

The complaint

Mr E is unhappy with a car supplied under a hire purchase agreement provided by Volkswagen Financial Services (UK) Limited trading as Porsche Financial Services ('VWFS').

What happened

In January 2018 Mr E acquired a new car funded in part with a hire purchase agreement with VWFS. The car cost £168,232 and Mr E paid a deposit of £57,008.57. Mr E was due to make 47 monthly repayments of £1,521.78, followed by a final balloon payment of £58,163.75 if he wanted to keep the car.

Mr E says shortly after acquiring the car he noticed issues with it making noises. These have been described somewhat differently at times, but Mr E has said the car was making creaks, squeaking and rattling sounds. These have been described as coming from the interior of the car, the sunroof and the rear.

Mr E says he reported these issues to the dealer and the car was seen at various times for various repairs. I believe more than one dealer is involved here, but for ease I'll refer to all dealers as 'D'. Mr E says the noises always came back following attempted repairs and these were never put right.

Unfortunately, around September 2019 the car was involved in a collision where it was hit from the rear. An initial repair was carried out on the car to rectify the accident damage. But Mr E said the noises continued past this point. He says the car continued to be returned to D for repairs and these continued to be unsuccessful.

Around October 2021 the car was looked at again by D. At this point it removed the rear bumper and advised the accident damage had not been fully repaired. D said the best course of action would be to fully repair this damage before continuing to listen for the noises Mr E complained about. Mr E acquired a quote for the additional work that needed to be done as a result of the collision.

Around February 2022 Mr E complained to VWFS as the agreement was coming to an end. He said the car had been making noises since he acquired it and that the issue had never been put right.

At the end of March 2022 VWFS issued its final response. It said, in summary, that D had looked at the car on two occasions and were happy to investigate the issues once the car had been fully repaired. It didn't uphold Mr E's complaint.

Shortly after this it appears the remaining repairs from the collision were carried out. Mr E told D this didn't resolve the noise issues.

Mr E then referred the complaint to our service. In summary, he said the car had been making noises since he acquired it that had never been put right. And he said it had been seen by D far more times than the two instances VWFS mentioned in its response to his

complaint. He provided our service with numerous evidence of contact between himself and D, job sheets from when D saw the car and an extensive history of what happened. He also provided videos which he said showed the noises.

Our investigator issued an opinion and explained she didn't think the complaint should be upheld. She said, in summary, that she hadn't seen enough evidence to persuade her there was a fault with the car. And she said any noises following the accident could've been caused by the collision.

Mr E disagreed. He said, in summary, that the repairs carried out wouldn't have affected the noises from the car. And he said he was going to get an independent inspection carried out.

We then received a copy of an independent inspection from December 2022. This identified a knocking noise and a resonating noise when the car was test driven. Our service sent VWFS this report for its comments.

VWFS responded and said the report didn't change its view on the case. It said the report didn't identify the source of the noises and it didn't say they were present at the point the car was supplied to Mr E.

Our investigator then explained to Mr E that the report didn't change her opinion, as it didn't identify the source of the noises and it wasn't possible to say whether they were present or developing at the point Mr E got the car.

I sent Mr E and VWFS a provisional decision on 15 June 2023. My findings from this decision were as follows:

Mr E complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr E's complaint against VWFS.

I should begin by explaining to both parties that I might not comment on all of the evidence and points raised in this case. I'll instead focus on what I think are the key facts and the crux of Mr E's complaint. I want to reassure VWFS, and Mr E, that where I haven't commented on or addressed something, both here and in the summary of what happened above, this doesn't mean that I consider it unimportant. I've reviewed all of the information and evidence, even when it isn't mentioned in my decision. My approach here reflects the informal nature of our service.

