

The complaint

Mr A complains about the quality of a car he has been financing through an agreement with Volkswagen Financial Services (UK) Limited, trading as Seat Financial Services (who I'll call VWFS).

What happened

I issued a provisional decision on this complaint earlier this month. An extract from that provisional decision is set out below.

I don't think VWFS have been reasonable here and I'm expecting to ask them to take some further action. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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.

Mr A acquired his car under a hire agreement. This is a regulated consumer credit agreement and as a result our Service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then VWFS, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr A. The car here was brand-new so I don't think a reasonable person would expect it to have any faults.

The relevant legislation gives the business one opportunity to fix a fault that is present when a car is supplied. There have been several, failed, attempts to fix the intermittent software issues Mr A complains of and VWFS have now offered to allow Mr A to reject the car. They've explained that in those circumstances, they will refund the unused portion of his advance rental payment, and that they will provide a goodwill gesture of £380.16 which they say is equivalent to a refund of 10% of Mr A's finance instalments over the period of a year.

The fact that the car was supplied in an unsatisfactory condition is not in dispute and I won't, therefore, consider that any further. What is disputed is whether VWFS's offer of redress is fair and reasonable.

When a business agrees to reject a car and the finance is provided under a hire agreement with no expectation or obligation of future ownership, we would expect the business to

provide a pro-rata refund of any advanced rental paid by the consumer. As VWFS have offered to do that I don't think they've been unreasonable in that regard.

We'd also expect the business to provide a refund of some of the rentals to reflect any loss of use or loss of enjoyment the consumer may have experienced as a result of the fault. Mr A says that their offer of £380.16 isn't sufficient. He's provided a list of the functionality he has lost during his period of hire and has explained that although the fault was intermittent, it was present for about two thirds of the time.

VWFS's system notes show that Mr A complained to them about issues with the SOS call system in October 2022. Email records show he was experiencing problems earlier than that. He says the SOS call system failure started in October 2021 and has been present intermittently since. He's also explained there was a problem with the screen "blanking out" from the start of his agreement and that he regularly had to reboot the system.

Mr A has explained that the SOS call system failure happens on all long drives and means he can't use:

*Satnav and route guidance.
Data and internet access (and privacy).
Hands Free Phone.
Music, media, and radio.
Air conditioning and temperature control.
Seat heating.
Autonomous parking assistance.
Lane following.
Speed sign detection.
Speed limiting.
Braking assistance.
Adaptive cruise control.
Android Auto and Apple CarPlay.
And voice controls.*

I don't think a refund of £381.60 for problems that have, albeit intermittently, persisted for much of his three year agreement, is sufficient to compensate Mr A for the lack of functionality he's experienced. While he's clearly been able to drive the car and has completed the mileage anticipated, I think his use has been impaired, and his enjoyment of the car would have been impacted too. In those circumstances, I think a refund of 20% of all finance instalments paid for the time he's had the car is reasonable.

Mr A has been inconvenienced by these issues. He's had to take the car back to the dealership on several occasions, he's had to drive with distracting noises coming from the SOS system, and some functionality stayed on and couldn't be switched off (e.g., heated seats). He has also had to escalate his complaint to this Service when I think it could have been resolved earlier. In those circumstances, I think VWFS should pay him £300 compensation.

My provisional decision

For the reasons I've given above, I'm expecting to uphold this complaint and to tell Volkswagen Financial Services (UK) Limited to:

- *Allow Mr A to reject the car, collect it at no cost to him, and end the finance agreement.*
- *Provide a pro-rata refund of any unused portion of the advance rental paid. Add 8%*

- *simple interest* per year from the date of payment to the date of settlement.*
- *Refund 20% of all finance instalments paid in respect of the impaired use and loss of enjoyment Mr A has experienced. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Pay Mr A £300 to compensate him for the distress and inconvenience he's experienced.*
- *Remove any adverse reports they may have made to his credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments and/or evidence

VWFS accepted my provisional decision and had nothing further to add.

Mr A explained:

"The one point of detail I thought it would be wise to comment on is that the initial problems were definitely connected to the non-performance of the SOS system. However even after the software was fixed to address this, as noted in the timeline I sent, the display freezing issues have continued and still to continue to this day.

Meaning the services noted in the judgement are still not accessible and the car continues to provide no access to the functionality described.

I believe that (the manufacturer) have attempted an over the air update as for a few days the display kept on asking me to update but I was unable to access the menus. It appeared to update itself but since then the display problems still re-occurred."

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 think Mr A's comments support the provisional view I had reached on this complaint. It seems problems have plagued him through his agreement, and it is therefore fair to apply the 20% refund to all finance instalments paid, as I'd suggested. I don't think I have seen additional evidence that would lead me to change my provisional decision.

Putting things right

My provisional decision, therefore, becomes my final decision on this complaint.

My final decision

For the reasons I have given above, I uphold this complaint and to tell Volkswagen Financial Services (UK) Limited to:

- Allow Mr A to reject the car, collect it at no cost to him, and end the finance agreement.
- Provide a pro-rata refund of any unused portion of the advance rental paid. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund 20% of all finance instalments paid in respect of the impaired use and loss of

enjoyment Mr A has experienced. Add 8% simple interest* per year from the date of payment to the date of settlement.

- Pay Mr A £300 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to his credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 January 2024.

Phillip McMahon
Ombudsman