

The complaint

Miss A complains about a car supplied under a hire purchase agreement provided by Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (VWFS).

What happened

Around October 2021 Miss A acquired a new car under a hire purchase agreement provided by VWFS. The car cost £26,035. The credit agreement shows a deposit of £7,628.81 and Miss A was due to make repayments of £229.00 over 47 months, with a final payment due of £10,806.25.

Unfortunately, Miss A says the car developed a fault around 26 September 2023 when an engine management light ('EML') illuminated. She says the car was returned to the dealer on around six occasions for this, but was never repaired as the EML kept reappearing. And she said at times the car had gone into limp mode and limited her speed when driving.

Miss A complained to VWFS around January 2024. In March 2024, it issued its final response to the complaint. VWFS said, in summary, that it was only responsible for the car's quality when it was supplied and so wasn't liable for any issues which developed over the course of the agreement. It said as Miss A had the car for around 25 months before she complained, it was understandable the car might develop issues which needed repairing.

VWFS said if Miss A decided to voluntarily terminate the agreement, it would waive a fee of £443.77 and reimburse 20% of six monthly repayments made since September 2023. Miss A remained unhappy and referred the complaint to our service. She said the car still hadn't been repaired and was still sporadically going into limp mode. Miss A said she would like a replacement car as a resolution.

Our investigator issued an opinion and upheld the complaint. In summary, he said he thought the car was not of satisfactory quality when supplied due to the fault described. He said he thought Miss A should be allowed to reject the car. He said VWFS should reimburse 20% of the monthly repayments from when the car developed the fault in September 2023. And he said VWFS should pay Miss A £200 to reflect the distress and inconvenience caused.

VWFS disagreed. It said, in summary, that the car had covered over 10,000 miles when the fault occurred. It said the dealer should be given another chance to repair the car. And it said if the car was repaired it would consider additional goodwill gestures such as an extension to the warranty.

Our investigator explained this didn't change his opinion. He also explained he didn't think the car was reasonably durable.

VWFS still disagreed. It said there wasn't evidence that a part had failed prematurely. And it said it was up to Miss A to show a problem was present when the car was supplied. Miss A got in touch and explained the car was now more frequently going into limp mode. She supplied photos showing this. She also later sent another photo showing an error

message in relation to the parking brake. And she then sent an invoice stating the EML was illuminated dated 17 September 2024.

As VWFS continued to disagree, the case was passed to me to decide.

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 think this complaint should be upheld. I'll explain why.

Miss A 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 Miss A's complaint against VWFS.

Firstly, I'd like to explain to both parties that I may not comment on every point raised nor every piece of evidence. I'll instead focus on what I think are the key facts and what I consider to be the crux of Miss A's complaint. This reflects the informal nature of our service.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This says, in summary, that under a contract to supply goods, the supplier – VWFS here – needed to make sure the goods were of 'satisfactory quality'. It's important to note in this case the CRA specifically states durability can be considered when assessing if goods are of satisfactory quality.

Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors. I'm satisfied a court would consider relevant factors, amongst others, to include the car's age, price, mileage and description.

Here I need to consider that Miss A's car was brand new and cost over £26,000. So, I think a reasonable person would expect it to be in excellent condition and to be free from even very minor issues. And I think they'd expect to have trouble free motoring for a significant period.

What I need to consider in this case is whether the car supplied to Miss A was of satisfactory quality or not.

It doesn't seem in dispute here that the car had a fault causing it to display an EML and enter into limp mode. But I still think it's worth me setting out the evidence and stating that I agree this was the case.

From the 'vehicle data' supplied I can see a note from 30 September 2023. This states:

"Investigate complaint EPC lamp on dash carry out visual inspection confirm EPC displayed on dash"

"Replace acf valve with pipe clear fault codes send protocol and test tested ok"

I've seen a technician report from 15 November 2023. The mileage was recorded as 10,955. This stated:

"Investigate EPC lamp on dash"

"no epc light on when inspected no fault codes found"

I've seen a technician report from 28 November 2023. The mileage was recorded as 11,312. This stated:

"Engine warning light on yellow"

"eml light – current fault code was coolant temp sensor"

"Speed limitation fault and not able to accelerate"

"due to current fault with coolant sensor"

I've seen a job card dated 7 March 2024. This states:

"Investigate EPC LAMP ON/LIMP MODE"

From VWFS' system notes from this time it appears a software update was applied to try to resolve the issue.

