

## Complaint

Mr W has complained about the quality of a car that Volkswagen Financial Services (UK) Limited (“VW”) supplied to him through a hire-purchase agreement.

## Background

### *The transaction and Mr W’s agreement*

In August 2022, VW provided Mr W with finance for a used car. The car was just under three years old and had completed 17,082 miles. The cash price of the vehicle was £64,895.00.

As I understand it from the sales order form, Mr W had an existing vehicle from the same manufacturer that was approaching six years old and which had finance of £49,495.36 outstanding on it. The motor dealer offered Mr W a part exchange value of £47,500.00 for this vehicle and this left a shortfall of £1,995.36 on the finance. Mr W paid £2,000.00 to the motor dealer of which £1,995.36 went towards settling the amount remaining on his old finance agreement and £4.64 was used as his deposit for the new agreement.

This resulted in Mr W borrowing £64,890.36 to cover the amount he needed to complete his purchase. The ‘Personal Contract Purchase’ (“PCP”) hire-purchase agreement had interest, fees and total charges of £25,992.86 (comprising of interest of £25,982.86 and an option to purchase fee of £10) and a term of 48 months.

This meant the total amount to be repaid of £90,813.22 (not including Mr W’s deposit) was due to be repaid in 48 monthly instalments of £1,105.84 followed by an optional final payment of £37,733.05 which Mr W had to pay if he wished to keep the vehicle.

### *Mr W’s difficulties with the vehicle*

Mr W says he first started experiencing difficulties with the vehicle supplied when he was looking to use it in low gears and in reverse in October 2023. No fault could be found with the vehicle at this stage. In December 2024, the vehicle broke down and was recovered to the motor dealer before being returned to Mr W in early January 2024. That same week, the vehicle broke down once again and Mr W says that the vehicle has been off the road ever since. At this point, Mr W complained to VW.

### *Mr W’s complaint*

Mr W never received a final response from VW. But after having waited longer than the eight-week period a firm has to issue a final response, Mr W referred his complaint to our service.

### *After the complaint was referred to our service*

When providing us with its business file, VW accepted that given Mr W’s history with the vehicle, Mr W rejecting it seemed to be an appropriate remedy. Nonetheless, Mr W’s

complaint was then considered by one of our investigators. She upheld Mr W's complaint as she thought that VW had supplied Mr W with a vehicle that was not of satisfactory quality.

VW accepted the investigator's assessment and confirmed that it would settle the complaint along the lines of her assessment. But Mr W disagreed with the assessment. He was unhappy at the compensation VW agreed to pay and asked for an ombudsman's decision.

### **My provisional decision of 9 August 2024**

I issued a provisional decision – on 9 August 2024 - setting out why I was intending to issue a final decision confirming that I required VW to do more than what it had already agreed to do in order to put things right for Mr W.

In summary, I was satisfied that VW needed to refund Mr W more than 30% of the payments he'd made since January 2024. This was because while Mr W may have had the use of a replacement vehicle, it was not a like for like replacement of the car VW supplied. And staying mobile in such replacement is unlikely to have cost anywhere near 70% of the monthly payment on Mr W's agreement.

### **Responses to my provisional decision**

VW responded to say that it accepted my provisional decision and didn't provide anything further for me to consider.

Mr W also respond to confirm that he accepted my provisional decision and he also didn't provide anything further for me to consider either.

### **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, VW purchased the vehicle from the dealership Mr W visited.

Mr W then hired the vehicle from VW and paid a monthly amount to it in return. VW remains the legal owner of the vehicle under the agreement unless and until Mr W's loan is repaid.

This arrangement resulted in VW being the supplier of Mr W's vehicle and so it is also responsible for answering a complaint about its quality.

Having carefully considered matters, including the responses made to my provisional decision, I'm satisfied that, as the parties are in agreement that it wasn't, I don't need to decide whether the car supplied to Mr W was of satisfactory quality. All I need to decide here is whether what VW has agreed to do to put things right for Mr W is fair and reasonable in all the circumstances of his complaint.