I should also explain to Mr E from the beginning that I can't consider several of the issues he's raised. He's raised various concerns about customer service, communication and the work done to the car by D. And it's clear he's unhappy with the investigation and initial repair following the collision, and the length of time it took to identify the continuing issues. But, VWFS aren't responsible for this. He's also raised concerns about a subject access request and how D responded to this. But, again, VWFS aren't responsible here. These issues will need to be raised directly with D or the relevant party.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – VWFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, I'll consider here that the car Mr E acquired was a high end

model from a premium manufacturer, that cost over £168,000. So, I think a reasonable person would have extremely high standards for its quality, would expect it to be in mint condition when it was acquired and to have trouble free motoring for a significant period.

As VWFS were responsible for supplying Mr E with a car that was of satisfactory quality, I'll consider if this was the case or not.

I should start here by saying I'm satisfied VWFS have given an incomplete account of the history of what happened with the car in relation to the issues Mr E complained about. In its final response, it said D had seen Mr E's car on two occasions. And in response to seeing the independent inspection, it said the first time D saw the car about a rattle was in October 2018. It then explained it thought D had then seen the car in June 2019, July 2019, January 2020 and November 2021.

But, from the communication between Mr E and D, I'm satisfied he raised the issue of the noises much earlier than this, and I think it's likely D investigated and attempted repairs more frequently than VWFS believe. I'll explain why.

After Mr E entered into the finance agreement, I've seen an email from D to Mr E that confirmed the car was ready to collect on 7 February 2018. After collection, D emailed Mr E to check how he was getting on with the car. Mr E replied on 22 February 2018 saying:

"I've got a couple of rattles at the moment which have been there from the start"

So, I'm satisfied Mr E raised that the car was making abnormal noises around two weeks after he acquired it.

In March 2018 Mr E emailed D and said:

"the car is great apart from the squeaks have returned"

D replied and said:

*"As this is **reoccurring**, I have forwarded this to the service department for them to contact you to have it booked in" (emphasis added by myself).*

So, D knew about the noises the car was making and knew this was a "recurring" issue shortly after Mr E acquired it.

VWFS said in October 2018 some rear boot trim was rattling and the issue was rectified. But it appears more substantial work was carried out than this at this point. Looking at the job sheets, these mention Mr E reported a squeaking from the sunroof. Work was completed to both the front and rear suspension in relation to a "scrubbing noise" and the job sheets noted:

"attended to interior rattles from rear, removed interior trims and reworked rear lateral trim panels, tested all ok"

I appreciate this job sheet notes the issue was rectified. But Mr E has shown he contacted D less than two months later and explained there was still a rattling noise, a noise from the sunroof, the car made noise when going over bumps and a noise was coming from the rear of the car when driven.

The car was then again seen by D in February 2019. The job sheets from this time don't explain work was done in relation to noise, but emails from D explained it was investigating

the noises Mr E complained about.

The car was again seen by D in March 2019, where the job sheets noted:

“refitted passenger side trim – tested all ok Cleared sun roof seals and geased (sic) tested all ok”

“attended to rattle from rear side trims, find lateral trim on left side rattling, removed trim and reworked/touch up contact points, tested, all ok”

The day after this, Mr E emailed D and explained there was no difference in the noise from the panels. He asked if this was normal and explained, if so, he couldn't bear to be in the car.

Mr E again complained about the noises to D in May 2019. And in June 2019 D again had the car and confirmed Mr E had noted rattling issues from the passenger side trim, rattling from outside of the car and squeaking from the sunroof. Later in June 2019, after D had the car, Mr E confirmed to it the noises hadn't been resolved.

In July 2019 D saw the car again, where work was completed on the exhaust and a coolant pipe. D also noted Mr E complained about a rattle from the passenger side.

Following the collision in September 2019, which I'll comment on further below, Mr E continued to complain about the noises in December 2019 and January 2020.

In February 2020, a rear speaker was replaced due to Mr E again complaining about rattling. The day after this, Mr E got in touch with D and explained the issues were still there, saying:

*“it is at the side and in the ceiling and sounds b****y dreadful”*

Mr E also said around this time:

“I'm not travelling to ('country') and back with it making that noise – I really don't have that sort of tolerance”

Around this time Mr E also reported that D saw the car again and tried to fix the issue by applying Velcro to the trim. I haven't seen job sheets for this, but an email does seem to verify D did see the car at this point.

