

complaint

Mr K complains that the vehicle he acquired through a hire purchase agreement financed by Volkswagen Financial Services (UK) Limited was misrepresented. He wants to reject the vehicle and receive a refund or a replacement vehicle.

background

Mr K is represented in this complaint by a friend - Mr Q - but for ease of reading I'll mostly refer to Mr K.

Mr K tells us he wanted to purchase a new vehicle and visited a dealer, who I'll refer to as "V", on 8 January 2018. He says he was shown a vehicle in the showroom which was described to him as being a 7 speed version of the model he had chosen. And he was given a brochure for this model. Mr K says he agreed to the deal involving this vehicle and signed an order form. He says the deal included an allowance of £5,000 in relation to his existing vehicle. Mr K says a few days later he was asked by the dealer to sign some additional paperwork in relation to the new vehicle - and he says he did this. Mr K states that when he collected the vehicle and drove it away he noticed that it was a 6 speed not a 7 speed model - so he complained to V. He told us that V is now saying he agreed to accept the 6 speed model - which he denies.

VWFS told us that Mr K had originally ordered a 7 speed model but had agreed to accept a 6 speed variant as that was already in stock. And that he'd signed an order form for the vehicle on 8 January. It said he'd subsequently signed documents for the confirmation of registration details on 18 January and the terms and conditions of the finance agreement on 19 January. As all the documents referred to a 6 speed vehicle it thought Mr K was fully aware he was acquiring this variant.

I issued a provisional decision on this complaint on 11 June 2019. In my provisional view I said I was minded to uphold the complaint as I thought there had probably been a misrepresentation over the description of the vehicle. But I said I did not intend to recommend the refund of the "*scrappage*" allowance which had been applied in respect of Mr K's previous vehicle.

Since I issued my provisional decision VWFS has not replied. Mr K's representative has responded and said he does not agree with my provisional view. He's emphasised that Mr K didn't want the vehicle but was forced to use it whilst the complaint was investigated. And he doesn't feel the level of compensation offered is sufficient. I'll deal with individual aspects of the response in my final decision which is set out below. But as no new information has been provided I'm not minded to change my provisional view.

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 that Mr K has experienced the frustration and upset which has surrounded his acquisition of this vehicle. I've no doubt that he was looking forward to having what at the time was one of the most recent models. So I can understand his sense of disappointment when he realised he'd been provided with a different model to that which he'd expected.

As Mr K is alleging a misrepresentation I should explain our approach to such complaints. I don't apply the law - directly - but I do take it into account. A misrepresentation is a false statement of fact upon which a consumer relies and is induced into acting upon it. Mr K acquired the vehicle through a hire purchase agreement and under present legislation - as the provider of finance and supplier of the vehicle under this agreement - VWFS is equally responsible for any misrepresentation made by V in relation to the vehicle.

Where evidence is unclear or incomplete - 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. This is in line with our fair and reasonable remit.

In this case there is information - including documentary evidence - which is ambiguous and at times contradictory. And it mostly relates to what was said and agreed between Mr K and V's sales agent in the time leading up to Mr K collecting the vehicle. Unfortunately the sales agent is no longer employed by V. So it's not possible to seek further clarification of the notes and documents which relate to the circumstances in which Mr K acquired the vehicle.

There's no doubt Mr K initially ordered a 7 speed model. And an order form for this variant was prepared on 8 January which he signed. But I've also been provided with a copy of the same form - but one which contains an amendment which shows the 7 speed model being crossed out and a 6 speed model substituted.

VWFS notes record that V explained to it that Mr K had initially wanted a 7 speed model but had agreed to the 6 speed variant as that was already in stock. And VWFS points to the "*New Vehicle Invoice*" form - for the six speed model - which it says confirms the vehicle was ordered on 8 January. It also says Mr K's signature appears on the amended order form.

I assume the inference they wish me to draw is that Mr K had a change of mind almost immediately and that the change to the order form was made at that time.

This would potentially be a persuasive argument - were it not for the fact that Mr K has supplied me with a copy of the same order form - but one where the reference to the 7 speed model is unaltered and there is no mention of the 6 speed variant.

So I think it's probable that when Mr K left V's premises on 8 January he was in possession of a copy order form relating only to the 7 speed variant.

It also seems that the change to the order was registered upon V's system only on 17 January. This further implies that the error was discovered sometime later than 8 January.

The other issue which causes me to doubt the authenticity of the amended order form is that there is no change in price details. It's not in dispute that the 7 speed variant is more expensive than the 6 speed model. But both the version supplied by Mr K and that supplied by VWFS (who I think obtained it from V) have the same total cost of £28,458.

If, as is being suggested, the original order form was prepared for the 7 speed model and then altered - I'd have expected to see a reduced price being quoted. And I'd have expected Mr K to be provided with an amended copy to take with him.