Our investigator said (and VW accepted) that VW should:

- End Mr W's agreement with nothing further to pay;
- Refund 30% of the monthly payments Mr W made for the impaired usage of the vehicle;

- Refund the deposit Mr W paid of £4.64
- Add 8% simple interest on the refunded payments from the date Mr W made the payments to the date that the complaint is settled;
- Pay £300 for the distress and inconvenience caused.

I don't think that the investigator's direction goes far enough and I'm satisfied that VW should instead put things right in a different way. I'll now explain why in further detail.

Mr W wants to reject the vehicle so he's happy for VW to end his agreement and for it to collect the vehicle from the motor dealer/or garage (holding it on its behalf) where I understand it currently is. I am also satisfied that it would be fair and reasonable for VW to end its agreement with him and ensure that he has nothing further to pay on it as well as also arranging for the vehicle to be collected.

This will seek to place Mr W in the position he would be in had he not entered into the hire-purchase agreement in the first place, so I'm satisfied that VW should refund Mr W his deposit. I know that Mr W has supplied evidence of having paid the motor dealer £2,000.00 at the time of the sale.

However, as I set out in the background section of this provisional decision £1,995.36 of this £2,000.00 went towards settling the balance on Mr W's previous agreement. I appreciate that with the benefit of hindsight, Mr W may prefer not to have exited his previous agreement.

However, at the time at least, this was something that he wished to do – after all he must have wanted the vehicle which VW supplied albeit one that was of satisfactory quality. So £1,995.36 was an amount that Mr W was always going to have to pay to exit his previous agreement early and in September 2023. Furthermore, Mr W exiting his previous agreement meant that Mr W didn't have to pay the monthly payments he was still due to pay had that agreement run to the end of its term.

I accept that Mr W did have to make payments to this new agreement which VW was entering into with him. But I'll come on to what if, any payments, for this agreement VW should return to him shortly. For now, I'm satisfied that the deposit Mr W paid under this agreement was £4.64. And I'm also directing VW to return this £4.64 with interest at 8% per year simple.

I now turn to what, if any, of the payments Mr W made, under this agreement, VW should be able to keep. From what I've been provided with it appears as though, apart from the breakdowns, Mr W was able to use the vehicle for around three months. So I'm satisfied that it would be fair and reasonable for VW to keep the whole amount of Mr W's first three payments.

However, I note that Mr W has been without the vehicle VW supplied since January 2024. As a result, Mr W has been making monthly payments to an agreement for a car that he has been without since January 2024. Clearly it would not be fair and reasonable for Mr W to make payments to an agreement for a car that he has been without and hasn't had the use of. That said, while Mr W has been without the car that VW supplied to him, I understand that the motor dealer did provide him with a loan car.

As Mr W has had the use of a vehicle, albeit one there can be no argument wasn't equivalent to what VW agreed to supply, I do think that it would be unreasonable for VW to

return the full amount of the payments Mr W has made since January 2024. As it wouldn't be fair and reasonable for VW to refund the full amount of the payments Mr W made from January 2024, I've considered what it would be fair and reasonable for VW to keep to account for Mr W's usage of the loan car.

There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about the loan car provided, Mr W's usage of the loan car and what sort of costs he might have incurred to stay mobile had the motor dealer not provided him with the loan car.

All parties are familiar with the make and model of the loan car which the motor dealer provided to Mr W. As I've explained, I'm certain VW will agree that it is not a like for like replacement for the vehicle that it supplied to Mr W under the hire-purchase agreement. Our investigator did acknowledge this and thought that this meant that VW should be able to keep 70% of the monthly payments Mr W made from January 2024.

It's unclear to me exactly how the investigator arrived at 70% of Mr W's monthly payment representing fair usage for the loan car. I do appreciate that, as the investigator stated in her assessment, determining fair usage is not an exact science. But I'm mindful that the investigator's approach would result in VW being able to keep just under £775 a month to account for the fact that Mr W had use of the loan car. I don't think that Mr W would have paid anything like £775 a month in rentals, if he'd actually chosen to purchase the loan car, on PCP terms akin to those of the agreement VW supplied to him.

