

The complaint

Mr B complains about the quality of a car he acquired under a hire purchase agreement ("agreement") with Volkswagen Financial Services (UK) Limited ("VWFS").

What happened

In February 2023 Mr B entered into an agreement with VWFS for a used car costing £33,032. Under the terms of the agreement, everything else being equal, Mr B agreed to make an advance payment of £9,000 followed by 48 monthly payments of £381.57 and 1 monthly payment of £14,996.25 – making a total repayable of £42,311.61 at an APR of 12.1%.

In August 2023 Mr B complained to VWFS that the car had been sold to him with some damage present and after it had been chipped/modified. Or, if the car hadn't been sold to him after it had been chipped/modified, then the supplying dealership (or its agents) chipped/modified it after it had been sold to him and at a time when the car had been back with them for 'works'. Mr B then went on to say that due to both issues with the car he was looking to reject it.

In October 2023 VWFS issued Mr B a final response letter ("FRL"). Under cover of this FRL VWFS said that as the supplying dealership (or its agents) were prepared to undertake any work necessary to repair the damage present on the car when it was sold and given that it wasn't persuaded the car was sold chipped/modified, or that it was chipped/modified by the supplying dealership (or its agents) post sale, it wouldn't be accepting rejection of it.

In November 2023 Mr B confirmed to our service that what he wanted us to consider was his complaint that VWFS should allow rejection of the car on the grounds it had been, at some point in time, chipped/modified, but not by him.

Mr B's complaint was considered by one of our investigators who came to the view that it shouldn't be upheld.

Mr B didn't agree and so his complaint has been passed to me for review and decision.

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.

First, and for the avoidance of doubt, I would like to make it clear that given what Mr B confirmed to our service in November 2023 I'm only considering in this decision his complaint that he should be able to reject the car on the grounds that it has been, at some point in time, chipped/modified, but not by him.

Secondly, I would like to point out I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Finally, I would like to point out that where the information I've got is incomplete, unclear, or contradictory, I've to base my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr B submits that he should be able to reject the car on the grounds that it has been, at some point in time, chipped/modified, but not by him.

Now I accept I can't say for certain Mr B is wrong in what he says and submits on this point. But based on everything the parties have said and submitted I'm simply not persuaded, on the balance of probabilities, that the supplying dealership sold Mr B a car that had been chipped/modified or that it (or its agents) chipped/modified the car post sale. I say this for the following reasons:

- I find VWFS' submission that the supplying dealership, as a manufacturer approved seller of used and new cars, wouldn't have sold on a car that had been chipped/modified to be both plausible and persuasive.
- I find VWFS's submission that prior to the cars sale it was checked by the supplying dealership to confirm it hadn't been chipped/modified to be both plausible and persuasive.
- The diagnostics summary supplied by VWFS to our service, although not particularly conclusive, doesn't suggest the car had been chipped/modified prior to its sale.
- The warranty key report supplied by VWFS shows that the car was reported as being chipped/modified when the car had travelled 69,923 km (or 43,448 miles) compared to a mileage at the point of sale of 41,261.
- I see no logical or persuasive reason why the supplying dealership (or its agents) would have chipped/modified the car post sale given the time and cost in doing so and the fact that to do so would, as I understand it, invalidate any manufacturer's warranty supplied with the car and that it would put the supplying dealership in breach of its manufacturer's trading agreement.

I appreciate Mr B's point that he can't supply to our service evidence that he didn't do something. But I hope, given what I say above, he can understand why I can't – on the balance of probabilities – uphold his complaint.

My final decision

My final decision is that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 April 2024.

Peter Cook
Ombudsman