

complaint

Mr P complains that the new vehicle he acquired on a hire purchase agreement financed by Volkswagen Financial Services (UK) Limited was not of satisfactory quality. He wants to reject the vehicle and end the agreement.

background

Mr P tells us that at the end of April 2018 he acquired a new vehicle through a dealer I'll refer to as "G". He says that shortly after collecting the vehicle he noticed several faults and wrote a recorded delivery letter to G, seeking to reject the vehicle. He says the faults identified included problems with the gears; paint damage; loud cup holder rattle; door fob not working and problems with the park assist display function. He says G was unhelpful and it wasn't until July 2018 that it took the vehicle in for repairs. Mr P states that after the vehicle was returned the problems were still present and so he again returned the vehicle to G. He says that once again G failed to do the required repairs.

In September 2018, Mr P says he arranged for the vehicle to be inspected by an independent vehicle inspection company I'll refer to as "D". He says D confirmed that the faults he'd originally complained about in May were still present. Despite this, Mr P says VWFS refused to allow him to reject the vehicle.

Since he complained to this service, Mr P reports that the vehicle has continued to experience faults. He says that since acquiring the vehicle it has broken down six times and the transitioning between gears is still not satisfactory. And that on occasions the engine has shut down during use.

VWFS told us that G had repaired the issues with the noise from a cup holder. It said it (G) had not identified any other areas of concern. Based on this, VWFS informed us that it wasn't prepared to allow the vehicle to be rejected.

I issued a provisional decision on this complaint on 16 September 2019. I said I intended to uphold the complaint and that I thought Mr P should be able to reject the vehicle and end the agreement.

Since then both parties have replied. VWFS said the £1,000 deposit had been made to secure the vehicle and had been refunded to Mr P. So it wouldn't be looking to refund this amount again. It made no other comment about the provisional decision. Mr P said he didn't agree with certain parts of it. In particular he thought he should be refunded the cost of a gearbox oil change as he said this wasn't routine maintenance but arose from one of the faults. And he thought he should receive the whole of the scrappage allowance of £2,800 which had been made against the vehicle he surrendered.

I thank both parties for their replies. I've considered them carefully but save for not ordering the £1,000 to be returned I'm not minded to change my provisional decision. I'll explain my reasons in my final decision which is set out below.

my findings

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

I'm sorry Mr P has experienced a considerable amount of inconvenience with the performance of this vehicle. He no doubt thought that by acquiring a new vehicle he could look forward to an extended period of trouble free motoring. Sadly this hasn't happened.

Mr P's hire purchase agreement is a regulated consumer credit agreement and our service is able to consider complaints relating to it. VWFS supplied the vehicle and it's therefore responsible for a complaint about the quality of the vehicle. Whilst I don't apply the law - directly - I do take it into account. And relevant law here includes the Consumer Rights Act of 2015 (CRA).

Briefly summarised, the CRA requires that - in order to conform to contract - goods should be of satisfactory quality when supplied. As this was a new vehicle Mr P was entitled to expect that it would be free from even minor defects when he took possession.

Where information is incomplete or contradictory - as some of it is here - I have to make my decision on the balance of probabilities. That is to say, I decide what is the most likely explanation to account for what's happened. In trying to resolve complaints, we listen to what the parties tell us, and we look to documentary and other evidence to help us reach a decision. Finally, and importantly, we look at what is fair and reasonable.

Mr P sent a recorded delivery letter to G on 8 May 2018 which the tracking report says was delivered the following day. I understand G claims not to be aware of it - but I'm entitled to conclude it was delivered. This letter set out a number of faults which Mr P had identified with the vehicle and he asked to reject it.

The faults identified included, but were not limited to, complaints about a "*clunking*" from the gearbox; cup holder rattling; defect to the bonnet; faults with the multimedia system muting system; the park assist system not displaying on the screen and the key fob not always working.

For reasons that aren't entirely clear, there was a delay until around 11 July when the vehicle was returned to G. Work was done to alleviate the noise with the cup holder. I can't see anything to say that the other issues raised by Mr P were addressed. And on 16 July he once again wrote a letter to G and VWFS seeking to reject the vehicle.

On 20 July Mr P returned the vehicle to G and I've seen a warranty invoice dated 23 July which indicates more work was done to the area of the cup holder. On 26 July Mr P wrote a further letter to G and VWFS confirming his wish to reject the vehicle and including a detailed claim as to other consequential losses he said he'd incurred.

There are notes of various other contacts in the following weeks between Mr P, G and VWFS. And it's clear that Mr P was becoming increasingly frustrated at the refusal of VWFS to accept rejection of the vehicle. So he arranged for an independent inspection to be done. This was carried out by D on 6 September 2018.

D's report details a number of faults with the vehicle. The inspector stated:

- *I can confirm the vehicles remote fob is not operating the door locking;*
- *I can confirm the in-car entertainment mute function is not operating;*

- *I can confirm the bonnet of the vehicle has two paint imperfections present near to O/S headlamp;*
- *I can confirm the TPWS warning lamp is illuminated on the vehicles dash panel;*
- *I can confirm the vehicle dash display is advising "transmission not in park or neutral position" with the gear selector in the park position.*

These faults are essentially the same as some of those which Mr P complained about when he acquired the vehicle in May 2018.

