

The complaint

Mr G is unhappy with the delay in delivering a car he ordered under a hire agreement with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (“VWFS”).

What happened

In June 2023, Mr G ordered a brand new car from a dealership whom I’ll refer to as “D”. A different company brokered the agreement. I’ll refer to this company as “B”. Mr G says at the time, D told him it could deliver the car to him as early as the same month, providing a certain paint option was chosen. Following this, Mr G had discussions with B over the trim of the interior of the car listed on the order form. Mr G says B told him he would need to select a specific option if he wanted an early delivery date. Mr G agreed to this. The order was placed for the car to be built in September 2023 with a delivery date due for October 2023. However, it seemed that D had selected the wrong trim and so, the car couldn’t be delivered early.

In November 2023, Mr G entered into a 36 month hire agreement with VWFS to acquire the car. Under the agreement, Mr G was required to make an advance rental payment of £15,777.01 followed by 35 payments of £500. The car was delivered to Mr G in December 2023.

Mr G complained and said the car was delivered damaged and this damage wasn’t identified at the time. He said he noticed the damage after cleaning the car. He said the damage included a missing dust cap on the tyre valve, badly dressed welding on the bonnet finish and damage to an alloy wheel. He said VWFS didn’t respond to him within 14 days and so he couldn’t withdraw from the agreement. He said D failed to accept it caused a delivery delay by ordering the wrong seat trim and this caused him a loss of £15,000.

VWFS issued its response to Mr G’s complaint in March 2024. It said the car had arrived with an alternative interior and had a full leather option instead of a half leather option. It said Mr G was provided with the right to reject the car through a 14 day policy but Mr G decided to take delivery of the car and so, gave up his right to reject. VWFS said the repairs had been carried out in February 2024 and a courtesy car was provided to Mr G. It apologised for the delays in contacting Mr G and offered him £250.

Unhappy with this, Mr G referred a complaint to this service and reiterated his complaint. He also said he suffered a flare up due to an existing medical condition which led to him being hospitalised for five days as a result of the lack of contact from VWFS. Mr G said he wanted VWFS to provide him compensation for the stress in addition to the £15,000 loss he had suffered.

Our investigator looked into the complaint but didn’t think VWFS had acted unfairly. She said D changed the specification of the car without informing Mr G, which led to excessive delays. She said D wasn’t acting as an agent of VWFS and so it wasn’t responsible for the actions of D. She said in relation to Mr G’s concerns about the quality of the car, the issues found at the point of supply had been rectified. Since then, she has said that Mr G had raised further issues and so he may want to consider the option of rejecting the car. She said VWFS would need an opportunity to investigate any new concerns first though. Our investigator said she thought VWFS could have been clear on its position about a replacement car but she didn’t

think this would have made a difference to Mr G's complaint. She said the £250 offered by VWFS was reasonable for the delay in considering the complaint.

Mr G disagreed. He said the level of compensation was derisory and that D was an authorised agent of VWFS as it arranged finance for it.

Our investigator said the agreement was brokered by B and not D. She said the finance agreement stated that D was not an agent of VWFS.

Mr G said VWFS didn't proactively respond to his complaint of December 2023 in a timely fashion. He said he couldn't exercise his right to reject the car within 30 days or return the car within 14 days because VWFS didn't contact him until March 2024. Mr G said VWFS was in control of the whole contract.

Our investigator said complaint handling wasn't a regulated activity on its own and that Mr G accepted the condition of the car despite being aware it had cosmetic faults.

Mr G said no party knew the date when the car could be returned and that he had already returned his existing car making a payment of around £3,500 in early termination fees. He said it would be unfair for him to be able to return the car and be left in a worse position than before it was delivered. Mr G said he had lost equity of £15,000.

Following this, Mr G let this service know the car was returned to D and a serious electric fault was found that required wiring to be replaced. Mr G referred a separate complaint about the quality of the car to this service. VWFS agreed to terminate the agreement, refund Mr G's deposit and allow Mr G to retain the car until he took delivery of a replacement car. But it said Mr G needed to continue to pay the excess mileage, rentals and damage falling outside of fair wear and tear. Mr G accepted this as a resolution to his complaint. So Mr G no longer has the car.

Our investigator also contacted VWFS who said it provided authority to D to act on its behalf. However, VWFS said it had no relationship with B. Our investigator said that Mr G was made aware of the delivery delays and no delivery date was provided on the order form.

Mr G disagreed and said that B had told it the car wasn't ordered until August 2023, D had ordered the wrong car, he didn't believe D's explanations and the proof was in the calls he had with B (which it couldn't provide).

Our investigator said that when Mr G made the order at the end of June 2023, no delivery date was confirmed. She said D had confirmed it made an admin error and she wasn't considering the actions of B.

Mr G said that B must be acting as an agent of D and he reiterated his complaint points.

