

The complaint

Mr A complains that a car supplied to him under a hire agreement with Volkswagen Financial Services (UK) trading as Audi Financial Services (VWFS) was of unsatisfactory quality.

When I refer to what Mr A or VWFS have said or done, it should also be taken to include things said or done on their behalf.

What happened

In January 2024, Mr A was supplied with a brand-new car through a hire agreement with VWFS. He paid an advance rental payment of around £4,422 and the agreement duration or the hiring period was 36 months; with 35 monthly rental payments of around £432.

Mr A says within a fortnight of collecting the car, it did an emergency stop automatically. And in April 2024, the same thing happened again, but this time at high speed, causing him to hurt his hand and head. Roadside assistance was arranged, and he was followed to the local dealership where he was provided with a courtesy car while they completed diagnostics – which found no faults.

In June 2024, the same thing happened again. The car was returned to the dealership for further diagnosis, but again no fault was found.

Mr A complained to VWFS, as he'd lost confidence in the safety of the car. VWFS didn't uphold his complaint, as there was no evidence of a fault with the car. VWFS said Mr A could terminate his agreement early if he paid a settlement figure of around £6,700.

Unhappy with this response, Mr A referred his complaint to this service. Our Investigator reviewed matters and said without evidence to support the pre sense system is faulty, she was unable to conclude that VWFS had supplied him with a car that wasn't of satisfactory quality.

Mr A didn't agree. In summary, he said VWFS has offered him a reduction to exit the agreement and advised him to turn the pre sense function off, both of which he considers admission there is something wrong with the car.

As no agreement was reached, the matter was passed to me to decide.

I issued a provisional decision, setting out my intention to uphold Mr A's complaint. I said:

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a reasonable outcome is. 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 taken into account 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 A was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr A entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. In this case those relevant circumstances include, but are not limited to, the age, mileage and cash price of the car at the point of supply. The CRA 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.

In this case, the car was brand-new. So, I think it's fair to suggest that a reasonable person would expect a car of this type and cost to meet high standards of performance and durability. It should also be free from defects.

Mr A says he first experienced a braking issue within two weeks of acquiring the car. He said he was going at relatively low speed, and didn't report it at the time as he'd just gone over a pothole, so thought it could've potentially been caused by that. However, the same thing happened a couple of months later, which was understandably more concerning to Mr A given it was a reoccurrence of the same issue, and at higher speed.

It's my understanding that modern cars, like the one Mr A hired, have significant advanced technology, some of which is designed to improve the safety of the car. Here, it appears the issues Mr A experienced with unexpected braking is linked to the pre sense feature, which uses sensors to detect hazards that can trigger automatic responses, including the application of the brakes to avoid completely, or minimise the impact of a collision. While I'm sure this is a valuable safety feature, I also consider that malfunction of such feature would understandably cause significant concern and potentially be very dangerous in certain circumstances.

I've carefully considered the evidence available, which includes Mr A's testimony, to decide whether I'm persuaded the unexpected braking was more likely than not linked to a fault with the pre sense feature – and I think it was. I say this because the diagnostic fault find, carried out by roadside assistance in April 2024, confirmed:

"Patrol found the following fault code/s: System : Driver assistance system - EBU / Driver assistance systems Central driver assistance control unit 4.0 Status: C12D5FA - Driver assist system control unit. Error Message: Image processing fault. Sporadic fault. Member advised vehicle braking on its own found fault code in memory in driver assist control for fault with processing image followed to Audi dealers for repair then took member back home and organized replacement vehicle."

Mr A has provided job sheets which show the dealership checked the fault memory and an error relating to a known issue with the driver assist control module image processor was found. VWFS say this is a sporadic error code, rather than a fault. However, I note the dealership confirmed they erased the "fault" memory, after which they were unable to replicate the issue during road testing.

The dealership also confirmed there was another known issue relating to the pre sense feature activating for no reason. They confirmed they ran tests for the activation of pre sense between 29 March and 4 April 2024, which concluded no faults or repair suggestions. But I note neither of Mr A's instances of unexpected braking happened between these dates. Mr A confirmed the first occasion happened in February 2024, and the breakdown report confirms the second instance happened on 9 April 2024.

