

complaint

Mr K complains that a new car supplied to him under a hire purchase agreement he entered into with Volkswagen Financial Services (UK) Limited, trading as Volkswagen Finance, ("VF"), was not of satisfactory quality. The complaint is brought on Mr K's behalf by Mrs K.

background

Mr K complains about the quality of a new car he bought in August 2012 under a hire purchase agreement. The sale price of the car was over £9,900 and Mr K paid a deposit of £2,976. Mr K said that from delivery there was a gentle squeak audible from the brakes which he dismissed as being inherent of new components. The noise was on and off. But after approximately 5,000 miles the noise became persistent and gradually worse, and was always present. Mr K then became fed up with the noise and felt something was not right. He took the car back to the dealership on three occasions in May 2013 for repairs to be done. The dealership repaired the problem, but the noise returned, and in October 2013

Mr K asked the dealership to inspect the car. He had not been able to bring the car back before then due to family and work commitments. But, because he wanted a guarantee that the noise would disappear after repair which the dealership would not provide, Mr K did not allow the inspection. He then complained to VF that he wished to reject the car.

VF said that it would have expected the complaint to have been raised earlier with it. It also said that it felt that the car was fit for purpose and noted that Mr K continued to be able to drive it. It considered that the dealership's offer of an inspection and repair was reasonable.

our adjudicator's view

The adjudicator considered that the dealership's offer to re-inspect the car to attempt to identify and rectify the issue was reasonable. He also noted that the dealership said that it may look to buy the car or discuss a possible part-exchange, if Mr K no longer wanted the car.

Mr K disagreed and responded to say, in summary, that he still wanted to reject the car as he was unhappy with its quality as the noise was still present. He felt that the dealership had had several opportunities to repair the car, but the noise had always returned after repair and had not been rectified.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr K and to VF on 6 June 2014. I summarise my findings:

The agreement Mr K entered into for the purchase of the car was a hire purchase agreement. Under the terms of that agreement, VF is the provider of both the goods and the associated credit facilities to Mr K.

Hire purchase agreements are covered by the Supply of Goods (Implied Terms) Act 1973. The effect of the Act is that the hire purchase agreement includes a condition that the car will be of satisfactory quality. The concept of 'satisfactory quality' is expanded by the Sale and Supply of Goods Act 1994 and includes: fitness for purpose; appearance and finish;

freedom from minor defects; safety; and durability. These are the requirements of quality in the hire purchase contract agreed between Mr K and VF.

When deciding whether goods were of 'satisfactory quality' it was necessary to consider all the circumstances – including age and the price paid. Mr K had bought a new car. Generally goods are of satisfactory quality if they meet the standard a reasonable person would regard as satisfactory, taking account of all the circumstances.

As the evidence was incomplete, inconclusive, or contradictory (as it was here in relation to whether the car was of satisfactory quality at the time it was supplied to Mr K), I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and in the wider circumstances.

I noted that the car was new and that Mr K had said that there was a noise from the brakes from the time of delivery. I could understand that he may have thought that the noise was due to new components, and so delayed complaining to the dealership about it until May 2013. I also noted that it was very inconvenient and time consuming for the car to be returned to the dealership, especially as it would not provide a hire car whilst the car was being repaired. This meant that Mr K had to organise a third party to follow in a separate car when the car was taken in for repair.

There was a dispute as to whether there were two or three attempts at a repair in May 2013. But regardless of this, I could see that the noise returned. But due to family and work commitments, Mr K could not return the car for repair until October 2013. I noted that Mr K has lost confidence in the dealership after it had failed to remedy the car's faults following at least two repair attempts. So, he said that he did not want to leave the car for an inspection unless the dealership could guarantee that the issue would be remedied. Although I would not generally expect a dealership to provide such a guarantee, I could understand why Mr K had asked for it due to his frustration at the failure of previous repair attempts. He then told VF that he wished to reject the car.

Mr K also said that the dealership had said that the noise problem was characteristic of drum brakes. But Mr K had previously driven cars with drum brakes and had never experienced the brake noise issues before.

