

complaint

Mr D complains about a car he purchased in October 2013 on hire purchase with Volkswagen Financial Services (UK) Limited ('VFS'). In summary, he says that the bodywork was damaged at the point of sale (with a poor wax finish and marks and scratches) and he wants to reject the car.

background

Mr D says that he initially agreed to the dealer covering the cost of a repair conditional on his approval of the finished result. However, he was unsatisfied with the amount of paint that was removed, and that some damage remained. He says he stopped using the car and wishes to reject it.

VFS tried to resolve the complaint by offering to cover the cost of another detailed body polish, any future damage relating to the removal of the paintwork by the repairer, and compensation for the time it has taken to respond to his queries. Mr D did not accept this.

Our adjudicator recommended this complaint be upheld. She considered that the car was of unsatisfactory quality at the point of sale, and that Mr D could fairly reject it. She was satisfied that he should be able to return the car and have his deposit and all his finance payments refunded, except for one month. She also recommended that he receive compensation for insurance, tracker system and road tax expenditure relating to the time he has not been using the car.

VFS disagrees. In summary, it says that upon delivery Mr D made no mention of scratches on the car, and that it was agreed that a valet would take place to remove wax residue only. It says the repairer is not an inspection company but a valet service and is not qualified to provide technical expertise on paint quality, nor is it independent. VFS says that the scratches on the car are at a microscopic level and could not be considered a defect, and the removal of the paint has no impact on the quality of the car.

my findings

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

Where matters are in dispute or unclear I make my findings on the balance of probabilities – which is to say, what I consider most likely to be the case based on the available evidence and the wider surrounding circumstances.

The key issue here is whether or not the car that was supplied to Mr D was of satisfactory quality at the time of sale. When considering the concept of satisfactory quality I take into account many factors such as the price, age and use of the car. It is worth bearing in mind that a higher standard will be expected for a car purchased from new (like Mr D's) than a second hand car. I also note that the cash price of the car is around £150,000 – which, it is fair to say, would set the expectation of quality above that of most new vehicles.

With this in mind I turn to the condition of the car at the point of sale. I consider that there is no dispute that the initial finish of the bodywork was not satisfactory. However, VFS appear to dispute that the car was noticeably scratched at the time of sale, or that Mr D raised the issue of scratching at the time. It says that the main issue at the time was the quality of the wax finish, which it says has been subsequently remedied.

Mr D says that he did notice and raise the issue of the scratching at the time of sale. He says that he reserved the right to reject the car should the repair work not be to his liking. Crucially, Mr D has submitted credible emails which show that he wrote to the dealer soon after delivery specifically mentioning scratching, and that his acceptance of any repair was conditional on an overall right to reject the car.

VFS says that in a phone call to it Mr D only mentioned the problems with the wax finish. However, in Mr D's email to the dealer he says that the scratching has been caused by the poor application of wax. As the two issues appear to be closely related I do not find it significant that in the call with VFS Mr D may have only mentioned the overall wax finish.

Furthermore, I am not satisfied that the repairer is simply a valet service. It appears that it does remedy scratches and bodywork defects. Therefore, if a car was scratched it would appear reasonable to send it to a third party such as it. Furthermore, despite VFS's reservations about the impartiality of the repairer I consider its correspondence to be credible.

I have also looked at the photos of the car prior to the repair work and I can see visible scratching. I do not consider this to be microscopic, and it is not acceptable condition for a brand new car. Based on this evidence and the other information, including Mr D's credible submissions and emails, overall I find it likely that the car was visibly scratched on delivery and that Mr D raised this at the time. As the car was of unsatisfactory quality at the time of sale Mr D had a right to reject the car. However, he allowed VFS an opportunity to remedy the issue.

The repairer informed Mr D by email that as part of the remedial work on the badly affected areas it had to remove more paint than would be ideal for a brand new car. It also informed him that some marks remained on the car which it had not remedied as this would involve even more paint removal. Overall, and bearing this correspondence in mind, I am satisfied that Mr D had fair reason to find the repair unacceptable. Even if only small scratches remain, and a relatively small amount of paintwork has been removed, considering the overall age and cost of the car, and the fact that Mr D had made it clear that he only agreed to a repair conditional on his approval, I find that he is not acting unreasonably by choosing to reject the car now.

While another repair is a remedy that is available to VFS, in these particular circumstances, I am not satisfied that is a reasonable or practical option. I consider it fair that Mr D is able to reject the car, have the finance cancelled and his deposit refunded.

From the available evidence I am satisfied that due to this issue Mr D stopped using the car shortly after purchase. He has recently submitted an odometer reading of around 550 miles which is consistent with this. Mr D says some of this mileage was due to delivery and visiting the dealer or repairer. However, overall I am satisfied that he has had some use and benefit from the car (albeit limited). In the circumstances (and considering the distress and inconvenience he has been caused by the time this matter has taken to resolve) I consider it reasonable that VFS are only able to retain the first monthly finance payment to reflect the benefit which Mr D has had from the car while it has been in his possession.

In this instance, I am satisfied it was necessary for Mr D to keep the car insured and taxed while he was not using it. I also consider it fair in these particular circumstances that he kept the tracker on the car during this time. As he is not getting the benefit of this expenditure due to the fault with the car he should be fairly reimbursed these costs (excluding the costs relating to the first month of ownership).

Mr D has suggested that he should be reimbursed for costs related to insuring and using an alternative car (including depreciation). However, I am satisfied that he would be fairly liable for the cost of running at least one car (including depreciation), and as he is being reimbursed for expenses related to the financed car, I do not consider he can fairly claim these additional costs as part of this settlement.

my final decision

My final decision is I uphold this complaint and direct Volkswagen Financial Services (UK) Limited ('VFS') to:

- take back the car and cancel the finance agreement at no further cost to Mr D;
- refund Mr D his initial deposit;
- refund Mr D all payments he has made on the finance agreement except for the first month;
- refund Mr D his road tax, tracker and insurance costs after one month of ownership to the date of settlement on Mr D producing evidence of these expenses; and
- pay yearly simple interest at 8% on all refunded payments from the date of each payment to the date of settlement.

If VWFS chooses to deduct tax from the interest element of my award it should provide Mr D with a certificate of tax deduction so he may claim a refund, if appropriate.

Mark Lancod
ombudsman