

## **The complaint**

Mr N is unhappy that a car supplied to him under a hire purchase agreement with Volkswagen Financial Services (UK) Limited trading as Volkswagen Financial Services ('VWFS') was of an unsatisfactory quality.

## **What happened**

In March 2022, Mr N was supplied with a new car through a hire purchase agreement with VWFS. He paid an advance payment of £5,000 and the agreement was for £37,340 over 60 months; with monthly payments of £732.80.

The car was damaged by fire in June 2022, and it took six-months for this damage to be repaired. Mr N complained about this, which was dealt with under a separate reference number. Mr N accepted a resolution to this complaint.

In July 2023, Mr N complained to VWFS about issues with the infotainment system, speedometer, and four-wheel drive. VWFS didn't respond to this complaint within the timeframe they had to do so, so Mr N brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator explained that, as the complaint about the fire had already been dealt with, and Mr N had accepted a resolution to this, then this wasn't something we could look at again. And the investigation would only consider the new faults.

The investigator thought the evidence Mr N provided showed there were faults with the car. Given the age of the car, and the mileage travelled, she said that the car wasn't sufficiently durable when it was supplied, and this made it of an unsatisfactory quality. As VWFS had already had an opportunity to repair the car (when the fire damage was repaired) the investigator said that Mr N should now be able to reject the car.

As such, the investigator recommended that VWFS take back the car and end the agreement; refund the advance payment Mr N paid; refund 15% of the payments he'd made since July 2023; and pay him an additional £200 compensation.

Mr N didn't agree with the investigator. He didn't think the 15% refund was fair as it didn't account for the six months the car was in the garage being repaired after the fire, and it means he's paid over £13,000 for an unroadworthy car. He also said that the problems he's complaining about now started in December 2022 (although he's not been able to provide any evidence of this). Because of this, Mr N said he should either receive a full refund of all the money he's made, less a deduction for mileage, or be given a replacement car and be allowed to continue with the agreement.

VWFS said they hadn't seen any evidence of a fault with the car. The investigator provided this evidence to them, and they've made no further comments.

I issued a provisional decision on 12 December 2023, where I explained my intention to uphold the complaint. In that decision I said:

*In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr N was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.*

*The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, VWFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.*

*The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless VWFS can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr N to show it was present when the car was supplied.*

*So, if I thought the car was faulty when Mr N took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask VWFS to put this right.*

*Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here, and how. I note Mr N has referred to the time the car was being repaired after the fire and wanting some compensation for this. However, this has already been dealt with as a separate complaint, and our rules don't allow us to look at this again. So, anything that happened before the car was returned to Mr N following the fire damage repair hasn't been considered as part of my decision.*

*I've seen the videos Mr N has sent, which show the infotainment system isn't working. I've also seen a copy of an inspection carried out on the car on 12 November 2023. The car had done 10,163 miles at the time of this inspection. The inspection report says:*

*"Multiple multi media issues witnessed whilst vehicle was in our custody. The touch sensitive functions would stop working for long periods of time with no ignition cycle recovery. The media interaction screen would often (not always) not react to gestures or touches given by the operator making it difficult to make the environment comfortable. The Driver Assistance (DA) systems faulted once during a test drive resulting in us aborting the test drive for insurance liability purposes. This happened during normal driving conditions, engine was at temperature so all other mechanical systems were assumed to be operating within tolerance.*

*We witnessed a failure within the all wheel drive system however, when driving under normal conditions however, when interrogated there were no stored fault codes.*

*It is unknown at this point whether the repair has been carried out to an unsatisfactory standard or whether there are still issues due to the damage that have not been repaired."*

*Based on what I've seen, I'm satisfied there is a fault with the car. I've considered whether this is likely to be related to the fire, but I don't think that's the case. I say this because I've seen details of what work was carried out on the car after the fire. And this includes "wiring*

loom replaced.” As this is an electrical fault, and the wiring loom has already been replaced, I’m satisfied it’s more likely than not the current fault relates to one of two scenarios:

- 1) a faulty wiring loom was fitted to the car after the fire, and this has resulted in the infotainment system not working correctly; or
- 2) the infotainment system failed much sooner than could reasonably be expected, so wasn’t sufficiently durable.

