

## The complaint

Mr M is unhappy with a car that's been supplied to him under a hire purchase agreement with Volkswagen Financial Services (UK) Limited ("Volkswagen").

## What happened

In November 2022 Mr M signed a hire purchase agreement with Volkswagen. This was for a car that was just over three years old and had travelled approximately 49,348 miles. The cash price of the deal was £22,437. The dealer's invoice showed this included one year's road fund licence costing £165, and a two-year servicing plan costing £249.

Mr M said he felt forced into signing this agreement because there'd been a problem with another car he'd previously chosen from the same dealer, and he didn't want to be without transport. He put down a deposit of £4,965 using the trade-in allowance from his old car. The rest was to be repaid over 36 months using the finance agreement.

Mr M said he discovered the voice activation feature wasn't working during his journey home. He's told us that when he pressed the button on the steering wheel to activate it, a message came up saying: *"You can activate the voice control function by means of an activation key. Please contact your dealer."*

Mr M said he immediately called the dealer to complain about this function not working. He said they initially told him to take it up with the manufacturer, but after some persuasion they agreed to resolve it for him.

Mr M said he wrote a letter to the dealer in December 2022, asking them to confirm they'd resolve the voice recognition problem. He also asked them to look at the condition of the alloy wheels, which he wasn't happy with. Having received no response to his calls and emails, in March 2023 Mr M wrote a formal letter of complaint to the dealer saying he wanted to reject the car. The dealer declined this request, so Mr M complained to Volkswagen.

Volkswagen issued their final response to Mr M's complaint in August 2023. They said they couldn't comment on problems with the first car because they weren't involved in that transaction. And they said they wouldn't support his request to reject this car because there was no confirmed fault with the voice recognition system. Dissatisfied, Mr M referred his complaint to our service.

Our investigator said he didn't think the condition of the wheels was unsatisfactory. But he agreed that there was a fault with the voice activation system – and he thought that meant the car wasn't of satisfactory quality. To put things right, he said Mr M should be allowed to reject the car and receive a refund of the deposit he'd paid.

The investigator said Volkswagen should refund 15% of the monthly payments Mr M has made for the car to reflect the fact that it wasn't performing as it should've been - and that they should pay Mr M an additional £200 compensation for the distress and inconvenience he'd been caused. He also thought Volkswagen should remove any adverse information from Mr M's credit file about this agreement.

Mr M responded, saying he hadn't received a refund for the service package he'd cancelled. And he said the car was only supplied with six months' road fund licence, although he'd been charged for a full year.

Volkswagen said the fact that Mr M needs an activation code to use the voice recognition system doesn't mean there's a fault with the car. They said he may need to pay a subscription fee to access and use this service, rather than it being a standard feature.

As Volkswagen didn't agree with our investigator's recommendations, Mr M's complaint was referred to me for a final decision.

After reviewing the evidence, I rang the manufacturer's digital services helpline to ask whether the car should have voice recognition fitted as standard. They explained that it's fitted with buttons for a number of digital functions that are available on demand - including voice recognition.

The helpline said when a new car is ordered from the manufacturer, the first owner may not wish to pay extra for digital services, such as voice recognition. They said this feature remains available as an option to buy at a later date. They explained that, in those circumstances, pressing the voice recognition button brings up a message prompting the user to contact the dealer for an activation code.

### **My provisional decisions**

On 7 February 2024 I issued a provisional decision saying I wasn't intending to uphold the complaint based on the evidence I'd seen so far. I invited both parties to send me any further comments or information they'd like me to consider before I made my final decision.

Volkswagen responded saying they agreed with my provisional decision and had nothing further to add. But Mr M remained unhappy. I'll summarise the points he made:

- He didn't agree that Volkswagen had no involvement with the first car he'd chosen. He felt the dealer had acted as Volkswagen's representative throughout these negotiations.
- Mr M felt Volkswagen's complaint handling had been poor – and that they should've been able to provide him with recordings of the phone conversations he'd had with them about this matter.
- Mr M provided a copy of the vehicle tax reminder confirming the tax ran out on 30 April 2023, together with evidence showing he'd paid £180 to cover the next 12 months. He also provided a copy of an email dated 15 December 2022 from the dealer, confirming they'd agreed to cancel the service plan.
- Mr M said the car was sold to him as having voice recognition – and that he wouldn't have chosen the car without it being fully functional. He felt the fact that the dealer had offered to have the car back to look at the voice recognition system showed they knew and accepted this.

