

The complaint

Mrs W complains that a car she acquired via a hire purchase with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services ("VWFS") wasn't of satisfactory quality.

What happened

In December 2020 Mrs W entered into a four-year hire purchase agreement with VWFS for a new car. She paid an initial rental of £5,740 and the monthly repayments were set at £257.24.

In August 2022 the car suffered a fault with its gearbox and Mrs W took it to a manufacturer approved dealership for repair. Mrs W was unhappy at the service provided by this dealer as she says she was initially told the repair would take a week, but it actually took seven, they didn't communicate with her, and the courtesy cars provided weren't like for like. The repair was carried out under the warranty and so at no cost to Mrs W.

The car was returned to Mrs W in October 2022, and she complained to VWFS about the service she'd received and the delay in the repair. Mrs W also said she was concerned that the repair hadn't fixed the problem as the car continued to judder.

VWFS partially upheld Mrs W's complaint. It said that it and the dealership were two different entities and so a complaint about the service the dealer had provided, and the quality of the courtesy cars would need to be directed to the repairing dealership. However, VWFS acknowledged Mrs W had been without the car for seven weeks and that, although kept mobile, there had been a loss of enjoyment. It also acknowledged that Mrs W would have been caused distress and inconvenience dealing with the fault. It offered Mrs W, as a gesture of goodwill, a total compensation payment of £350. This figure was made up of a reimbursement of 50% of the payments made under the agreement by Mrs W while the car had been repaired together with an additional £150.

VWFS said that Mrs W should liaise with the repairing dealership about any problems with the car following the repair.

Mrs W was unhappy at the offer of compensation from VWFS and so didn't accept its gesture of goodwill. Mrs W says the car continued to judder and there were issues with the handbrake. And then in December 2022 Mrs W says the car nearly failed to stop in the snow despite the brake being applied. She called roadside assistance and it was arranged for the car to be returned to the supplying dealer.

Mrs W says she was unhappy at how the supplying dealer dealt with the issues with the car and as the dealer declined to allow her to reject the car, she agreed to sell it back to them. Mrs W says this has resulted in her suffering a financial loss as she didn't get her deposit back and had to pay for a car when she couldn't use it. Mrs W made a complaint to this service.

Our investigator didn't recommend Mrs W's complaint should be upheld. She said although

she didn't think the vehicle had been reasonably durable, the right remedy for that under the Consumer Rights Act 2015 was repair which had taken place. Our investigator said there was no evidence that had been produced to show this repair had failed.

Our investigator also said that as VWFS hadn't been aware of the events in December 2022 it hadn't had an opportunity of investigating what had been wrong with the car at that time. She said she didn't think she could reasonably conclude that VWFS would have agreed to the car being rejected at the time the supplying dealer had purchased it from Mrs W. So, in all the circumstances, our investigator said she thought VWFS's offer had been fair, and she wouldn't ask it to do more.

Mrs W disagreed with the view of our investigator. She said the car had developed a fault with its gearbox in August 2022 but even after it had been repaired it had continued to have issues and juddering which she had told VWFS about. It had referred her back to the repairing dealership. But in December 2022, when there had been snow, Mrs W said the car had been involved in a near miss due to its faulty braking. She said the car had then been taken back to the supplying dealer who had initially said it was a characteristic of the car and then said the car had been fixed though that wasn't the case. Mrs W said she had been unhappy at the supplying dealer's handling of the matter. Mrs W said that she had then decided to sell the car back to the supplying dealer because it had an inherent problem.

Mrs W said the car hadn't been of satisfactory quality from the point of supply and it would be fair for her to be reimbursed her deposit and to receive compensation.

As the parties were unable to reach an agreement the complaint has been passed to me.

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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mrs W is a regulated consumer credit agreement this service is able to consider complaints relating to it. VWFS is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here the car was new, so would be expected to be fault free at the point of supply and not to have required repairs and maintenance for some time. I've seen that in August 2022 repairs were required to the car's gearbox which were carried out under the warranty.

I've seen that Mrs W was unhappy at how long these repairs took and that the courtesy cars provided by the repairing dealership weren't the same as the car that was being supplied and didn't have working Sat Nav. She was also unhappy that the repairing dealer had to be chased to find out what was happening and that when the car was returned, a warning light had then illuminated for the brake fluid which was a repair she thought could have been carried out before the car had been handed back to her. Mrs W raised these concerns with VWFS in a complaint.