As the vehicle had been returned to G on two occasions in July 2018 that seems to me to have given it ample opportunity to identify and repair any faults. Although Mr P had by then sought to reject the vehicle, I'm going to assume that he was still open to the *possibility* of retaining it if things could be sorted out. That is a reasonable inference to be drawn from him having accepted the vehicle back after repairs were reportedly completed. But given the faults remained - and having obtained the report from D - he decided to continue to seek rejection of the vehicle and the termination of the agreement.

In my opinion, the information supplied shows that many of the faults which had been reported in May were still present in September. Mr P had allowed the opportunity to have the vehicle repaired and those repairs do not - with the exception of the cup holder - appear to have been carried out. I don't consider the apparent failure of G to identify the faults described in D's report to be a reasonable ground for not making those repairs. It was or ought reasonably to have been aware of the nature of the faults about which Mr P was complaining. So at the very least I'd expect to see detailed information to show all these items had been examined individually and the result of such an examination.

As this was a new vehicle and the faults were identified almost immediately after supply, I can reasonably infer they were present at the point of supply. This vehicle should have been free from even minor defects. In these circumstances I can conclude the vehicle was not of satisfactory quality when supplied and therefore that Mr P was entitled to exercise the right to reject it.

We'd normally try to put a consumer back to the same position they were in before goods - which proved not to be of satisfactory quality - were supplied. But that's not always possible.

Although it's probable the use of the vehicle has been impaired it's still managed to cover substantial mileage. When D carried out its inspection, the mileage recorded was 5,141. The latest information supplied by Mr P shows its mileage at 28 August 2019 to be 22,720. It's clear the vehicle has been used extensively, so it's fair and reasonable that this should be reflected in any settlement.

Mr P has indicated he thinks he should recover most of the costs that he incurred at the time he acquired the vehicle. And this includes the costs of some additional insurances, registration fee and vehicle excise duty. Some of the additional items which Mr P purchased at the time he acquired the vehicle, for example a service plan, were not part of the regulated credit agreement. So it doesn't fall within the jurisdiction of this service.

Other items such as the registration fee, damage insurance and vehicle excise duty would be incurred at the time the vehicle was used. And as Mr P has had use of the vehicle I think he should expect to pay the cost of these items. I also think the gearbox oil change, for

which he's supplied an invoice, should be considered a maintenance cost which is to be expected as part of the overall running costs. I've now seen information which says that gearbox oil doesn't have a service interval as it's part of a sealed unit. But that still doesn't show this cost arose directly from any fault with the vehicle or that it rectified that fault.

I've considered carefully the additional comments and evidence supplied by Mr P about the scrappage scheme. But I don't propose to recommend the refund of the £2,800 scrappage allowance. It's not the same as a part-exchange where the price is likely to approximate to the value of the goods being exchanged. The nature of a scrappage scheme is that any goods being surrendered are likely to be of little or no value and are not going to be reused. I've also got to take into account that - without the scrappage allowance - the monthly repayments would've been increased. The agreement was for three years so taking interest into account it's likely the monthly payment would have been around £100 or so extra. Mr P has estimated the value of the vehicle he surrendered as being between £1,710 - £1,890 at the time. But this vehicle would also have suffered depreciation during the period which the agreement has been running which is now around 18 months. Taking both these factors into account I think Mr P has had fair value for the vehicle he surrendered and it wouldn't be fair and reasonable to refund the scrappage allowance in addition to allowing him to reject the vehicle.

In summary, I'm satisfied the vehicle was not of satisfactory when supplied. It follows that I think Mr P was entitled to seek to reject the vehicle in May 2018. And he was further entitled to continue to seek to reject the vehicle when the faults which had been identified by D weren't repaired. I also recognise that whilst Mr P has obtained fair use from the vehicle this has been subject to some degree of impairment. So I think this should be reflected in a partial refund of the monthly repayments.

I'm aware Mr P isn't likely to agree with all parts of my final decision. And of course he's under no obligation to accept it. But I'd respectfully point out that my decision has to be accepted or rejected in its entirety. It's not possible to accept only individual parts of the decision. And if the decision is not accepted then it's not binding on either party. Regardless of whether it's accepted or not, my final decision brings to an end the involvement of this service in this complaint.

my final decision

For the reasons given above my final decision is I'm upholding this complaint.

In order to settle matters, I intend to require Volkswagen Financial Services (UK) Limited to take the following action:

1. End the agreement with nothing further for Mr P to pay from the date of termination;
This is subject to all payments due up to that date having been made;
2. Allow Mr P to reject the vehicle;
3. Arrange for the vehicle to be collected at no cost to Mr P;
4. Refund £199 being the cost of D's inspection report;
5. Refund one monthly payment to reflect impaired use;
6. Pay £300 for distress and inconvenience; and
7. Subject to all payments due under the agreement up to the date of termination being made, make arrangements for details of the agreement to be removed from Mr P's credit file.

Simple interest at the rate of 8% per year should be added to items 4 and 5 above from date of payment to date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 December 2019.

Stephen D. Ross
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