

complaint

Mr O complains that a car supplied by Volkswagen Financial Services (UK) Limited (VFS) isn't of satisfactory quality. He wants a like for like replacement or his money back and the finance cancelled.

background

In 2014 Mr O acquired a new car with finance from VFS. About six months later he had a problem with parking sensors and damaged the rear bumper. Mr O was abroad at the time and took the car to a local dealership. It found water was getting into the boot and carried out repairs under the manufacturer's warranty. Mr O says this hasn't fixed the issue - there's more water in the boot and the car smells bad. He returned to the dealer that supplied the car and it says the tailgate needs more repairs. Mr O believes the car wasn't fit for purpose when he got it and VFS should take it back for a refund.

VFS accepts there was a leak at the end of 2014. But it says that was repaired at no cost to Mr O. And when an independent expert looked at the car in April 2015 he couldn't find a fault, so the car's of satisfactory quality. VFS acknowledges the dealer has recommended further repairs now. But, given the passage of time, it thinks that issue probably wasn't present at the point of supply. Or it may have been caused by a by third party attempting repair or otherwise tampering with the vehicle. VFS offers to pay for repairs not covered by the manufacturer's warranty and pay Mr O £568.77 compensation, as a goodwill gesture.

Our adjudicator considers it's likely this car wasn't of satisfactory quality when Mr O got it. And he should be allowed to reject it now because repairs haven't been successful. She says VFS should take the car back, cancel the finance, refund Mr O's deposit plus interest and pay him £568.77 compensation - for out of pocket expenses and upset and trouble.

Mr O accepts our adjudicator's recommendations. But VFS doesn't. It says (in summary):-

- Mr O first raised the leak issue seven months after he got the car and VFS never accepted it was caused by an inherent defect;
- Mr O first noticed the leak after he damaged the rear bumper reversing, so that might have been the cause;
- The car was repaired under warranty in 2014. And the repairing dealer, the supplying dealer and an independent expert couldn't find any evidence of further water ingress despite extensive testing early in 2015;
- Our adjudicator initially found in favour of VFS, so she must have been satisfied there was no evidence the car was faulty at the point of supply; and
- Mr O only raised the current issues some ten months after repairs were carried out. So VFS can't determine if the cause is some outside influence – such as damage by pets or the equipment used to transport pets or poor quality workmanship by a third party.

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've reached the same conclusions as our adjudicator for much the same reasons.

Legislation provides that Mr O had the right to expect this car to be of satisfactory quality and fit for purpose when he got it in April 2014. This was a brand new vehicle costing nearly

£40,000. There appears to be no dispute that water was found in the boot the following November. And repairs (that took a few months) were carried out under warranty – including replacing the boot lid, various seals and the wiring loom.

I wouldn't expect a new car to need such substantial repairs in a relatively short time in the usual course of events. So I must consider the most likely cause in all of the circumstances. 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.

This leak was discovered when Mr O took the car in for repair after he damaged the bumper. VFS says that might have caused the problem. So I've looked at job cards from the dealer who carried out the repairs. They say the technician found the "*spare wheel well full of water and MMI not working...wiring in boot badly corroded due to water ingress, (wires broken etc)*". If there'd been evidence the leak was caused by Mr O's accident, I think the technician would have said so at the time - instead of repairing the car under warranty.

I find it unlikely that the amount of water and level of corrosion found in November 2014 would have accumulated in the short time between Mr O damaging the bumper and taking the car in for repair. And I can see that Mr O emailed the supplying dealer shortly after he got the car to say the multi media (MMI) unit wasn't working properly at that stage. So, having considered the circumstances overall, I'm satisfied it's more likely than not water had been penetrating the boot for some time - as a result of an inherent fault that was present when Mr O got the car.

I don't think it was unreasonable for Mr O to allow VFS the opportunity to carry out repairs. But he continued to complain to VFS and the dealer about a corrosive smell amongst other things. So I'm not persuaded he was happy with the results. That's why the parties agreed to inspection by an independent expert in April 2015.

I accept that expert and the supplying dealer couldn't find any evidence of further water ingress, or any other fault, at that time. I can see they noted a smell was present but it was suggested that might have resulted from transporting pets. Mr O didn't accept that and complained to this service. Our adjudicator initially considered VFS had acted fairly in repairing the car at no cost to Mr O – in view of the expert's conclusion that the leak had been fixed. But Mr O noticed more water in the boot shortly after, she suggested the car should be examined again.

The supplying dealer inspected and found "*water present in the tailgate (that could be heard when moving the tailgate up or down)*" and "*water under the spare wheel and down the sides of the boot*". The dealer concludes "*the smell was probably due to moisture within the vehicle*".

That suggests I think that water had been leaking into the rear of Mr O's car for some time. I note the technician who carried out the repairs in 2014 found multiple leaks - inside the boot lid itself and around tail light which weren't "obvious" or easy to "pinpoint". And I can see a second mechanic discovered a further leak after the first technician thought he fixed them all. So I'm satisfied, on balance, it's more likely than not the water ingress continued after the car was repaired, albeit very slowly.

I have considered what VFS says about the possibility that the cause of the current water ingress is an intervening event that occurred after the April inspection. But I've seen no

evidence to suggest there's any sign of damage caused by pets, transporting pets or a third party tampering with or working on the vehicle. I note Mr O says he's never taken the car to another garage as it's still under warranty. I think that makes sense. And I've found his evidence to be credible and consistent generally.

So, for the reasons I've given, I'm satisfied the current leaks have most probably resulted from the same inherent fault as the water ingress found in November 2014. I think it likely that inherent defect was present when VFS supplied the car. As such, I consider it fair that VFS should take the car back now and cancel the finance agreement. VFS should also refund Mr O's deposit plus interest – to put him back in the position he would have been if he'd never acquired the car.

I have no doubt Mr O has experienced considerable upset and inconvenience as a result of what's happened. And I don't think he's had the enjoyment he was entitled to expect when he acquired a new car. But I'm satisfied Mr O had some use of it – and I can see he's been kept mobile generally when the car was off the road. I think it fair he should pay for that. And I agree with our adjudicator it's fair that VFS should pay Mr O £568.77 to compensate him for some lost use, the upset and trouble he's experienced and out of pocket expenses.

my final decision

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

1. Take the car back and cancel the finance agreement at no further cost to Mr O;
2. Refund Mr O's deposit, along with 8% interest a year from the date it was paid to the date of settlement;
3. Pay Mr O £568.77 compensation for some lost use, distress, inconvenience and out of pocket expenses;
4. Remove any adverse information about the finance agreement from Mr O's credit file.

HM Revenue & Customs may require VFS to take off tax from the interest paid. VFS must give Mr O 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 O to accept or reject my decision before 11 April 2016.

Claire Jackson
ombudsman