

complaint

Mr C complains that Volkswagen Financial Services (UK) Limited (VFS) supplied a faulty car and won't take it back for a refund.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 10 February 2016 – a copy of which is attached and forms part of my final decision. In my provisional decision I explained why I considered VFS should take this car back and give Mr C a refund.

Mr C and VFS have both responded to my provisional decision. Mr C accepts my provisional conclusions, but VFS disagrees. It accepts Mr C never worked as a mechanic, but considers he had enough mechanical knowledge to cause the problems experienced with this car. In summary VFS says:-

- if the car had an oil leak when it was supplied that would have been seen much sooner;
- the vehicle had to be recovered again in November 2015 – because of a steering issue. And a second expert thinks there's enough circumstantial evidence to suggest someone tried to damage it by "nefarious means" - supporting its view the earlier oil leak wasn't due to a defect;
- there's a contradiction in my concluding it's unlikely Mr C would have left the spanner behind if he'd dropped it during an act of sabotage; and
- Mr C wanted rid of the car because his personal circumstances had changed and he could no longer afford it.

my findings

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

There's no dispute this car had a major oil leak in July 2015. I accept it's unlikely the car was losing oil for months, without anyone noticing. But, I'm not persuaded that means there couldn't have been an inherent fault present when it was supplied resulting in the leak some months later. And I think the crux of the complaint is whether the oil leak is likely to have been caused by a fault, which was there when Mr C got the car.

I appreciate VFS believes the leak was caused deliberately. It thinks something was done to the engine that caused the oil loss - and now refers me to loose steering nuts found the November after as further evidence of tampering. And VFS has provided a report from a second expert who examined the car then.

He says the roadside patrolman (who recovered the vehicle) noted some "Nyloc" nuts were "*only just threaded on to the bolts*" and had "*bright exposed threads*" at the time. The second expert explains a Nyloc nut is a "failsafe fastener" that doesn't loosen or become undone in service, so he's satisfied the steering nuts couldn't have been loose for long. And he considers the adjustable spanner found at the previous expert's inspection indicates "*someone other than a well-equipped vehicle technician*" slackened the nuts.

The second expert suggests the adjustable spanner was found in October, just a few weeks before he looked at the car. So I understand why he connects the two incidents. But the

spanner was discovered in July, some four months earlier. So I don't think it's likely to have been used to undo steering nuts which came loose in November. And the dealer replaced the engine after the spanner was found in July.

The second expert accepts that work may have involved removing the steering nuts. And I note he finds it "*almost inconceivable*" they wouldn't have been "*fully re-tightened*" after. But I find the suggestion Mr C loosened the steering on purpose - and then drove the car in an unsafe state, simply to give the appearance of another fault - just as unlikely. Overall, and on balance, I'm not persuaded I can safely conclude it's likely the steering nuts were undone deliberately in an apparent further act of sabotage, on the evidence here.

The second expert was also asked to comment on the July oil leak. And his report provides a bit more information about the engine damage found at the time. He says the "*balance shaft (a major internal engine component)* "*snapped*" resulting in the immediate, catastrophic and consequential damage". The second expert finds that unusual and says it normally only happens "*as a result of abuse / neglect or even sabotage / vandalism*". Taken with the presence of the adjustable spanner he concludes there was probably "*some nefarious cause*".

The balance shaft is located within a sealed unit in the engine, so I don't think the expert means to suggest Mr C reached in and used the spanner to physically break it. Instead, I understand him to mean the balance shaft snapped as a result of the oil loss. Consequently, I don't think the fact that the balance shaft was found to be snapped really takes us much further in establishing the cause of the oil leak itself.

I accept an adjustable spanner is not a tool a professional motor mechanic would generally use. And I think it may well have been dropped by Mr C. But, I remain of the view it's unlikely that Mr C (or a third party acting on his behalf) would have left the spanner where it was, if it had been lost during some "*nefarious*" activity.

I appreciate the spanner was found in a location that's not readily accessible - VFS says it's nearly "*impossible*" to reach from above. And, for Mr C "*to remove the spanner if he dropped it inadvertently he would have had to get under the vehicle... which is difficult if you lack the required knowledge*".

I've thought about what VFS says. But I find it difficult to reconcile the assertion that Mr C had sufficient knowledge to cause an oil leak of this nature and loosen steering nuts in the manner suggested - but couldn't remove a panel under the car to get the spanner back if he lost it whilst sabotaging the vehicle (especially when Mr C knew it was likely to be inspected by an expert not long after).

I appreciate VFS is convinced this car's not faulty. And it's impossible for me to be certain of exactly what happened. I want to assure VFS that I have considered everything it has said. Where evidence is incomplete, inconclusive or contradictory, as some of it is here, I must reach my decision on the balance of probabilities – in other words, what I think is most likely to have happened in the light of the available evidence and the wider circumstances.