In June 2020 Mr E complained again about the noise to D. And in September 2020 he said he'd been busy with work and so hadn't been in touch, but the rattles were still present and had been occurring since he got the car.

In December 2020 D saw the car again and explained to Mr E:

“It has proved to be a little challenging in finding the noise. We are currently looking at the NS rear suspension set up”

It appears Mr E got the car back in January 2021. And in March 2021 he complained again to D saying the rattles had returned. Mr E said they were coming from the rear and:

“It has been constant throughout the whole time that I've had this car”

Mr D again complained to D in September 2021 saying the rattles were still present. D saw the car in October 2021 and said it:

“can confirm it is a metallic noise from the exhaust area”

In response, Mr E said he believed the exhaust system was rattling as well as the car making noises from the interior. Later in October 2021 D said:

“(‘Name’) our technician whom went with you to listen to the noises felt the ones heard were obvious rear external noises and would be “easy to find” Hence the removal of the rear bumper cover (PU) to discover the extent of the damaged area. (‘D’) will be committed to listen to the rear Interior noises but feel the best cause of action is to do this once the rear external components have been replaced / repaired back to a pre impact position”

Mr E continued to explain to D that he believed the car had a rattle inside it. He also explained to his insurance company, when discussing the further work required for the collision damage, that the car had ongoing issues with a rattle that were present since purchase.

It appears the further work to the car was completed around the time VWFS issued its final response in March 2022. In April 2022, Mr E again contacted D and explained the issues with squeaking and rattling were still present.

I appreciate I’ve gone into quite some detail about the history here. But I think it’s worth doing so in order to point out how consistently Mr E has complained to D about noises coming from the car. This consistency also continues to what he told VWFS, his insurance company, and our service.

So, Mr E consistently complained to D about noises from the car over a period of around four years. D saw the car on multiple occasions over this period and either investigated or attempted repairs to fix the apparent issue. At numerous stages it appears D has acknowledged the car was making noises.

Thinking about this, I’m satisfied on balance that the car was making the noises Mr E reports. And I’m satisfied these noises began occurring when, or very shortly after, he got the car.

I accept that the evidence from D is mostly silent on the severity of the noise. But, Mr E has gone into some detail about this – some of which is set out above. He also explained during a longer trip that he had to try to mask the noises by using bedding and other items to deaden the sound. Thinking about this, I’m persuaded by what Mr E says here and I think it’s likely these noises were abnormal, and at least reasonably loud.

I’ve also thought about the independent report from December 2022. This explains:

“we can confirm an intermittent light knocking noise was audible from the rear of the vehicle”

“We also noted a resonating noise emanating from the dashboard at the nearside”

Thinking about these comments, it would appear this suggests that following the second repair to the collision damage that the noises were still present.

I’ve carefully thought about the collision damage. I accept it could be possible, or maybe even likely, that the collision caused some ongoing noise from the car. I say this because, as above, D seemed to believe noise was coming from the exhaust system which was later repaired. But, I’m also satisfied that abnormal noise was present both before, and because of what the independent report said, after the damage was fully repaired. I’ve also

considered that around this time Mr E reported both a noise from the exhaust and the interior of the car. So I'm satisfied, if the collision did cause a noise from the exhaust, this was likely a separate issue to the other noises Mr E was complaining about.

In summary, I'm satisfied Mr E's car was making abnormal noises from around the time he acquired it. I'm satisfied these were severe enough to be, at best, irritating while driving the car. I'm satisfied the multiple investigations and repair attempts by D didn't resolve the issues. I'm satisfied that, while I accept the collision may have resulted in additional noise from the car, this was a separate issue to the other noises. And I'm satisfied that the noises complained about continued to be an issue following the collision damage being fully repaired.