I also think it's probably significant that Mr K is not suggesting that the vehicle with which he was supplied was other than the vehicle he'd seen in the showroom. That would be consistent with an error being made in the vehicle description made to him and on the original order form. And if - as seems likely - it was only later discovered (after Mr K had left) that the showroom model was 6 speed and not 7 speed it could account for V's copy of the order form being amended but Mr K still having an unaltered copy .

When he signed the documents on 18 and 19 January I doubt if Mr K gave much attention to any peripheral details in those papers. He was signing a finance agreement and a registration document. The main relevance of those documents (how the vehicle was to be paid for and to ensure it was legally able to be on the road) was not about the individual specifications of the vehicle.

I've also got to take into account Mr K's actions - and whilst they don't prove there was a misrepresentation - they are consistent with him being convinced the wrong vehicle model had been supplied. And that it was an important factor to him.

On a balance of probabilities I think there was a misrepresentation regarding the description of the specification of this vehicle. I don't think any harm was intended - as in reality Mr K was supplied with the vehicle he'd seen - and I think the alteration probably arose more out of a desire to avoid embarrassment than any malign intent.

Where we find there's been a misrepresentation our preferred option would be to try and restore Mr K to the same position that existed immediately before the misrepresentation. That's not possible here as it's eighteen months on and Mr K has had the use of this vehicle throughout this period. It's only fair and reasonable that he should pay for this as even if he'd got a different vehicle he'd still have the expense of running it.

I've also got to consider that as part of the overall deal Mr K handed over his existing vehicle. But I've seen evidence that it was 12 years old, with 212,000 mileage recorded. The invoice states than an allowance of £5,000 - described as a "*Scrappage Upgrade Bonus*" was made against the cost of the new vehicle.

I think it's fair and reasonable to treat this as different from a "*part-exchange*" allowance. By and large "*scrappage schemes*" are designed to encourage a customer to swap an older, more polluting vehicle, for a less environmentally harmful vehicle. There's no likelihood the exchanged vehicle will be put to further use. And it seems it was scrapped in this case.

As I intend, as part of my final decision, to suggest the agreement should be ended I've got to decide what, if any, redress Mr K should receive for his old vehicle.

The finance agreement was scheduled to last for 48 months. So the £5,000 allowance had the effect of reducing the monthly repayments by at least £100 - and probably more if interest is taken into account. Whilst this is not an exact calculation I think it's fair and reasonable to suggest that Mr K has benefitted to the value of at least £1,800 to date. I think that's probably more than the old vehicle was worth - probably a good deal more. In my provisional view I did say that I would be prepared to reconsider this - if Mr K could show me the vehicle he surrendered was worth more than I had estimated. As I've not been provided with anything that contradicts my provisional view I shan't be recommending any further compensation over this aspect.

I've also been told about legal expenses incurred by Mr K. Although I've not seen the exact nature of these it does not affect my view on this matter. There is no fee charged to a complainant to bring a case to this service. And if a complainant incurs legal expenses as a result of seeking advice about alternative means of pursuing his complaint - such as bringing a claim through the courts - then any costs would need to be applied for in those proceedings.

In summary, I think it's probable there was a misrepresentation - and that Mr K should be allowed to reject the vehicle. But I'm not intending to award any further redress in respect of the vehicle for which the scrappage allowance was made or for legal costs.

I accept Mr K has experienced distress and inconvenience as a result of the misrepresentation and delays in VWFS's response during the investigation of this complaint. So I intend to recommend VWFS pays £400 in respect of the distress and inconvenience for which it's responsible.

I'm aware Mr K and his representative - whilst accepting some parts - are unlikely to be completely satisfied with all my findings and recommendations. And in particular it's already been made clear they feel the overall level of compensation is not sufficient. I entirely respect their view to hold an opinion different to my own and it's open to Mr K to accept - or reject - my final decision as he sees fit.

But I should respectfully point out that - in order to benefit from those aspects with which Mr K agrees - it would be necessary for him to accept the entire decision. Likewise if Mr K rejects my final decision then he would be able to pursue all aspects of his complaint by other means if he wished to do so.

But whether my final decision is accepted or not it brings to an end the involvement of this service in seeking an informal resolution of this complaint.

my final decision

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

I now require Volkswagen Financial Services (UK) Limited takes the following action to settle this complaint:

1. End the agreement with nothing further for Mr K to pay. (This is subject to payments due up to the date of termination being made);
2. Arrange for the vehicle to be collected at no cost to Mr K;
3. Refund the deposit of £300 to Mr K;
4. Pay £400 compensation to Mr K for distress and inconvenience;
5. Subject to the payment of all sums and charges due under the agreement, to arrange to have the record of the agreement removed from Mr K's credit file.

Simple Interest at the rate of 8% per year should be added to item 3 above from date of payment to date of settlement.

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

Stephen D. Ross
ombudsman