

The complaint

Miss A complains that a car that was supplied to her under a hire purchase agreement with Volkswagen Financial Services (UK) Limited, trading as Audi Financial Services, wasn't of satisfactory quality.

What happened

I issued a provisional decision on this complaint in September 2022 in which I described what had happened as follows:

"A used car was supplied to Miss A under a hire purchase agreement with Audi Financial Services that she signed in February 2021. She complained to the dealer about some issues with the car, including a knocking noise. The car was repaired but the knocking noise continued so Miss A complained to Audi Financial Services. It upheld her complaint in August 2021 and agreed to deduct a monthly payment of £558.77 from the arrears on Miss A's account but that wasn't actioned so she was sent arrears letters and then, in January 2022, it terminated the agreement so Miss A complained to this service.

The car was inspected in April 2022 and an engine noise issue and vibration were still present and required further investigation. Our investigator recommended that Miss A's complaint should be upheld. He thought that the car wasn't of satisfactory quality when supplied to Miss A and he recommended that Audi Financial Services should: collect the car, cancel the agreement; refund Miss A's deposit; record the agreement as settled on her credit file and remove any adverse data reported to the credit reference agencies; pay her £200 compensation for the distress and inconvenience caused; refund 5% of the paid instalments and deduct 5% of the unpaid instalments to reflect the impaired use (and agree a suitable arrangement with Miss A for repayment of the unpaid instalments); and pay interest on the refunded amounts.

Miss A says that she wants to keep the car and for her credit file to be cleared with a clear representation of what happened. Audi Financial Services says the car has to be returned as the agreement's been terminated because payments were missed and adequate notice was given. It says that all concerns have been repaired or looked at and a slight engine rattle was confirmed in May 2022 but it's not excessive and sounds like normal diesel rattle. It says that Miss A has no right to reject the car and that she's had good use of the car based on her usage of it. It says that it's worked out that the approximate total owed by Miss A once the car is returned will be £3,961.63 and that she'll also be liable for refurbishment and excess mileage charges as she's already 10,000 miles over her annual mileage".

I said in my provisional decision: *"I agree with our investigator that Miss A's complaint should be upheld but I consider that Audi Financial Services should put things right in a different way, and my provisional findings are as follows:*

- *Audi Financial Services, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Miss A - whether or not it*

was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;

- the car that was supplied to Miss A was about four years old, had been driven for 29,600 miles and had a price of £34,490;*
- satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;*
- Miss A complained to the dealer about some issues with the car soon after it was supplied to her and the car was repaired but some of the issues, including a knocking noise, continued;*
- Miss A complained to Audi Financial Services and it upheld her complaint but it's final response letter to her in August 2021 made no reference to the ongoing issues with the car;*
- the car was inspected by an independent expert in April 2022 and the inspection report says: "The engine noise and vibration are still present and further investigation is required to diagnose their cause with the appropriate repairs performed. The stored fault codes should be investigated and rectified as required" – the car's mileage was recorded on the report as 46,799 miles;*
- Audi Financial Services says that the car was checked again in May 2022 and a slight engine rattle was confirmed but it wasn't excessive and sounds like normal diesel rattle and the engineer said that he wouldn't recommend any further repairs because of the repairs that had been carried out;*
- I consider it to be more likely than not that the car wasn't of satisfactory quality when it was supplied to Miss A because of the issues with it – but Miss A says that she wants to keep the car and she was able to use it to drive more than 20,000 miles between February 2021, when it was supplied to her, and April 2022;*
- Audi Financial Services agreed to deduct a monthly payment of £558.77 from the arrears on Miss A's account in August 2021 but that wasn't actioned so she was sent arrears letters – there have continued to be issues with the payments due under the agreement;*
- it says that Miss A was given adequate notice about the arrears on her account and that the agreement was terminated in January 2022 because payments were missed – it says that the car has to be returned as the agreement's been ended but it sent an arrears notice to Miss A in June 2022 which said that she was behind on her payments under the agreement;*
- I'm not persuaded that it's fair or reasonable for the hire purchase agreement to have been terminated in these circumstances and I consider that Miss A should be allowed to continue to use the car on the terms set out in that agreement - but I consider that it's fair and reasonable for Miss A to pay for the use that she's had from the car;*
- I consider that Audi Financial Services should reinstate Miss A's agreement (or if it's unable to do that it should treat the agreement as if it hadn't been terminated so that Miss A is able to continue to use the car on the terms and conditions set out in the agreement);*
- I consider that, if it hasn't already done so, Audi Financial Services should deduct a monthly payment of £558.77 from the arrears on Miss A's account and that it should try to agree an affordable repayment arrangement with Miss A for the*

balance of the arrears - and, if a repayment arrangement is agreed, I consider that it should also remove any adverse information about the hire purchase agreement that it's recorded on Miss A's credit file;

- if an affordable repayment arrangement isn't agreed or if Miss A doesn't make the agreed payments, I consider that it's fair and reasonable for Audi Financial Services to take action to recover those amounts from her, to the extent that it's legally entitled to do so, in accordance with the terms and conditions of the hire purchase agreement;*
- Miss A has been able to use the car to drive more than 20,000 miles and she wants to keep the car so I'm not persuaded that her use of it has been impaired enough to justify a reduction in her monthly payments; and*
- these events have clearly caused distress and inconvenience for Miss A and I find that it would be fair and reasonable for Audi Financial Services to pay her £200 to compensate her for that distress and inconvenience”.*

Subject to any further representations from Miss A and Audi Financial Services, my provisional decision was that Miss A's complaint should be upheld. Audi Financial Services says that it has nothing further to add. Miss A said that she was going to respond to my provisional decision but, despite being given more time to do so, hasn't made any further representations.

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.

As Miss A hasn't made any further representations in response to my provisional decision and Audi Financial Services says that it has nothing further to add, I see no reason to change the findings that I set out in my provisional decision.

Putting things right

I find that it would be fair and reasonable in these circumstances for Audi Financial Services to take the actions described in my provisional decision.

My final decision

My decision is that I uphold Miss A's complaint and I order Volkswagen Financial Services (UK) Limited, trading as Audi Financial Services, to take the actions described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 13 December 2022.

Jarrold Hastings
Ombudsman