After reviewing the case again, I issued another provisional decision on 21 February 2024 saying:

*I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. The agreement between Volkswagen and Mr M was for hire purchase. I'm satisfied that I can consider complaints about this type of finance.*

*I want to reassure both parties that I've carefully considered all the information they've provided. If I haven't commented on a specific point, it's because I don't think it affects what I believe to be the right outcome in this case.*

*The problem with the first car*

*I appreciate Mr M is very unhappy about a problem with the first car he'd chosen from this same dealer. He's provided a copy of the unsigned hire purchase agreement the dealer had drawn up for that first car.*

*I can see this would potentially have allowed Mr M to pay for that first car in instalments, using a hire purchase agreement with Volkswagen. But I've seen no evidence to suggest that agreement was ever signed or completed.*

*I can understand why Mr M thinks the dealer acted as Volkswagen's representative throughout. But I don't think that's quite right. The dealer acted as credit intermediary, which means they helped Mr M get credit by introducing him to the finance provider – Volkswagen. The Consumer Credit Act 1974 sets out specific circumstances in which Volkswagen will be liable for things the dealer said to Mr M before he signed the finance agreement.*

*It's likely that Volkswagen will be liable for things the dealer said about the car Mr M ended up with, because that forms the subject of the hire purchase agreement he signed. But I don't consider Volkswagen to be liable for things the dealer may have said about another car Mr M wanted, because Volkswagen never became involved in that transaction.*

*All the evidence I've seen shows the dealer fully completed a second hire purchase agreement with the details of the car Mr M now has. As that's the only signed agreement I've seen between Volkswagen and Mr M, that's the only agreement I'll be considering in this decision.*

*Was the car of satisfactory quality?*

*Under a hire purchase agreement Volkswagen is the supplier of the car, so they're responsible for a complaint about its quality.*

*The Consumer Rights Act 2015 is relevant here. It says that under a contract to supply goods, there's an implied term that the quality of those goods is satisfactory. It goes on to explain that things like fitness for purpose, appearance, and freedom from minor defects can be aspects of the quality of goods.*

*The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described and all the other relevant circumstances. In a case involving a car, I think the relevant circumstances for me to consider would include things like its age, mileage, and price.*

*In this case, I bear in mind that the car was just over three years old and had covered around 49,348 miles when it was supplied to Mr M. It cost £22,437, which is a lot less than it would've cost when it was new. With a car of that age and mileage, I do think a reasonable buyer would expect some parts to have suffered a bit of wear and tear. But I think they'd still expect all of its main features to be working properly.*

*Mr M has provided photos showing some damage on the alloy wheels. Although I appreciate he's disappointed about this, I'm not persuaded it means the car wasn't of*

satisfactory quality. I think it's reasonable to expect a bit of wear and tear on the wheels of a car that's had three years' and almost 50,000 miles' use.

Mr M feels very strongly that this car should have voice recognition fitted as standard - and that it isn't working properly. He says he wouldn't consider having a car without this because he uses it all the time. I'm sorry to hear that this hasn't met his expectations.

But I'm not persuaded that Mr M was reasonably entitled to expect the voice recognition feature to have been activated before he got the car. I've seen no supporting evidence to show he made the dealer aware that he specifically wanted this feature to be working, or that this was something he was promised.

Mr M has provided a copy of an email from the dealer offering to have the car back to take a look at the voice recognition system. I don't think this shows they accepted there was a problem with it. Nor have I seen anything that persuades me the voice recognition feature isn't working because there's a fault.

Mr M has shown us a photo of the relevant button on the steering wheel, and another photo showing the message that appears when he presses it. I find this to be consistent with the information provided by the manufacturer's digital services helpline about functions that are available on demand, at an additional cost to the customer.

I don't consider it to be relevant that the handbook for this car includes instructions for how to use the voice recognition system. I think it's quite common for manufacturer's handbooks to cover features that aren't supplied as standard on all models.

If Mr M wishes to make use of the car's voice recognition function, I think he needs to purchase that digital service from one of the manufacturer's network of garages to obtain an activation code. I don't think Volkswagen need to do anything more here.