As Mr G remains in disagreement, the complaint has been passed to me to decide.

As part of this decision, I'll only consider the delays in the car being provided to Mr G. I won't be considering Mr G's complaints about the actions of D or B, as these have been considered under separate complaints by this service. I also won't be commenting on the quality of the car, as Mr G has accepted an outcome in relation to this complaint separately. And neither will I consider any commission payments made as this is being considered under a separate complaint.

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.

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 G was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

I've read and considered the whole file and acknowledge that Mr G has raised a number of different complaint points. I've concentrated 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. The rules of the service allow me to do this.

What I need to decide in this case is whether VWFS has acted fairly and reasonably under the hire agreement it supplied.

In this case, there is no dispute that the car Mr G received wasn't to the specification he had ordered. This is because the interior trim of the car wasn't the exact type selected by Mr G. VWFS accepts this in its final response letter. So I think it's fair to say that the car wasn't as described. I can consider this complaint against VWFS as it is responsible for the goods it supplied.

However, I can't consider Mr G's complaint about the delays caused by B in choosing the incorrect interior option. I'll explain why.

Mr G entered into a hire agreement. When there is a hire agreement, generally the finance provider isn't liable for anything said to the customer by anyone before the customer enters the agreement. Furthermore, the terms and conditions of Mr G's hire agreement state:

“6.2 Any dealer or manufacturer who is involved with this Agreement before or after it starts is not our agent. We are not responsible for anything they say, do or fail to do unless we have given them written authority to act as our agent or are made responsible by law.”

In this case, VWFS has confirmed it provided authority to D only and not B. This means that I can only consider any representations made by D in relation to the delivery delays. I can't consider any representations made by B as VWFS didn't provide B with authority to act as its agent.

Mr G has provided correspondence between himself, D and B. Mr G has said that B made the representations about the colour of the paint of the car and B verbally advised the delivery date as mid-August 2023 and B told him that D didn't process the order until August 2023. However, these are all things that B told Mr G. And as I've already said, I'm not considering what B has done in this case.

I can see from an email chain between Mr G and D that D confirmed the wrong trim was ordered when it initially made the order. It provided information to show that this was due to human error as the default trim option had changed. As the error with the trim was made when the initial order was made, there's no confirmation the incorrect trim being selected caused any delays. D said the delay occurred due to the car being delayed when it was being delivered to the country, which was out of its control. Mr G said D offered him £200.

I've also seen a quote for the car which is dated 15 June 2023 from B. This states that the estimated delivery date is “TBC” and “*Estimated delivery date is to the best of our knowledge and is not a contractual obligation*”. But Mr G only confirmed the order on 30 June 2023. I've not seen a copy of the signed order, so it's unclear what was discussed. Mr D has mentioned that he was told if he selected a certain paint colour, the car could be delivered in June 2023. But given Mr G signed the order form on the last day in June 2023, I think it was clear this date couldn't be met – unless Mr G was told the car was with D already – which it wasn't.

I've seen emails between Mr G and D. These confirm that when D received the order from B in June 2024, it told B that the car was likely to be delivered in October 2023, but there was no guarantee of this as this was subject to change. D confirmed it had no control or influence over the manufacturer and it provided estimates based on information sent to it by the manufacturer. It said it received the car in November 2023 and booked a pre-delivery inspection but the initial delivery date of 30 November 2023 was cancelled by Mr G and was rebooked for 13 December 2023.

Mr G provided a letter from D which stated that the delay to the delivery was communicated to Mr G in good time and the delay couldn't be foreseen by D due to the car not arriving in the country. It also said that the car arrived with a full leather interior as opposed to the half-leather option, which was at no extra cost to Mr G. It said despite it providing Mr G with 14 days to reject the car, Mr G decided to take delivery of the car.

A letter from B confirms that the reason for the delay was that by the time Mr G signed the order in late June 2023, the stock availability had changed by the time the order was processed by the manufacturer. And because of the time delays in signing the order, the order became a factory order.

Having carefully considered all this, as Mr G has pointed out, there is no supporting information to confirm that the change of the order of the car affected the delivery date. And so, whilst the car did take some time to be delivered, I'm not persuaded that this was as a result of a different trim being selected as there is no supporting information to show this. It seems that the delays were down to the manufacturer having delays and these delays may have been caused regardless of whether the right options were selected or not.

Having said this, there's no dispute that the wrong trim was selected. But I've not considered any financial loss or compensation as a result of the wrong trim being selected, as Mr G has already been compensated for this under his other complaint. VWFS offered Mr G £250 as part of this complaint for delays in responding to Mr G, which I think is fair and reasonable in the circumstances. It follows that I don't think VWFS needs to do anything further in relation to this complaint. If Mr G separately wishes to accept the £200 compensation offered by D, he'll need to contact it directly.

My final decision

My final decision is that I do not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 4 November 2024.

Sonia Ahmed
Ombudsman