

The complaint

Mr T complains that a car he acquired through a Hire Purchase Agreement with Volkswagen Financial Services (UK) Limited (VWFS) wasn't fit for purpose. He would like more compensation than VWFS has agreed to pay.

What happened

Mr T says he took out a Hire Purchase Agreement for a new car in September 2020. He says he had problems with the software from when he first got the car resulting in numerous repair attempts which didn't work. He was also unhappy with the roof rack and bars and whilst these were replaced it remains difficult to uninstall.

Mr T says he asked to reject the car in May 2022 but didn't get a response to his letter and then further complained to VWFS in November 2022.

VWFS upheld Mr T's complaint in relation to the software related issues and offered to refund the equivalent of one month's rental (£346) plus £100 for the distress and inconvenience. It didn't uphold Mr T's complaint about the roof rack explaining that the issue was characteristic of the accessory.

Our investigator issued a view in which he upheld Mr T's complaint. He found there was a fault with the car but not with the roof rack. He felt VWFS's refund of the equivalent of one month's rental was fair but felt the compensation for distress and inconvenience should be higher. He recommended that VWFS:-

- Refund the equivalent of one month's rental (£346) to cover loss or impaired use of the car adding 8% simple interest
- Pay £200 for any distress and inconvenience caused by the faulty goods
- Remove any adverse data from Mr T's credit file in relation to this agreement.

VWFS accepted this view, but Mr T didn't. He raised a number of issues around the right to rejecting within 30 days, how his rejection request was handled by VWFS, the time and effort taken with garage visits, the lack of resolution on the roof rack issue, and the lack of explanation as to why the equivalent of one month's rental was sufficient compensation.

Our investigator considered and responded to these points but as he didn't change his view Mr T asked for an ombudsman's final 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.

Mr T took out an agreement for a new car in September 2020. As such I think he could reasonably have expected it to be fault free. We usually say if issues arise within six months of having a car the onus is on the business to investigate and to see if there is a point-of-sale

issue for which it is responsible. After six months the onus is on the consumer to show there is a point-of-sale issue – usually by providing some independent evidence or report to support this.

Mr T says he had issues from when he first got the car. He hasn't been able to evidence work carried out to his car or the garage visits he says he made. He has told us a new control unit was fitted in May 2021 but that doesn't accord with the vehicle history showing this took place in October 2021. Notwithstanding that discrepancy it's clear that there was a software issue with the car from at least October 2021.

Mr T hasn't given us any independent evidence to confirm if the fault was present at the point of sale or not and now he has sold the car it's not possible to get an independent inspection of it. However there clearly was a problem which took several attempts to repair. VWFS accepted this in its final response letter.

The issue for me to consider is the appropriate level of compensation. VWFS offered to refund the equivalent of one month's rental and accepted our investigator's recommendation that this should have interest applied along to this with a payment of £200 for the distress and inconvenience. Mr T doesn't feel this is sufficient for the inconvenience. He would like a minimum of the equivalent of 14 months payments refunded and at least £500 compensation.

The issues Mr T had with the car related to a software fault with the SOS warnings, satellite navigation, and an issue with the roof rack. From the vehicle history I can see that there was an issue with the SOS warning light with a new control unit fitted in October 2021 but it's clear from the vehicle history the SOS warning light was still an issue in December 2021 and March 2022 so clearly this fault hadn't been rectified by this last date.

Mr T has told us his mileage was limited because of the issues with the car. As I understand it he didn't feel safe driving it. However, he did still drive approximately 8000 miles. If he was really concerned about safety I am not sure he would have driven the car at all. I have no evidence he used the car less than he would have done had he not had the software issue. And also, no evidence as to whether the software fault was ongoing or intermittent and if the latter how intermittent the problem was. So, it's difficult to assess the exact impact of the fault on Mr T's use of the car.

In its final response letter of 22 November 2022 WFS advised it understood the software issue had been resolved. Mr T says it wasn't and he sold the car with the fault. He hasn't evidenced this so I can't be sure if the fault was finally resolved or not

With regard to the roof rack as I understand it from the information I have Mr T raised a problem with this in November 2021. The roof rack was replaced as a gesture of goodwill although the issue seems to have taken some time to resolve. Mr T wasn't happy with the resolution as he has told us the roof was difficult to uninstall but VWFS advised this was characteristic of the accessory. I appreciate that must have been frustrating for Mr T, but it seems there was nothing more that could be done.

In terms of the other points that Mr T has made to support his request for further compensation I have no evidence Mr T asked to reject the car within the first thirty days he had the right to do so or that the dealership obstructed such a request.

As I understand it Mr T asked the dealership to reject the car when a new control unit was fitted in October 2021, but this was declined on the basis that as more than six months had passed the business said it had more than one right to repair which was accurate. And at that point the control unit had been replaced so there would have been a reasonable expectation the issue had been resolved.

With regard to Mr T's letter to request rejection to in May 2022 it seems this wasn't received. Having looked at the customer notes I can't see any reference to this – just a reference to paying off the full balance for the car the month Mr T got it. I think Mr T probably did send a letter requesting rejection but as there is no evidence that VWFS received this I can't hold it responsible for not taking any action until Mr T contacted VWFS in November 2022. VWFS issued a final response letter the same month, so I think VWFS completed its investigation in a timely manner.

I appreciate Mr T has told us he sold his car at a loss; he hasn't evidenced why this was or that the car was sold with the software issue still ongoing. However, selling the car was his choice he could have asked us to consider allowing him to reject the car and waited until the outcome of our investigation. Unfortunately, as he sold the car it can't be inspected so I don't know if there would have been grounds to reject it or not.

Taking all of this information into account it seems to me that the ongoing software issue would have impacted on Mr T's use of the car although it's difficult to quantify how much so and as the car has been sold its impossible to get it independently inspected. After much consideration I feel that the refund of one month's rental VWFS offered and the increased compensation it agreed of £200 is fair.

My final decision

My final decision is that I uphold this complaint.

In full and final settlement Volkswagen Financial Services (UK) Limited should :-

- Refund the equivalent of one month's rental payment of £346 with 8% simple interest added
- Pay £200 for the distress and inconvenience caused due to the issues with the car
- Remove any adverse data from Mr T's credit file in relation to this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 31 July 2023.

Bridget Makins
Ombudsman