The second expert says it would have been useful if the engine control unit had been interrogated about what the car was doing when the engine failed in July. I think it's a pity that wasn't done. But I'm satisfied the dealer probably examined the car thoroughly before replacing the engine – and presumably reported its findings to the manufacturer. And I can't

exclude the fact the manufacturer chose not to dispute the related warranty claim and replaced the engine.

So, having re-considered all of the available evidence, I remain satisfied, on balance, that

- the spanner was probably dropped inadvertently during minor maintenance;
- there's not enough evidence here for me to safely conclude the car was damaged on purpose in July 2015; and
- it's more likely an inherent defect caused the oil loss; and
- that was probably present when the car was supplied.

I'm not persuaded the steering problems in November provide enough grounds for me to reasonably conclude that it's more likely Mr C tampered with the car. And, for the reasons I've given, I'm not persuaded I can fairly depart from my provisional conclusion that VFS should take this car back and refund Mr C's deposit.

Mr C hasn't been able to keep up with his repayments under the finance agreement. VFS says it has to report such information accurately to credit reference agencies (CRAs) - as well as the way Mr C manages any arrears going forward. So it objects to my provisional view that all related information should be removed from Mr C's credit file.

I have found Mr C is entitled to return the car for a refund so VFS should cancel the finance. As such I think Mr C is entitled to be put back in the position he would have been if VFS had never provided a faulty car - or the finance. Having said that, I acknowledge Mr C had some use of the car and benefited from the related borrowing so it's fair he should pay for that. And there's no suggestion VFS was wrong to provide the finance to begin with.

So, having considered the specific circumstances here, I think a fair and reasonable outcome overall is for VFS to record information with CRAs until the arrears are paid off. And it should then remove any information about the finance from Mr C's credit file.

my final decision

My decision is I uphold this complaint. In full and final settlement I require Volkswagen Financial Services Limited to

1. Cancel the finance agreement and take the car back at no cost to Mr C;
2. Refund the deposit along with interest at 8% simple per year from the date of payment to the date of settlement;
3. Credit one month's instalment payment and pay Mr C £75 for the distress and inconvenience he experienced before July 2015;
4. Reduce each instalment payment from July 2015 by 25%;
5. Apply the amounts payable under 2 and 3 above to reduce any arrears under the finance agreement;
6. Put an affordable repayment plan in place for any remaining outstanding balance; and
7. VFS may report to credit reference agencies until the arrears are repaid and then it must remove all information related to the finance from Mr C's credit history.

HM Revenue & Customs may require VFS to take off tax from the interest paid. VFS must give Mr C a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 May 2016.

Claire Jackson
ombudsman

copy provisional decision

complaint

Mr C complains that Volkswagen Financial Services (UK) Limited (trading as Volkswagen Financial Services) (VFS) supplied a faulty car and won't take it back for a refund.

background

At the end of 2014 Mr C acquired a new car with finance from VFS. He complained to the dealer about faults shortly after and reported about 15 issues over the next six months. VFS agreed to have the car examined by an independent expert in July 2015. Two days before the inspection the car had a severe oil leak that damaged the engine – which was later replaced by the manufacturer. Mr C says the car wasn't of satisfactory quality when it was supplied, so VFS should take it back and refund his money.

VFS says the dealer and the expert couldn't find most of the faults Mr C complained about. It accepts there were some minor issues, but those were resolved at no cost to Mr C. And VFS offered to refund one month's payment and pay Mr C £75 as a goodwill gesture. VFS says a spanner was found in a panel near the leak site on the expert's inspection. It wasn't the sort of tool a professional technician would use. So it's likely the leak was caused by someone tampering with the engine, not a fault. And Mr C shouldn't be entitled to reject the vehicle.

Our adjudicator recommends the complaint should be upheld. He thinks a new car of this age and mileage shouldn't need the engine replacing. So it's likely the car wasn't of satisfactory quality at the point of supply. He notes Mr C had some use of the car, as he's driven it over 16,000 miles, and finance payments are in arrears. He recommends VFS should

- cancel the hire purchase agreement and take the car back at no cost to Mr C;
- credit three months instalment payments (inclusive of the one month refund VFS offered) plus the £75 goodwill offer towards the arrears - to reflect the time Mr C was without the car while the engine was being replaced;
- refund Mr C's deposit payment of £1,000 with interest at 8% a year from the date the deposit was paid until settlement, and apply the refund to reduce arrears;
- pay any money left over to Mr C; and
- remove adverse information about the agreement from Mr C's credit file.

VFS feels strongly our adjudicator didn't give enough weight to evidence it believes shows the car was tampered with. It says Mr C is a mechanic who didn't want this car because his circumstances had changed. And points out Mr C only reported problems after enquiring about part exchange- and the issues he complained about were either easily fixed or didn't exist.

my findings

Supply of goods legislation says Mr C had the right to expect this car to be of satisfactory quality and fit for purpose. Those two concepts aren't strictly defined. But it's generally taken to mean the car should meet the sort of quality standard a reasonable person would expect in the circumstances.