So, in summary, Mr A experienced unexpected braking with impact severe enough for him to feel it necessary to arrange roadside assistance and recovery. The breakdown report confirmed the presence of a fault code related to the driver assist function, of which the pre sense feature forms part of. The dealership confirmed the presence of the same fault code, which can be linked to two known issues related to the driver assist function and, while they said no repair was carried out, they did erase the fault code which resolved the issue. Based on the above, I'm persuaded that, on balance, it's more likely than not there was a fault with the pre sense feature that resulted in car performing an emergency stop, and the dealership cleared the fault to resolve the issue.

The same thing then reoccurred in June 2024 and Mr A again called for roadside assistance. The breakdown report confirmed checks found emergency braking at 11:36 and a fault code with the same date and time.

The dealership inspected the car and found the same fault code, which related to "data bus missing message" and two others relating to "front sensor for driver assistance systems implausible signal" and "tiredness & distraction warning function restriction". They confirmed they followed test plans for known issues relating to the driver assist system and road tested the car, but were unable to find or replicate the fault.

VWFS says braking can occur due to normal limitations of the system, including the Adaptive Cruise Control (ACC) radar beam being reflected by other static objects such as signs, fences, stationary vehicles etc, which can also be impacted by poor light or weather conditions. VWFS have suggested the sensor sensitivity can be altered to prevent this from happening, but Mr A says the technician was unable to do this due to the car not having the required software to achieve the adjustment. So, it was suggested that Mr A turn off the pre sense function altogether. In my view, it's reasonable to expect such safety feature to work as designed on a brand-new car. So, I don't think turning it off is a reasonable solution for it not working as it should. Mr A also says he felt he was jeopardizing the safety of his car by doing so. And even when he did turn it off, it would, at times, reactivate while he was driving.

I've carefully considered what Mr A has told us about his experience in the car and note he has been consistent throughout his testimony to both VWFS and this service. I've considered what VWFS have said about possible objects picked up by the car's camera that Mr A may not have noticed. But I find it unlikely this would happen on three separate occasions, within a relatively short period of time, without Mr A having any awareness of any objects on any occasion. Especially as in two out of those three occasions he stopped to be recovered, meaning he would've been able to identify any objects that caused the car to brake at this time, if there was anything. I also think it's highly unlikely Mr A would go to the trouble of waiting for roadside assistance to recover him to the dealership for further inspection, and complaining to VWFS about the car, if the issue didn't occur as he described.

So, for these reasons, in addition to the fault and error codes related to the driver assist system and the fact there are known issues with this and the pre sense feature, I'm persuaded it's more likely than not the pre sense feature was defective in some way that resulted in the unexpected braking for no apparent reason. And given this was a brand-new

car, which should reasonably be free from defects for some time, I consider the car wasn't of satisfactory quality when it was supplied to Mr A and remained of unsatisfactory quality after VWFS had the opportunity to repair it.

Putting things right

Having determined the car wasn't of satisfactory quality when it was supplied to Mr A, I've next considered what VWFS should do to put things right.

The CRA provides a short term right to reject the car within the first 30 days if it was of unsatisfactory quality. Outside of the first 30 days, the right to reject may only be exercised if the goods don't conform to contract after one repair or replacement.

While the first occasion of unexpected braking happened within the first 30 days, Mr A didn't report it and was unaware of a fault within this time. As he was unaware of the fault within the first 30 days, he couldn't have possibly expressed his wish to reject the car within that time.

However, I note the car has since gone back to the dealership twice, and at the first visit, the fault codes were erased. While this may have resolved the issue at the time, the unexpected braking reoccurred two months later. So, I find VWFS had their single opportunity to repair the fault, and that repair was unsuccessful.

I appreciate VWFS don't consider there to be a fault with the car, given the issue couldn't be replicated during testing. But the evidence available does confirm the sporadic nature of the fault codes that coincided with the instances Mr A describes. The fact the fault can't be replicated in order to identify a remedy to solve the issue is understandably concerning for Mr A, as no reassurance can be offered that the same issue won't reoccur in the future.

For these reasons, I don't find Mr A's request to reject the car to be unreasonable. So, VWFS should end the agreement with nothing further to pay and arrange collection of the car at no cost to Mr A. When cancelling the agreement, VWFS should ensure no adverse information is recorded on Mr A's credit file.

Mr A has mentioned being advised he should receive a full refund of all the payments he's made towards his agreement. But I don't agree. Mr A has had use of the car, so I think it's fair that he pays for the use he has had. I also note that while the car was with the dealership for testing, he was kept mobile with a courtesy car.