Either of these scenarios would make the car of an unsatisfactory quality.

Section 24(5) of the CRA says “a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.” This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it’s not a single chance of repair for the supplying dealership AND a single chance of repair for VWFS – the first attempted repair is the single chance at repair. What’s more, if a different fault arises after a previous repair, even if those faults aren’t related, the single chance of repair has already happened – it’s not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, or if this fails to identify and fix a failing part, as was the case here, then Mr N has the right of rejection.

Mr N has been able to use the car after it was returned to him following the fire damage repair. While I appreciate he didn’t necessarily feel safe driving the car, in case it set on fire again, this didn’t happen. And I can only consider compensation for what actually happened, not what might have. Because of this, I think it’s only fair that he pays for this usage, and for the availability of this car to be used.

However, given the issues with the infotainment system, I’m also satisfied that Mr N’s usage and enjoyment of the car has been impaired. Because of this, I also think it’s fair that VWFS refund some of the payments Mr N made. And I think 15% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality.

Mr N has said the faults with the infotainment system started in December 2022, when the car was returned to him, but he hasn’t been able to show that was the case. The investigator has said this refund should start in July 2023, when Mr N raised his complaint with VWFS. While I would normally agree with this, as in scenarios like this the complaint is the first evidence of any fault that can be provided, in this instance Mr N complained to us first. And this complaint took place in March 2023. As such, I’m satisfied there was a fault with the car from at least March 2023, and the 15% payment refund should start from this date.

Mr N has provided evidence of the £24 costs he’s incurred in having the car inspected. And, given that the car wasn’t of a satisfactory quality, I think it’s only fair that VWFS reimburse these costs.

Finally, it’s clear that Mr N has been inconvenienced by what’s happened and by having to arrange for the car to be inspected. And he was further inconvenienced by not being able to do long journeys in the car because of the infotainment system issue, and how it occasionally affected the all-wheel drive system. So, I think VWFS should compensate him for this.

The investigator had recommended VWFS pay him £200, which is in line with what I would’ve directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my decision.

Therefore, I intend to ask VWFS to:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr N;
- remove any adverse entries relating to this agreement from Mr N's credit file;
- refund the £5,000 deposit Mr N paid (if any part of this deposit is made up of funds paid through a dealer contribution, VWFS is entitled to retain that proportion of the deposit);
- refund 15% of the payments Mr N has paid from March 2023 to the date the agreement ends;
- upon receipt of proof of payment, reimburse the £24 Mr N paid for the November 2023 inspection on the car;
- apply 8% simple yearly interest on these refunds/reimbursements, calculated from the date Mr N made the payments to the date of the refund<sup>†</sup>; and
- pay Mr N an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr N a certificate showing how much tax they've taken off if he asks for one.

## Responses

Mr N again said that he felt the 15% refund of the payments was unfair, as he'd only done around 10,000 miles since the car was supplied to him, and it means he would've paid around £11,000 for this usage. He said he took out the agreement with the intention of owning the car at the end, and to not do so *"seems like robbery to me."* Mr N felt he would be better to sell the car privately and repay what he owed to VWFS under the agreement.

VWFS again said there was no evidence of any faults with the car. They believed the only acceptable evidence would be a report under the VWFS warranty scheme, *"as they are best trained to investigate technical issues with the brand models and they are the ultimate specialists."* They didn't think the report provided by Mr N was acceptable because it was provided in a spreadsheet format and had only cost £24. They also didn't think the video evidence was sufficient *"because we cannot verify if the vehicle is being operated in normal conditions."*

VWFS referred to another decision by the Financial Ombudsman Service, where the deciding ombudsman said the main dealer's workshop were the most experienced with a particular make and model of vehicle, and believed this meant Mr N's report should be discarded.

VWFS felt that my comments about the wiring loom having been replaced meaning the replacement wiring loom was either faulty, or that the infotainment system had failed sooner than could otherwise be expected for other reasons were *"speculation."* They said the CRA allowed then the right to repair and questioned why they weren't allowed to carry out a diagnostic on the car and undertake any necessary repairs. Finally, they didn't think there was any evidence of a fault with the infotainment system in March 2023.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've noted Mr N's concerns about the amount he's paid for the usage of the car. However, I addressed these concerns in my provisional decision. I also explained why I can't consider anything related to the previous fire, and that Mr N had already been compensated for this.