I've then also seen more recent photos Miss A took of the car in limp mode and displaying an EML. And she's supplied a more recent invoice from September 2024 stating the EML was illuminated.

Thinking about all of this, I'm satisfied from the above evidence that the car did have a fault beginning in September 2023 where an EML was illuminated and the car was going into limp mode.

What I now need to consider is whether this fault means the car was of unsatisfactory quality or not.

It's worth noting here that I don't have specific information or evidence about the ultimate cause of the EML illuminating and the car going into limp mode. But, I don't think I need to make a finding about what I think is causing this or need further evidence to make a fair and reasonable decision.

I say this because I'm satisfied it's clear the car has an underlying fault that is causing these issues. From the above, I can see the car has been attempted to be repaired on several occasions. And I'm satisfied none of these repairs have resolved the issue.

I agree with VWFS that there is very limited information to show this fault was present or developing at the point of supply. But, as I've explained above, I need to think about whether the car was durable. I've considered that the car was less than two years old and had covered less than 11,000 miles when the fault appeared.

Thinking about this and considering the age and mileage, whatever the underlying cause is here, I don't think a reasonable person would expect any fault to appear on this car that persistently caused it to go into limp mode and display an EML - that couldn't be diagnosed nor repaired after multiple attempts.

It follows that I find the car to be of unsatisfactory quality when it was supplied to Miss A as I'm satisfied it wasn't durable.

I now need to consider what VWFS needs to do to put things right.

Miss A told our service she would like a replacement car. Replacement is one of the remedies set out in the CRA. But, I don't think it would be fair and reasonable in this case. I say this as Miss A's car is now used. Finding another car of the same make, model,

specification, age and mileage will not be practical or potentially even possible. So, I've considered what other rights Miss A has.

VWFS said it believes the dealer should get further opportunities to repair. Miss A has said she does not want the car to be repaired. The CRA explains if after one repair the goods don't conform to the contract, which here can be taken as being returned to satisfactory quality, Miss A would have the final right to reject.

I've already explained above that I'm satisfied multiple unsuccessful repair attempts were carried out. Miss A has made it clear she no longer wants the car. So it follows I'm satisfied Miss A has the final right to reject it.

I've thought about Miss A's use of the car. I understand she has continued to drive it, so it's reasonable that VWFS can retain the majority of the monthly payments made. But, I'm also satisfied an EML would illuminate and the car would sporadically go into limp mode. So I'm satisfied the use Miss A has had of the car, since the end of September 2023, has been impaired. So, I find VWFS should reimburse 20% of the monthly repayments made since this point to reflect this impaired usage.

I also agree with our investigator that Miss A has been caused distress and inconvenience because of what happened. I think it must have been upsetting and disruptive whenever the car has gone into limp mode. I think it must have been stressful for Miss A to realise the car wasn't repaired whenever it was returned. And she's had to take time out to take the car to the dealer on multiple occasions to try to resolve this issue. So I think VWFS should pay her £200 to reflect this.

My final decision

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

- Cancel the agreement with nothing further to pay
- Collect the car at a time and date suitable to Miss A at no cost to her
- Reimburse the deposit Miss A paid* **
- Reimburse 20% of all repayments made since 26 September 2023** ***
- Pay Miss A £200 to reflect the distress and inconvenience caused
- Remove any adverse information from Miss A's credit file in relation to this agreement

*From an order form I've seen it appears a "*Finance Deposit Allowance*" was made towards the agreement. I've presumed this may not have been paid by Miss A. VWFS only need to reimburse Miss A the amount *she* paid towards the deposit, including any cash or net part exchange balance.

** VWFS should pay 8% simple interest on these amounts from the time of payment to the time of reimbursement. If VWFS considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss A how much it's taken off. It should also give Miss A a tax deduction certificate if she asks for one, so she can reclaim the tax

from HM Revenue & Customs if appropriate.

***From VWFS' system notes, I believe it may have already paid Miss A some funds in relation to this point. If so, it can deduct this from the amount due.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 20 December 2024.

John Bower
Ombudsman