So, in circumstances where a likely monthly payment for a car equivalent to the loan car wasn't 70% of the payment Mr W made, Mr W didn't choose the loan car and he only ended up with it because the car VW supplied wasn't of satisfactory quality, I am satisfied that VW being able to keep 70% of the monthly payments from January 2024 isn't fair and reasonable.

As 70% of the monthly payment for the agreement, isn't a fair and reasonable amount to account for Mr W's usage of the loan car, I've given careful thought to what would instead be a fair amount. 25% of the monthly payment Mr W was required to pay towards his agreement would result in payments of just over £275.

Bearing in mind the likely price of the loan car, I think that £275 is far closer to the monthly payment (than the amount suggested by the investigator) Mr W would have paid on a PCP agreement for the loan car, although I do accept that it is probably towards the lower end of the spectrum.

However, I don't know exactly how old the loan car was, its specification is unlikely to have been at the higher end because it was a loan car and most importantly Mr W did not choose to enter an agreement for this vehicle. He only had this car because the car he wanted and was paying a much higher monthly amount for wasn't of satisfactory quality. In these circumstances, I think that it would be fair and reasonable for VW to keep 25% of monthly payments Mr W made from January 2024 onwards in order to account for the fact that Mr W was provided with the use of a loan car, which enabled him to stay mobile.

I've also considered the distress and inconvenience that Mr W experienced in light of the impact of him supplied with a vehicle that wasn't of satisfactory quality. He has not only had to deal with the car breaking down more than once in the period he was able to use it, he has also been without the vehicle at all since January 2024.

I appreciate that Mr W might have been provided with a loan car. But it's clear that this was not a like for like vehicle and I think that Mr W being without a vehicle of the type that was

supplied while paying around £1,100.00 a month, is likely to have caused him a degree of distress. I say this particularly as Mr W's previous vehicle was also of the same make and model that VW supplied to him under this agreement.

I also think that there have been delays in getting the faults with the vehicle diagnosed and by the time of writing, I've not been provided with any persuasive evidence that they have been diagnosed or have been rectified. Indeed, the information I've been provided with suggests that VW has offered Mr W little help and hasn't even responded to his complaint.

Nonetheless, I have to be mindful of the fact that complaint handling isn't an activity that I'm able to consider a complaint about. So, while I can consider whether VW supplying a vehicle that wasn't of satisfactory quality caused distress and inconvenience to Mr W, I cannot make an additional award of compensation for VW's poor complaint handling – its failure to issue a final response or engage with Mr W's complaint.

Having kept all of this in mind, I'm satisfied that the distress and inconvenience caused to Mr W by him being without a car equivalent to the one VW agreed to supply, as well as him having to chase VW to try and put things right all because he was supplied with a car that was not of satisfactory quality means that VW should pay Mr W a further £500 in compensation.

### **Fair compensation – what VW needs to do to put things right for Mr W**

Overall and having considered everything, I'm satisfied that it would be fair and reasonable, in all the circumstances of Mr W's case, for VW to put things right for Mr W by:

- collecting the car from Mr W (or the motor dealer should that now be where the vehicle is) at no cost to him;
- ending the hire-purchase agreement and ensuring that Mr W has nothing further to pay. VW should also remove any adverse information it may have recorded against Mr W as a result of this agreement from his credit file should any have been recorded;
- refunding his deposit and 75% of the payments that he made to the agreement from January 2024 onwards;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr W to the date the complaint is settled†;
- paying him £500 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires VW to take off tax from this interest. VW must give Mr W a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons given above and in my provisional decision of 9 August 2024, I'm upholding Mr W's complaint. Volkswagen Financial Services (UK) Limited should put things right for Mr W in the way I've directed it to do so in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 September 2024.

Jeshen Narayanan  
**Ombudsman**