#### Tax and servicing

I've seen that the hire purchase agreement Mr M signed showed the car had a cash price of £22,437. I've also seen a copy of the dealer's invoice dated 23 November 2022, which shows this cash price included £165 for a full year's road fund licence and £249 for a two-year servicing deal.

Mr M has shown us a copy of a reminder he received, notifying him that the tax was due to expire at the end of April 2023. He's also provided evidence confirming he paid £180 on 25 April 2023 to tax the car for another year.

I'm satisfied that Mr M was reasonably entitled to expect the car to have been taxed for another six months. So, I think it's fair for Volkswagen to reimburse half of the £180 he paid to tax it for a full year.

Mr M also complained that he hasn't received a refund of the £249 he'd agreed to pay for servicing. He's shown us a copy of his email correspondence with the dealer, confirming they'd agreed to cancel this servicing plan. But as I haven't seen any evidence showing Volkswagen agreed to this cancellation, I'm not persuaded that I should direct them to issue a refund. I think this is something for Mr M to take up with the dealer.

#### Complaint handling

*Mr M feels he's been given inconsistent information by Volkswagen's complaint handling staff. But it's not for me to comment on whether Volkswagen should record calls with customers - that's a business decision they're entitled to make for themselves.*

I said I intended to uphold the complaint and direct Volkswagen to pay Mr M £90 to cover six months' road fund licence, plus interest. Again, I invited both parties to send me any further information or comments they'd like me to consider before I made my final decision.

Volkswagen said they accepted my provisional decision and had nothing else to add.

Mr M raised a number of points, which I'll summarise:

- Having found Volkswagen to be responsible for the road fund licence, he felt it was inconsistent not to do the same with the cancelled service plan. If Volkswagen weren't notified of this cancellation by their intermediary, that was due to their own failed administration.
- Our investigator advised Mr M to raise separate complaints against the dealer and Volkswagen. If the cancelled service plan wasn't Volkswagen's responsibility, our service should reconsider his complaint against the dealer.
- Mr M felt strongly that our service should further investigate whether customers are being ripped off by a large-scale road tax scam.
- He highlighted the difference in the interest rate he was quoted on this car, compared to the rate he'd been quoted for the car he'd originally been interested in. He thought this should be an area of concern for our service.
- Mr M again asked whether Volkswagen should retain call recordings for compliance, and whether our service could request them.

### **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 appreciate Mr M feels very strongly about this complaint. But I haven't seen any new information that persuades me I should change the findings set out in the provisional decision I issued on 21 February 2024.

I've seen evidence showing Mr M agreed to purchase a service plan – and I've seen nothing to suggest there was anything wrong with the plan that was provided. So, I don't agree that I should approach this in the same way as the failure to provide a full year's road fund licence.

I've seen a copy of an email showing the dealer agreed to cancel the service plan. But as I haven't seen any evidence showing Volkswagen agreed to cancel the finance for this element of the transaction, I'm not persuaded that I should direct them to issue a refund. As I explained in my provisional decision, I think this is something for Mr M to take up with the dealer.

This decision deals with Mr M's complaint against Volkswagen Financial Services (UK) Limited. It wouldn't be appropriate for me to comment here about any other complaint Mr M may have made about a different business.

Nor will I be commenting on whether any of the issues Mr M experienced may be a part of a wider problem. The Financial Ombudsman Service isn't here to regulate businesses - that's not part of our role.

We offer a free service to resolve complaints about financial businesses. I can request information I need to help me decide how a complaint should be resolved. I don't find it necessary for me to review telephone conversations Mr M had with Volkswagen about his complaint, so I won't be asking for them.

In my provisional decision I explained why I wouldn't be considering Mr M's complaint about the first car the dealer offered him. To summarise, I said I've only seen one signed agreement between Volkswagen and Mr M, so that's the only agreement I'll be considering in this decision. And for that reason, I won't be commenting on any differences in the deals he was offered by the dealer.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint and direct Volkswagen Financial Services (UK) Limited to:

- Pay Mr M £90 to cover six months' road fund licence.
- Add 8% simple yearly interest to the above amount, calculated from 25 April 2023 to the date of settlement.
- If Volkswagen consider tax should be deducted from the interest element of the award, they should tell Mr M how much they've taken off. They should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 April 2024.

Corinne Brown  
**Ombudsman**