisfactory quality when it was supplied to Mr S as it lacked the durability any reasonable person would expect from a brand new car.

In his comments on the investigator's first opinion, Mr S has indicated that there were other issues he had with the car, before the engine mount needed replacement. However, he hasn't provided anything to show what these issues were, or that they made the car of an unsatisfactory quality when it was supplied. As such, when I'm looking at what VWFS should do to put things right, I'm only considering the issue with the engine mount.

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 confirm to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for VWFS – the first attempted repair is the single chance at repair. This single chance of repair was completed on 31 October 2023.

The CRA is also clear that, if the single chance at repair fails, as was the case here, then Mr S has the right of rejection. However, this doesn't mean that Mr S is required to reject the car, and he is able to agree an alternative remedy i.e., further repairs to the car. This is what happened here, and Mr S has confirmed that the second repair to the car was successful. As such, it wouldn't now be reasonable to allow Mr S to reject the car.

Mr S has been able to use the car while it's been in his possession. And while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage. In these circumstances, I wouldn't usually direct VWFS to refund any of the payments he's made.

However, in this instance, VWFS have offered to refund 30% of three payments, totalling £412.03, to recognise that Mr S's usage and enjoyment of the car was impaired towards the end of the agreement, when the engine mount issue arose. I'm satisfied that this is fair in the circumstances, especially given that Mr S was driving a car that was less than two years old. As such, I won't be asking them to increase this offer.

VWFS have also offered to compensate Mr S £300 for the distress and inconvenience he was caused by the above. When considering this offer, I've thought whether it's fair and reasonable to both parties, and if it falls 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.

In this instance I'm satisfied that it falls in line with our service's approach and what I would've directed, had it not already been put forward. I think this amount is significant enough to recognise the worry and upset Mr S would've felt by having to arrange for the car to be repaired, and by this repair being initially unsuccessful. But I also think this fairly reflects that Mr S was provided with a courtesy car while the car supplied to him was being repaired. So, I won't be asking VWFS to increase this offer.

As such, it's now for Mr S to decide whether to accept this offer for the issues he had with the car.

### Balloon Payment

I've reviewed the agreement Mr S had with VWFS, and this makes it clear how much the balloon payment was, and when it fell due. While it's not necessarily reasonable for VWFS to assume a customer will remember these details (in this case) two years after the agreement was signed, I've also seen they sent Mr S a letter dated 4 August 2023, reminding him of this. This letter was sent to the address VWFS held on file for Mr S, and I haven't seen anything to show me this wasn't sent.

This letter gives Mr S four options – part-exchange the car, refinance the balloon payment, pay the balloon payment, or hand back the car. Mr S has subsequently indicated that he wanted to refinance the balloon payment. This letter makes it clear that, to do this, he must contact them no later than 21 days before the end of the agreement, and they provided him with both a telephone number and email address to do this. However, Mr S didn't contact VWFS to refinance the balloon payment. He also didn't ask to part-exchange or hand back the car.

The 4 August 2023 letter made it clear that, if VWFS didn't hear from Mr S (which they didn't) they would attempt to collect the balloon payment by direct debit on 2 September 2023. And this is what they did. I'm satisfied that VWFS made Mr S reasonably aware of his options and what they would do about the balloon payment. As such, I don't think they did anything wrong by attempting collection.

I've also reviewed VWFS's system notes which record the conversations they had with Mr S. When Mr S contacted them on 12 September 2023 about the balloon payment, he asked if the collection of this could be put on hold until the car had been repaired. Crucially, he made no mention of wanting to refinance the balloon payment at this point. So, it was reasonable for VWFS to assume it was Mr S's intention to make the payment in full.

At the time Mr S contacted VWFS about the balloon payment, it was already 10-days overdue. The requirement to repay the balloon payment isn't conditional upon the car being in a roadworthy condition at the time the payment falls due, and the repair to the engine mount was in progress. Given all these circumstances, I don't think it's unreasonable for VWFS to expect Mr S to make the balloon payment (especially as he didn't ask, even at this late date, to refinance it), so I don't think they acted unreasonably by not agreeing to Mr S's request to suspend collection until the car was repaired.

As the balloon payment is a payment due under the agreement, albeit a one-off higher payment, VWFS have an obligation to report any late- or non-payment of this to the credit reference agencies. As such, I also don't think VWFS did anything wrong by reporting the failure to make the balloon payment, and Mr S's continued non-payment of this.

So, in conclusion, and while I appreciate this will come as a disappointment to Mr S, I'm satisfied that VWFS have acted fairly and reasonably, and I won't be asking them to do anything more.

### **My final decision**

For the reasons explained, I don't uphold Mr S's complaint about Volkswagen Financial Services (UK) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 April 2025.

Andrew Burford  
**Ombudsman**