I've also considered the amount Mr N financed, the deposit he put down, the term of the agreement, the interest being charged, and the age and milage of the car. If I were to consider fair usage instead of a percentage reduction, given all these factors, I would consider a payment of around £620 a month to constitute fair usage. Which is in line with a 15% reduction on the monthly payments – the amount I provisionally decided should be refunded to Mr N.

So, while I've given consideration to Mr N's comments, these don't change my view as to what I think is a fair remedy in the circumstances. Mr N has said he would be better off if he were to sell the car and clear the finance. This is an option that may be available to him if he were to reject my decision and is something he would need to discuss with VWFS.

I've also noted VWFS's comments. While I recognise they've made reference to other decisions the Financial Ombudsman Service has made, a crucial part of our service and the way we consider complaints is that we consider each complaint on its own merits and its own individual circumstances. So, my decision won't be impacted in any way by any decision made on a different complaint, no matter how similar VWFS feels the situation is.

I don't accept VWFS's view that the only acceptable report is one undertaken by their warranty company. While I accept they are highly trained technicians, this doesn't mean that other people aren't sufficiently able to identify and diagnose faults. Especially when something like the infotainment system isn't working correctly and displays warning messages that certain systems have failed during a test drive.

I also don't accept that the video evidence provided is insufficient as it doesn't show the car was being operated in normal conditions. I say this because I haven't seen anything to show me under what abnormal conditions the infotainment system is designed not to work, and for the car to shut off systems such as all wheel drive. So, I'm not convinced it was the way in which the car was being operated that caused the problems, to the exclusion of any other faults with the car.

Given this, I remain satisfied that it's reasonable to rely on the report Mr N provided.

Turning to my comments on the wiring loom, I would remind VWFS that, where evidence has been incomplete or contradictory, the rules of our service allow me to reach my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances. Given the evidence I've seen, I remain satisfied that it was reasonable for me to conclude that either the replacement wiring loom was faulty, or the infotainment system was insufficiently durable, and that either of these circumstances was the most likely reason for the fault occurrence. And, for the reasons already provided in my provisional decision, either circumstance makes the car of an unsatisfactory quality.

VWFS have commented on the CRA and the right to repair. But they are aware of the fire to the car, and the repairs that took place following this. As the CRA only allows for a single chance at repair, not a chance per fault, I remain satisfied VWFS don't have a further right to attempt a repair on the car. However, they were able, at any point after Mr N complained to them in July 2023, to arrange for the car to be inspected. But they chose not to do so. Given the time that's elapsed, I no longer think its fair or reasonable that they now ask for this opportunity, when it's already been available to them for nearly six months. As such, I'm satisfied it's reasonable for me to make my final decision based on the evidence I have.

Finally, VWFS have said there's no evidence the infotainment system failed in March 2023. Except that Mr N raised a complaint with this service on 14 March 2023 about the failed infotainment system. I consider it highly unlikely that Mr N would raise a complaint about a fault that didn't exist, only to have that exact same fault manifest itself at a later date, completely independently. As such, I remain satisfied that the fault occurred no later than 14 March 2023.

For the reasons given, the comments I've received from Mr N and VWFS don't change my view on what happened, or what VWFS should do to put things right. So, I see no compelling reason why I shouldn't now adopt my provisional decision as my final decision.

### **Putting things right**

For the reasons already stated, VWFS should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr N;
- remove any adverse entries relating to this agreement from Mr N's credit file;
- refund the £5,000 deposit Mr N paid (if any part of this deposit is made up of funds paid through a dealer contribution, VWFS is entitled to retain that proportion of the deposit);
- refund 15% of the payments Mr N has paid from 14 March 2023 to the date the agreement ends;
- upon receipt of proof of payment, reimburse the £24 Mr N paid for the November 2023 inspection on the car;
- apply 8% simple yearly interest on these refunds/reimbursements, calculated from the date Mr N made the payments to the date of the refund<sup>†</sup>; and
- pay Mr N an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr N a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr N's complaint about Volkswagen Financial Services (UK) Limited trading as Volkswagen Financial Services. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 January 2024.

Andrew Burford  
**Ombudsman**