It's worth commenting briefly here on the videos Mr E supplied. I'm in agreement with Mr E that you can hear some creaking, knocking and cracking noises at times. But, it's very difficult, given the nature of the noises and the driving environment, to be able to separate what is normal, potentially abnormal, or external. So, I haven't put much weight on these. But, ultimately, this doesn't change my opinion on the case.

It follows all of this that, thinking about the car Mr E acquired and the fact it cost over £168,000, that it wasn't of satisfactory quality when it was supplied. So, I now need to think about what would be fair and reasonable to put things right.

My starting point here are the remedies available to Mr E under the CRA. I don't think it's appropriate to instruct a further repair. I say this as, given the amount of attempts so far, I have no confidence that this would be successful. I also need to consider that the term of Mr E's finance agreement was nearly ended when he complained. I also don't think, given this, it would be appropriate to consider a price reduction or replacement.

This means the other available option is to allow Mr E to reject the car. I appreciate VWFS said the finance agreement had ended, but this wasn't the case when Mr E complained, and I believe he still hasn't made the balloon payment. So, I'm satisfied Mr E still has this right.

I've also considered Mr E's use of the car. While as set out above, the car has had an ongoing issue, I need to consider that Mr E has had use of it throughout the term of the agreement. But, I also think it's fair to say that due to the issues Mr E has experienced, the car wasn't performing as it should and so this usage was impaired. I'm satisfied VWFS can retain the majority of Mr E's monthly repayments, but I think it should give a proportion of these back to reflect this impaired usage. Thinking about what's fair and reasonable here, I think an amount of 15% should be reimbursed.

I've also considered that Mr E has retained the car beyond the original term of the finance agreement. From what I understand, I believe he hasn't paid the balloon payment, and I believe he has not been making the monthly repayments that were previously due under the agreement either.

Here, I would generally say that it's reasonable for Mr E to pay for the use of the car that he's had following the end of the original term of the finance agreement. And a starting point would be to consider the monthly repayments that were due under the agreement in place.

But, I do need to consider the use of the car Mr E has had during this specific period. While it hasn't been sat completely unused, it's fair to say his use of the car has very significantly dropped since the end of the agreement. Roughly speaking, during the original term of the finance agreement Mr E covered around 7,500 miles a year.

Looking at the independent report from December 2022 and a photo from March 2023 Mr E

provided, which are the last two confirmations of the mileage I have, Mr E has covered the equivalent of around 720 miles a year, or less than 10% of his previous use.

Thinking about the above, I don't think it would be fair and reasonable, under the very specific circumstances of this case, to charge Mr E the amounts previously due as I'm satisfied Mr E paying around £24,000 for what is very minimal usage of the car is not fair and reasonable.

When thinking about this, I've also had in mind that Mr E has suffered a significant amount of distress and inconvenience because of what's happened here. He's had to spend a large amount of time and effort taking the car to D to be repaired or looked at. While it appears at times he's had a courtesy car, I don't believe this was every time his car was seen by D, and I haven't seen that he was given a comparable car to drive. I also need to consider that this issue, and the stress this caused, continued over a period of several years.

Thinking about what's reasonable here, I think the fairest thing to do is not to make Mr E any separate award for the significant distress and inconvenience caused and instead not charge him for the usage of the car post the original term of the agreement ending.

I gave both parties two weeks to respond with any further information or evidence.

VWFS responded and said, in summary, that Mr E wasn't entitled to keep the car after the term of the agreement ended and he didn't pay the balloon payment. It said Mr E's actions by keeping the car contradicted the fact he said it wasn't of satisfactory quality.

VWFS said Mr E wasn't entitled to get the deposit back as he had the benefit of this by using the car throughout the agreement. It said by not complaining to VWFS and asking to reject the car sooner, he had accepted the repairs carried out by D. And it said it was unreasonable for Mr E to keep the car following the end of the term of the agreement without penalty.

Mr E got in touch and said he mostly agreed with the decision, but he thought the percentage of payments due back should be higher. He also explained some details about a personal situation that he said had been caused due to the stress of the situation with the car.

