

complaint

Ms B complains that a car she acquired through a hire purchase agreement with Volkswagen Financial Services (UK) Limited (VWFS) is of unsatisfactory quality. Her representative, Mr M, assists Ms B.

background

Ms B acquired a new car via hire purchase for £36,737 at the end of November 2012. In August 2014, she told the garage that the rear view mirror vibrated when the vehicle reached certain speeds. She says this distorted the driver's view and caused them to feel nauseous, so she felt it was a safety issue.

Ms B says that the car is still not right despite several visits to the garage and extensive repairs, which have been completed under warranty. She was initially willing to swap the car for another one of the same make but she no longer wants to. She also wants to claim compensation.

The adjudicator upheld the complaint. He felt that the car had a fault at the time it was sold and that hadn't been put right. He decided it was fair to cancel the agreement and return the car. He also thought Ms B should have her deposit returned, as well as the cost of the independent report that she paid for, and that interest should be paid on these amounts. He didn't think any compensation was necessary since Ms B had either had the use of the car or been provided with another one during the period of the hire purchase agreement.

Ms B and VWFS both rejected this. Ms B says she's made payments on a car she hasn't had the use of and should have her payments refunded. She's out of pocket because:

- The replacement cars she's used have had higher petrol consumption so it's cost her more;
- She put four new tyres on the car at a cost of almost £900 but she's not had the benefit of them.
- The way the interest calculations are made on the hire purchase agreement means she's placed at a disadvantage by returning the car early.

She has also told us that the replacement cars didn't always have the same features as her car so she was disadvantaged. She thinks she should get the payments she made on the car refunded to make up for the issues she's had with it.

VWFS felt the decision was unfair. They feel the fault is more likely to have developed after the car was sold, and if it did then they aren't liable. They point out that Ms B had the car for 18 months before reporting the fault and she'd travelled a significant number of miles in the car by that time. In order to resolve the complaint though they offered to:

- Collect the vehicle at no cost to Ms B.
- Refund the cost of the independent inspection and her two most recent hire purchase payments, and pay interest on both of these costs.

Ms B rejected this and the complaint came to me.

my provisional decision

I issued a provisional decision in this case. I explained why I proposed to uphold the complaint in part. In summary, I concluded that:

- Goods need to be of satisfactory quality. This includes them being free from defects, being safe and being durable. While Ms B didn't report the fault until 18 months after she bought the car, this doesn't mean the finance company can't be held responsible for it. My view was this was an issue over the durability of the car and there is an expectation that the items we buy will last a reasonable time.
- While the car had quite high mileage at the time the fault was reported, I'd seen nothing to suggest this was the cause of the mirror vibration.
- The garage had carried out a series of repairs, none of which solved the problem. It seemed likely they'd accepted there was a defect or they wouldn't have carried out repairs. The two independent reports also confirmed the presence of the fault. They found the mirror vibrated and caused the reflection in the mirror to become distorted when the engine reached around 1800-2000 rpm.
- I was satisfied that it wasn't reasonable for a car of this age and mileage to have developed a fault of this nature. I found the car wasn't fit for purpose. It hadn't been possible to repair it so I didn't think it was appropriate to require Ms B to keep the car.
- When deciding what a fair remedy should be I considered a number of things. Ms B used the car for around 18 months before reporting the fault. In addition, the hire purchase contract included a maximum mileage limit of 10,000 miles a year after which 7.2p per mile was payable. Ms B had exceeded this and under the terms of the contract, she would owe the finance company money. I didn't think it was fair to ask her to pay this in the circumstances but thought it was a relevant factor.
- I also considered what Ms B told me about the costs she incurred, the inconvenience she experienced and the fact that, whilst she was given another car, it didn't have all the features of her own car.
- I decided it was fair for VWFS to allow Ms B to return the car, refund her deposit and 20% of her payments from November 2012 and cancel her agreement without any cost to her. She should also get back the cost of the inspection report she paid for. I awarded compensation of £250 because VWFS incorrectly told Ms B that they weren't responsible, as the fault didn't develop until 18 months after she bought the car. Their final response also indicated they relied on the independent expert report to support the fact that they weren't responsible, when in fact it was inconclusive about the cause of the fault.

I invited the parties to make any final points if they wanted, before issuing my final decision. Both parties objected to my provisional view.

Ms B says that she feels the fault was present at the time she bought the car and simply got worse over time. She would like 100% of her payments returned so she can buy another car. She referred to another similar case considered by this service which she thinks I should follow. She says the excess mileage should be disregarded because if she'd kept the car - as she'd always planned to - it wouldn't have been an issue.

Ms B says that we should consider the issue of refunding her repayments entirely separately to the return of the car. She'd like me to return all her payments and allow her to keep the car. If this isn't possible then, as the car isn't safe and can't be sold, she'd like me to tell VWFS to make it a "write off". This would mean she could come to an arrangement with her insurers to recover her losses.

VWFS appeared to misunderstand my decision and thought I was suggesting it was an inherent fault with the car. They repeated their view that this was not a fault that was present at the point of sale and they aren't liable for any faults that develop after that.

my findings

I thank both Ms B and VWFS for taking the time to respond. I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered the other case Ms B has referred to but I need to make my decision on the facts of this case. It's not appropriate to make comparisons because each case is unique.

Ms B feels the fault was present when she bought the car. There is no report of the fault occurring before August 2014 - 18 months after the car was purchased. I remain of the view that this is an issue about the durability of the car. I'm disappointed that VWFS have tried again to suggest that their responsibility for faults was limited.

Ms B asks me to disregard the excess mileage on the car. The contract she signed gave both a maximum annual mileage and a maximum total mileage. Both had been exceeded. The excess mileage charge is payable on demand under the terms of the contract. Whilst I still don't think it's fair to require her to pay the charge, I still think it's right to consider it.

Under the hire purchase contract VWFS remain the owner of the car until the final payment is made under the contract. I can't order VWFS to transfer ownership of the car to her so she can keep it.

The return of a proportion of her payments is intended to compensate Ms B for the loss of enjoyment of her car when she could not use it. I've seen nothing to suggest she lost the use of the vehicle totally, after the fault was reported so I don't think the return of all of her payments is appropriate. I remain of the view that the return of 20% of her payments is fair. The rest of my decision remains unchanged and is outlined below.

Finally, I note Ms B's request that the car is written off but I don't have the power to order VWFS to deal with the car as she asks.

my final decision

My final decision is that I uphold this decision in part. I require Volkswagen Financial Services (UK) Limited to:

- take back the car at no cost to Ms B and cancel the finance agreement.
- refund Ms B her deposit.
- refund 20% of her payments from November 2012.
- refund the cost of her inspection report.
- pay yearly simple interest on all refunds at 8% from the date of payment to the date of settlement.

- pay £250 compensation to Ms B.

If VWFS believes it is legally required to deduct tax from the interest element of my award, it should provide Ms B with a certificate of tax deduction when it makes payment, so she can claim a refund, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 11 April 2016.

Nicola Crabb
ombudsman