During Mrs W's complaint to VWFS there were a number of calls between them. Mrs W says that during these calls she told VWFS she continued to have concerns about the car because it juddered. I've seen that VWFS sent Mrs W its final response to her complaint in November 2022 and in that letter, it says, it is aware Mrs W was unhappy with the repair but that she should continue to liaise with the repairing dealer about that. It then offered Mrs W, as a gesture of goodwill, £350 in total for the loss of enjoyment and dealing with the fault. I understand this offer is still open to her to accept.

I agree with the view of our investigator that a car of this age (under two years) and mileage (around 17,500) wouldn't been expected to require the repair work that it had to the gearbox in August 2022. I don't think the car was as reasonably durable as a reasonable person would have expected. However, although the car developed a fault that doesn't mean that Mrs W was entitled to reject it. Under the Consumer Rights Act the retailer has an opportunity to carry out a repair first which is what happened.

I appreciate Mrs W wasn't happy about how long the repairs took in August, but this seems to have been due to a part having to be ordered. However, the lack of contact and updates from the repairing dealer isn't something that VWFS is responsible for, so I think it acted reasonably passing that matter to the dealer to respond to. VWFS also wasn't responsible for the provision or quality of a courtesy car though I think it acted fairly by offering Mrs W a 50% reduction on the payments that she had paid under the agreement during the period she wasn't able to use the car. I also think VWFS acted fairly by adding an additional £150 to that amount to reflect the distress and inconvenience caused to Mrs W dealing with the faulty car at that time.

So, I think the offer made by VWFS in its final response letter was fair. I also think that VWFS's response to Mrs W's view that there could be an issue with the repair was reasonable. At that time there was no clear evidence what was wrong with the car or whether this was linked to the repair, or in fact a new issue. Mrs W needed to liaise with the repairing dealership or another dealership for further investigations to be undertaken.

Mrs W has described events in December 2022 which led to the car being taken back to the supplying dealer. Mrs W didn't contact VWFS and dealt only with the supplying dealer. VWFS says it was unaware of any problem with the car in December. Mrs W says the supplying dealer at first said there was nothing wrong with the car and then later agreed that there was. However, there is no record of any repair work having been undertaken on the car by the supplying dealer in December 2022, only that Mrs W had raised concerns that the fault with the gearbox were still present. I've also seen that the supplying dealer agreed to purchase the car from Mrs W and appears to have paid the expected price when doing so.

Mrs W has also complained that during the time the car was with the supplying retailer in December she was only provided with a courtesy car for part of it. She was also unhappy about the way it dealt with her. But as set out above, VWFS wouldn't be

responsible for these things.

Mrs W says as the car suffered from a fault in August and that this fault continued and deteriorated up to December 2022 then the car must have had an inherent fault and was therefore of unsatisfactory condition. She says she was entitled to reject it and have deposit returned. But I don't have enough evidence to reasonably make this conclusion. I haven't seen any evidence from a garage or mechanic as to what was wrong with the car after the repairs in August 2022. And I would need to be satisfied that the repair had failed and caused the issues Mrs W experienced in December. On the evidence I have seen, I can't fairly say the repairs in August were unsuccessful, it's a possibility that another issue had arisen and, if that was the case, then the opportunity for the retailer to repair would have applied again.

I've seen that Mrs W didn't appreciate the difference dealing with the supplying dealer rather than VWFS and although I'm sympathetic to that, this wouldn't mean it was fair to hold VWFS liable for any financial loss suffered by Mrs W when selling the car. By dealing only with the supplying dealer, VWFS hasn't been given a chance to investigate Mrs W's complaint that the car had deteriorated and was dangerous to drive in December 2022. And as set out above there isn't evidence available that supports the car had an inherent fault.

I also don't think it would be fair to ask VWFS to make a reimbursement of the December 2022 payment made by Mrs W under the agreement. I appreciate the car was at the supplying dealership but whether there was a fault that VWFS would have been liable hasn't been established.

So, although I appreciate this will be of disappointment to Mrs W, I'm not upholding her complaint. I don't have enough evidence to say that car had a manufacturing fault and VWFS had acted unfairly here. I think it's offer made in November 2022 was fair and reasonable and I'm not asking it to do more.

My final decision

For the reasons given above, I'm not upholding Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 14 September 2023.

Jocelyn Griffith
Ombudsman