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 carefully considered everything VWFS said in response to my provisional decision.

I've thought about what VWFS said about the deposit. I explained in my provisional decision why I still think Mr E has a right to reject the car and I won't repeat myself here, other than to say I've reconsidered this and I'm satisfied this is still the case. I say this as when Mr E complained, and had a right to reject, the finance agreement was still in its original term, and as he didn't pay the balloon payment the agreement wasn't paid off.

I understand VWFS's frustration that Mr E raised the complaint with it late in the agreement's term. But I need to consider that, as above, he'd been complaining to D about the situation consistently for years. I also understand that the deposit involved here is larger than average, due to the cost of the car and the figures involved.

But, the CRA is quite clear about Mr E's rights here. Given I'm satisfied Mr E has a right to reject the car, the CRA explains when exercising the right to reject:

"To the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money"

"If the contract is a hire-purchase agreement or a conditional sales contract and the contract is treated as at an end before the whole of the price has been paid, the entitlement to a refund extends only to the part of the price paid"

To summarise, Mr E is entitled to a refund to the 'part of the price paid' – or in other words, the deposit he paid and the monthly payments.

However the CRA also explains:

"If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered"

This is why I think it's reasonable that, in line with what I recommended in my provisional decision, VWFS are retaining 85% of the monthly payments Mr E made towards the agreement. And I've also considered, when thinking about what's fair and reasonable, that VWFS are getting back what is still likely a valuable asset.

I've also thought about what VWFS said about Mr E accepting the repairs that D had carried out. But, I think from the communication with D that this clearly wasn't the case.

I also take on board VWFS's comments that Mr E wasn't entitled to keep the car after the end of the term. And I appreciate this may be the case – but I'm also satisfied, as above, that his usage of the car dropped significantly at this point. And, if VWFS had allowed him to reject it at the time he complained, this wouldn't have been an issue. I'd also point out to VWFS that if he didn't keep the car, I would've awarded Mr E a payment for distress and inconvenience.

Given the issues went on for years, this would've been significant. But I still think it's fair VWFS don't make an award here given Mr E's use of the car following the end of the term. Although in terms of the overall redress this is relatively minor, and I appreciate I didn't mention this in my provisional decision, thinking about things in the round I also don't think VWFS need to reimburse Mr E the cost of the independent report for the same reason under the very specific circumstances of this complaint.

I've also considered what Mr E said in response to my provisional decision.

I was very sorry to hear about the personal situation Mr E told us about. I have very limited information here about what, I assume, are quite complex circumstances. But I think, based on the little detail I have, that it is unlikely VWFS are directly responsible here.

I've also thought about what Mr E said about a higher percentage of payments being due back. But, having reconsidered everything, I still think what I recommended in my provisional decision is fair and reasonable.

I've also reconsidered Mr E's use of the car. It appears this has gone up recently. But, Mr E has explained this is due to having to use the car due to the personal situation he told us about. Thinking about things in the round here, I still think what I said in my provisional

decision is fair and reasonable. But, I would politely ask Mr E to avoid using the car if at all possible until it is now collected.

I want to reassure VWFS and Mr E that I've carefully considered everything else they said in response to my provisional decision. And I've thought about all of the other information on the case again. Having done so, I still think the complaint should be upheld for the reasons explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct Volkswagen Financial Services (UK) Limited trading as Porsche Financial Services to put things right by doing the following:

- End the agreement with nothing further to pay*
- Collect the car at a time and date suitable for Mr E, at no cost
- Reimburse Mr E the deposit paid of £57,008.57 **
- Reimburse Mr E 15% of all repayments made towards the agreement **
- Remove any adverse information from Mr E's credit file in relation to the agreement

*To be clear, Mr E should not be responsible for any arrears since the original term of the agreement ended, nor the balloon payment

** These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If VWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr E how much it's taken off. It should also give Mr E a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 July 2023.

John Bower
Ombudsman