This was a new car when Mr C got it. In summary, he reported problems with the window operation, wipers and washers, engine noise and vibration, gear changes, loss of power, parking sensors and the LCD screen over the first six months. The dealer carried out some repairs and a software update in early July. I accept these were relatively minor matters and easily resolved – and not all of the issues Mr C complained about could be replicated.

But I'm satisfied there were some quality issues. I think it likely they caused Mr C some inconvenience - not to mention disappointment, especially in a new car. VFS seems to acknowledge that, because it offered to refund a month's payment at the time – and later agreed to pay Mr C £75 compensation.

The car had a catastrophic oil leak near the end of July. I have considered carefully what VFS says about that. It directs me to the evidence of a spanner found near the leak site. And says Mr C worked as a mechanic in the past. So it's likely he (or someone known to him) caused the leak. As such, the car wasn't faulty and Mr C shouldn't be allowed to reject it.

I think VFS is mistaken when it says Mr C is an experienced mechanic. I say this because the dealer looked at Mr C's employment record. And it told VFS (in an email in September) there's no indication Mr C had that sort of history - although he sometimes worked on his own cars.

I don't think it's unusual for a driver to carry out some maintenance on the car he uses. Given the various minor issues Mr C was having, I can see that he might well have looked under the bonnet himself at some stage. So I accept it's possible Mr C dropped the spanner. But I think he's unlikely to have left it there if he did so during the course of some deliberate sabotage. And I'm not persuaded the presence of this spanner means I should conclude Mr C must have caused the leak.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

An independent expert inspected this car after the oil leak but he couldn't find the cause. And I appreciate that's frustrating. But I note when VFS asked the expert to comment specifically on the presence of the spanner he replied "*It ...appeared to have no bearing upon the concerns raised by the customer or those noted during the inspection*". If the expert had seen any evidence that the spanner was the deliberate or inadvertent cause of the oil leak – say the presence of a missing, loose or broken part – I think he would have said so.

The expert's report concludes that the oil leak requires "further investigation by the dealership". I can see the manufacturer subsequently replaced the engine under its warranty. And I'm not persuaded it's likely the manufacturer would have agreed to do that, if it thought the damage was caused by Mr C or a third party.

On balance, from the evidence I've seen so far, I think it more likely than not the oil leak was caused by an inherent fault. And, given the car's age and mileage, that was probably present at the point of supply. I don't think it fair Mr C should have to keep the car in the circumstances. So I agree with our adjudicator VFS should take it back, cancel the finance and refund Mr C's deposit with interest.

Our adjudicator recommends VFS should also credit two instalments towards arrears (in addition to its goodwill offer) for the time Mr C was without this car when the engine was replaced. I understand why he reached that conclusion. But VFS supplied courtesy cars to keep Mr C mobile when this car was in for repairs. I note Mr C says the courtesy cars were bigger and cost more to run – and I appreciate he probably used them less as a result. But I can't reasonably exclude the fact Mr C had use of a car throughout. And I think it fair he should pay something for that.

I have considered what happened carefully. I accept the problems Mr C first complained about were relatively minor and seem to have been resolved. But I've no doubt Mr C was inconvenienced, and deprived of some of the use and enjoyment he could reasonably have expected from a new car, as a result. VFS offered to cancel one instalment payment and pay Mr C £75 for that. And I don't think that's unreasonable.

But I think VFS should have agreed to take this car back in July after the oil leak. I'm satisfied Mr C was put through a good deal of worry and upset because it refused to do so – and blamed him for the damage. Having considered the circumstances overall, for the reasons I've given, I think a fair outcome here is for VFS to cancel one month's payment, pay Mr C £75 compensation and reduce each monthly instalment due after July 2015 by 25%. I consider that fairly reflects the additional inconvenience, upset, loss of use and enjoyment Mr C experienced after that.

I think it's reasonable for VFS to apply any refunds and compensation payments towards the arrears - taking the reduced instalment payments above into account. And work with Mr C to put in place an affordable repayment plan for any remaining arrears if necessary.

my provisional decision

For the reasons I've explained I'm minded to uphold this complaint. And, subject to any further comments I may receive from Mr C and VFS, I intend to order Volkswagen Financial Services (UK) Limited to

1. cancel Mr C's finance agreement and take the car back at no cost to him;
2. refund the deposit, and pay interest on that refund at 8% a year from the date of payment to the date of settlement;
3. credit one month's instalment payment and pay £75 for the distress and inconvenience Mr C experienced before July 2015;
4. reduce each instalment payment due from July 2015 by 25%;
5. apply the amounts payable under 2 and 3 above to reduce arrears under the finance agreement;
6. put in place an affordable repayment plan for any balance outstanding after that; and
7. remove any adverse information about the finance agreement from Mr C's credit file.