

## The complaint

Mr H is unhappy that a car supplied to him under a contract hire agreement with Volkswagen Financial Services (UK) Limited trading as Audi Finance Services ('VWFS') was of an unsatisfactory quality.

## What happened

In March 2022, Mr H was supplied with a new car through a contract hire agreement with VWFS. The agreement was for an advance rental of £5,573.45 and 35 monthly rentals of £375.

In July 2022, the car developed an issue with some driver assist functions, which required a software update. However, this update wasn't initially available, and the car wasn't repaired until April 2023. During this period, Mr H was able to use the car, but some of the functions weren't always available.

Mr H complained to VWFS, who agreed the car wasn't of a satisfactory quality when it was supplied. And, in November 2022, they offered Mr H three options:

1. Keep the car and await the software update, and VWFS would refund £900 of the payments Mr H paid (equivalent to 20% of the payments for 12-months), OR
2. Reject the car and receive a pro-rata refund of the advance rental payment, OR
3. Order another VW Group car and retain the existing car until the new car is ready, then receive a pro-rata refund of the advance payment.

Mr H didn't want to reject the car, as a replacement would be more expensive. Now the car has been successfully repaired, VWFS are still willing to offer option 1, even though the repair took less than the 12-months on which this payment was calculated.

Mr H was unhappy with how VWFS dealt with the matter and brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator thought that VWFS had acted fairly by making the offer they did, and that the offer to reject or repair was in line with the Consumer Rights Act 2015 ('CRA'). And, as the car has now been repaired, the investigator thought the £900 offer was reasonable in the circumstances – the car had been faulty for around 10-months, during which time Mr H was able to use it, but not all of the driver assist functions were working. So, he didn't think VWFS needed to do anything more.

Mr H didn't agree. He said he had no option but to have the car repaired, as the agreement with VWFS *"clearly states that I have to keep the vehicle in perfect condition and maintained when required."* He also said that, as it was safety features with the car that weren't working *"the insurance company would have deemed the vehicle not road worthy"* in the event of any accident, which would've voided the insurance.

Mr H also said that the offer to refund 20% of the payments didn't take into consideration the advance rental he paid, so the offer should've been £900 plus 20% of the full advance payment (which he'd calculated to be £1,108.75).

Because Mr H didn't agree with the investigator, this matter has been passed to me to make a 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr H was supplied with a car under a contract hire agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The CRA says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, VWFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless VWFS can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr H to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr H took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask VWFS to put this right.

Based on the evidence I've seen, I'm satisfied it's not disputed there was a fault with the car, nor that there was an extended period while it was being repaired - Mr H was supplied with the car in March 2022, it developed a fault in July 2022, and the fault was repaired in April 2023. What's more, VWFS have accepted the car wasn't of a satisfactory quality when it was supplied. As such, my decision will focus on what I think VWFS should do to put things right.

The CRA allows for a single chance of repair. However, it says that this repair should be done without undue delay or inconvenience to the customer. Otherwise, the customer has the option to reject the car. While, in his comments on the investigator's view, Mr H has said that he was given no option but repair, it's clear from VWFS's complaint response letter of 21 November 2022 that he was also given the option to reject the car. And, while I accept that this wasn't something Mr H wanted to do for financial reasons, I'm satisfied that VWFS's offer was in line with the requirements of the CRA.

However, as the car has now been repaired, and there's no evidence that the repair was unsuccessful i.e. the fault hasn't reoccurred, I'm also satisfied that VWFS acted reasonably by withdrawing the offer to reject the car. And it's just their offer of £900 compensation that remains available for Mr H to accept.

I've taken Mr H's concerns about the car seriously and into consideration. And I accept he wouldn't feel fully confident driving the car in case it was involved in an accident. However, when looking at situations like this, and what I think is fair and reasonable compensation, I'm looking at what actually happened, and not what might have happened.

Mr H has indicated that his insurance company would've voided his insurance had it been involved in an accident, and also implied the faults with the car made it both undriveable and uninsurable. However, I haven't seen anything, for example a letter from Mr H's insurer at the time, to show me that was the case. Nor has Mr H said at any point that he stopped using the car, only that he felt he couldn't use it to its 'full extent'.

In his complaint, Mr H explained (and provided some evidence of) that the car was experiencing sporadic faults with the following driver assist functions:

- Call SOS function
- Pre-Sense Collision Management system
- Lane Departure Warning function
- Distance Warning function
- Main Beam Assist function
- Adaptive Light function
- Cruise Control

Mr H has also provided NCAP details for the Pre-Sense Collision Management system, which explains this is a seat belt tensioning system if the car detects unusual longitudinal or lateral acceleration and deceleration, for example swerving, above certain speeds.

While I appreciate these driver assist functions were present on the car supplied to Mr H, and it's reasonable for him to expect them to be fully functioning, none of these systems are a legal requirement for vehicles driving on UK roads. As such, and for the reasons already given, I'm not satisfied the sporadic faults with these systems made the car undrivable, or uninsurable. So, I won't be asking VWFS to increase their offer because of this.

However, this doesn't mean that Mr H wasn't inconvenienced by these sporadic faults. And this also meant that he wasn't getting full enjoyment from the car. In a situation like this I would normally direct a payment reduction to compensate the customer for any frustration and/or inconvenience they'd been caused. And, where these faults were sporadic and/or affecting some systems that wouldn't be used all the time, I would normally be recommending a relatively small percentage of the payments be refunded.

VWFS's offer of £900 has been based on 20% of 12 monthly rental payments. However, the car was only suffering the faults for around 10-months. Mr H has raised the issue of the advance payment and indicated that VWFS should refund 20% of the full payment. However the car wasn't faulty for the full 36-months of the agreement, and the advance payment covers the full agreement period. So, if the advance payment were to be considered, then any reduction would be calculated on the amount of the payment that was applied to the period the car was faulty, and not the entire lifetime of the agreement.

As such, taking everything into consideration, and given that I wouldn't necessarily recommend a 20% refund in these circumstances, and while I appreciate that Mr H will be

disappointed by this, I'm satisfied that the £900 offered by VWFS was reasonable in the circumstances. And I won't be asking them to increase this.

It's now for Mr H to decide whether to accept this offer or not.

### **My final decision**

For the reasons explained, I uphold Mr H's complaint about Volkswagen Financial Services (UK) Limited trading as Audi Finance Services. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 August 2023.

Andrew Burford  
**Ombudsman**