However, I do accept Mr A's use of the car has been impacted by the issues he's experienced. It hasn't been carefree, as he would've expected from a brand-new car. Mr A says he hasn't used the car as much as he'd intended to and has had to make other arrangements for long distance journeys, or when transporting his young grandchild, due to serious concerns about the safety of the car. So, having considered all of the circumstances of this complaint, I find it reasonable for VWFS to refund 10% of Mr A's monthly rentals to compensate him for the impaired use he has had of the car.

Mr A paid an advanced rental of around £4,422, which essentially reduced the cost of the remaining monthly rentals due over the remaining term of the agreement. As this has reduced the monthly rentals, I consider it unreasonable to direct VWFS to refund the full amount. Instead, VWFS should calculate a pro-rated refund, assuming the advanced rental amount was spread equally over the 36-month term of the agreement, equivalent to the remaining period of the rentals after the agreement is cancelled. In the same way as VWFS is required to refund 10% of the monthly rentals, VWFS should also refund 10% of the pro-rated advanced rental amount for the period up to the date the agreement is cancelled.

Interest should be calculated at 8% simple per year on each of the refunded payments, from the date of payment until the date of settlement.

Lastly, I've considered that Mr A was inconvenienced by having to be recovered by roadside assistance on two occasions. Mr A has described being hurt due to the sudden braking at high speed and this would've understandably caused considerable distress and ongoing concern about the safety of the car, meaning he's had to make other arrangements in the circumstances mentioned above. I therefore think VWFS should pay Mr A £300 compensation for the distress and inconvenience caused by being supplied with a car that was of unsatisfactory quality.

Both VWFS and Mr A accepted my provisional decision. However, Mr A asked that I reconsider the compensation amount, as he doesn't think £300 is sufficient for the distress and inconvenience he was caused. Specifically, he said he spent many hours complaining about the issue and had to make numerous calls and visits to the dealership. He also said he was under mental pressure to remember to turn off the pre sense system every time he drove the car. Overall, he says the matter has caused him significant mental distress and anxiety for over a year and a half and feels £1,500 compensation would more fairly reflect this impact.

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 have come to the same overall conclusions as those set out in my provisional decision, for the same reasons. Both parties now accept the car was not of satisfactory quality, and largely agree to my redress proposal, so there's no need for me to comment on that further here. Mr A's response focuses on the compensation award for distress and inconvenience – so I've reconsidered this, taking into account Mr A's comments.

I don't dispute the prolonged frustration and worry regarding the possibility of the pre sense fault reoccurring, or Mr A having to remember to turn it off each time he used the car. It is for these reasons that I proposed a 10% refund of rentals paid by Mr A, to reflect impaired use of the car. So, as this has been reflected within the rental payment refund, I don't consider it to be reasonable to ask VWFS to also pay compensation in addition for these reasons.

We wouldn't typically look to award compensation as a result of a consumer needing to make a complaint, it is the unfortunate reality that problems do arise and complaints may need to be made. However, I accept that Mr A had to spend a lot of time communicating with VWFS and the supplying dealership about this matter. And he was inconvenienced in many ways as I've mentioned within my provisional decision. But, overall, I am satisfied the redress set out within my provisional decision is fair and reasonable in all of the circumstances of this complaint.

My final decision

For the reasons set out above, my final decision is that I uphold Mr A's complaint about Volkswagen Financial Services (UK) trading as Audi Financial Services and direct them to:

- End the agreement with nothing further for Mr A to pay.
- Remove any adverse information recorded on Mr A's credit file.
- Calculate a prorated refund of the £4,422 advance rental payment, assuming the

payment was spread equally over the duration of the hire agreement term, refunding an amount equal to the unused period of hire after the car is taken back.

- Refund 10% of the prorated amount of the advance rental for the period Mr A had use of the car.
- Refund 10% of the monthly rentals for the payments made up to the date the car is taken back.
- Pay 8% simple yearly interest on each of the refunded amounts from the date of payment until the date of settlement†; and
- Pay Mr A an additional £300 compensation for the distress and inconvenience caused.

†If VWFS considers that tax should be deducted from the interest element of my award, they should provide Mr A with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 August 2025.

Nicola Bastin
Ombudsman