Having considered the circumstances here, I found that a reasonable person would find the noise issues in the car to be unsatisfactory. As the car was new, I would have expected it to be free from minor defects such as the noise issues. And on balance, I considered it more likely than not that the fault was present at the time the car was sold to Mr K, and the car was not of satisfactory quality when supplied. If goods are found to be of unsatisfactory quality, the legislation sets out that repair, replacement or rejection of those goods is available as a possible remedy.

The adjudicator recommended that the dealership should have the opportunity to re-inspect the car to attempt to put things right. But I could see that Mr K lacked confidence in the dealership's ability to repair the car due to its previous repair history. I also considered that the adjudicator's recommendation gave a lack of certainty and potential further delays in resolving the issue. So, I considered that Mr K should be permitted to reject the car, and that VF should cancel the hire purchase agreement and write off any amounts owed by Mr K. As the finance agreement was being cancelled, it should be removed from Mr K's credit file. I noted that Mr K had had some use from the car, but that the brake noises have

restricted his enjoyment of it. I therefore concluded that Mr K should be awarded 10% of each monthly instalment to take account of the loss of enjoyment. I also found that Mr K incurred distress and inconvenience arising out of the problems with the car.

Subject to any further representations by Mr K or VF, my provisional decision was that I was minded to uphold this complaint in part. In full and final settlement of it, I intended to order Volkswagen Financial Services (UK) Limited to:

1. Arrange for the collection of the car and cancel the remaining finance at no additional cost to Mr K;
2. Refund Mr K's deposit. Interest should be calculated on this sum at 8% simple per annum from the date of Mr K's payment to the date of settlement;
3. Refund 10% of each monthly instalment that Mr K has paid. Interest should be calculated on these amounts at 8% simple per annum from the date of each payment to the date of settlement;
4. Pay Mr K £200 compensation in relation to distress and inconvenience; and
5. Remove the information about the hire purchase agreement from Mr K's credit file.

If VF considered that tax should be deducted from the interest element of my award, it should provide Mr K with the appropriate tax deduction certificate so that he is able to claim a refund, if appropriate.

VF disagreed and responded to say, in summary, that legislation stated that if a customer is claiming repair, replacement, full or partial refund after six months of ownership, that customer must provide evidence to support their claim that the car was faulty when it was bought. In this case the car was bought new in August 2012 but Mr K did not raise concerns until nine months later in May 2013. So, VF said that the onus of the burden of proof is on Mr K to demonstrate there was a fault with the car, especially as no fault had been found by the dealership.

Mr K had no additional information and was happy to accept my provisional decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I note that VF has referred to the legislation concerning the burden of proof. But I have to decide what is fair and reasonable in the circumstances of this case, and the relevant legislation is one of the things we take account of when doing this. Mr K said that there was a noise coming from the brakes from the time of delivery of the car. I can see that there were at least two attempts by the dealership to repair the car, but the noise returned. After this Mr K lost confidence in the dealership's ability to remedy the noise issue. On balance, I consider that the noise problem was present at the point of sale, so the car was not of satisfactory quality when supplied. It follows that I find that I have no reason to depart from the findings and proposed award outlined in my provisional decision.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of it, I order Volkswagen Financial Services (UK) Limited to:

1. Arrange for the collection of the car and cancel the remaining finance at no additional cost to Mr K;
2. Refund Mr K's deposit. Interest should be calculated on this sum at 8% simple per annum from the date of Mr K's payment to the date of settlement;
3. Refund 10% of each monthly instalment that Mr K has paid. Interest should be calculated on these amounts at 8% simple per annum from the date of each payment to the date of settlement;
4. Pay Mr K £200 compensation in relation to distress and inconvenience; and
5. Remove the information about the hire purchase agreement from Mr K's credit file.

If VF considers that tax should be deducted from the interest element of my award, it should provide Mr K with the appropriate tax deduction certificate so that he is able to claim a refund, if appropriate.

Roslyn Rawson
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