

The complaint

Mr H complains that a car acquired under a personal contract purchase (PCP) agreement with Volkswagen Financial Services (UK) Limited (VWFS) wasn't of satisfactory quality when it was supplied to him. Mr H also complains that information was withheld during the sales process, and he felt pressured to go ahead with the agreement.

Mr H has been represented in this complaint. But for ease of reading I will refer to Mr H only within this decision.

What happened

The parties are familiar with the background of this complaint so I will only summarise what happened briefly here.

In May 2023, Mr H acquired a used car from a dealership (C). He paid a deposit for the car, with the balance of the purchase price being provided by VWFS under a PCP agreement. The car was two years old and had covered approximately 19,500 miles when the agreement started. The agreement was for 47 months, and the cash price of the car was £14,566.

A day later, Mr H got in touch with C. He was unhappy because the car had excessive scratches on a lot of the bodywork, and there was evidence the car had previously been owned by a rental company. Parts of their logo were visible on areas of the car's bodywork. He also told C the aerial was damaged. Mr H told C they hadn't disclosed the previous use of the car, and he felt the scratches were excessive for the age of the car. C took the car back and resprayed the most affected areas of the bodywork. They also replaced the aerial.

A couple of months later, Mr H noticed that the stop/start function on the car wasn't working. C were unable to take the car in for inspection, so Mr H took it to a local garage, who found that the battery was lacking the required charge to enable the stop/start function to work. They had to charge the battery overnight to get the stop/start working. A month later Mr H had to take the car back as the battery had lost charge again.

At this point he complained to VWFS. He said the car supplied to him wasn't of satisfactory quality at the time he acquired it. He also said C had failed to disclose the car had been an ex-rental car, which he said was in breach of the regulations. Further, Mr H said he'd felt pressured by C to go ahead with the sale without having the opportunity to go through the paperwork fully. He wanted to reject the car and end the agreement with VWFS. VWFS didn't uphold Mr H's complaint. They said the car was of satisfactory quality when it was supplied to him, and there was no evidence that C had pressurised Mr H into going ahead with the sale. They also said C didn't need to declare the car's history to Mr H, and the vehicle passed all the pre-sales check to show it was satisfactory.

Mr H brought his complaint to our service. Our investigator didn't uphold it. He said he didn't think he had enough evidence to show the car wasn't of satisfactory quality when it was supplied to Mr H. In relation to the car's previous ownership and use, our investigator explained that it was mentioned on the Vehicle Order Form, and he felt that was enough to

draw it to Mr H's attention. He also said he didn't think there was any evidence to suggest Mr H had been pressured into the sale while at the dealership.

Mr H didn't agree with the investigator. As he didn't agree, it was passed to me to decide. I issued my provisional decision on 5 September 2024. It said:

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

Mr H has provided a lot of information here. I'd like to reassure him that I've read and considered everything that's been sent, although I haven't commented on it all within this decision. I will be focussing on what I consider to be the key points of the complaint.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

The fact the car was supplied to Mr H by VWFS under a PCP agreement means that the credit provider has responsibility for things that were said or done by C prior to Mr H's entry into the agreement.

I've read Mr H's comments about C's failure to bring it to his attention that the car being acquired had been an ex-rental car prior to entering the agreement. He makes his argument passionately in all his correspondence with VWFS and our investigator. With that in mind, I've reviewed relevant guidance issued by the Chartered Trading Standards Institute (CTSI)¹. That information sets out to the motor trade steps to take in terms of compliance with relevant law², such as avoiding misleading actions or omissions, and poor or unfair business practices.

The guidance says that making a misleading omission could be unfair. An example given is that of failing to disclose that a car is an ex-business or rental car that may have had multiple users. It goes on to say, amongst other things, that when important information is provided in writing, it must be clear and prominent in the documentation given to the consumer and drawn to their attention before the sale.

Having looked through the pre-sale information given to Mr H I think it can be argued that the information about the previous use of the car is clear and prominent. On the bottom of page 3 of the Vehicle Order Form (VOF) it mentions the previous usage of the car. It states: 'The vehicle being purchased has previously been registered to a business or a vehicle rental company or was used by a business and may have been driven by more than one driver.' Whilst that mention in itself may not be seen as being clear and prominent, the same comment is made on page 4 of the VOF, in the same section as the new car details that Mr H is acquiring. I'm more satisfied than not that mentioning it twice on the VOF is enough for me to say that it was clear and prominent. However, the guidance from the CTSI also states this information should be drawn to Mr H's attention – and I haven't seen anything from C to show that was the case. They have said that it's on the VOF and that draws Mr H's attention to it – but that may not be enough in this case to satisfy the guidance in full. Our investigator has said he's satisfied Mr H was aware of the information about the previous use of the car, as it was explained on the VOF. I'm not sure that is correct, based on what I've said above and considering the guidance.

¹ Car traders and consumer law – Guidance for dealerships – can be found at <https://www.businesscompanion.info/focus/car-traders-and-consumer-law>

² Amongst other things, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Rights Act 2015, and the Consumer Contract Regulations 2013

That said, I don't think I need to make a finding on that within this decision as I think the issue of whether the car was of satisfactory quality when it was supplied to Mr H is more relevant here.

As the PCP agreement entered by Mr H is a regulated consumer credit agreement this service is able to consider complaints relating to it. VWFS are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr H entered. Because VWFS supplied the car under a PCP agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mr H's case, the car was used and had covered approximately 19,500 miles when he acquired it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage, and price.

Our investigator has explained that he thinks the car was of satisfactory quality when it was supplied to Mr H. I don't agree in this case. There is no doubt the car has had some faults, and still appears to have them – the reports and invoices provided by Mr H confirm that. And I'm persuaded, from what I've seen, that the car wasn't of satisfactory quality when it was supplied to Mr H. I'll explain why.

Mr H returned the car to C shortly after taking receipt of it, as when the car was looked at in the daylight it had noticeable scratches across the boot and other parts of the bodywork, and remnants of the previous registered owner's logo were visible markings on the car. The aerial was also damaged. C agreed to accept the car back and to re-spray the most severe scratched areas, as well as the area where the logo could be seen. They also agreed to repair the aerial. I'm satisfied that by agreeing to undertake this work so soon after the car was supplied, it implies that the car wasn't of satisfactory quality at that point. I think a used car can expect to have some cosmetic scratches – I haven't seen anything to suggest Mr H didn't expect this to be the case – but the photos I've seen do show an excessive number of scratches, even after the respray from C. And the previous owner's logo is still visible in certain places.

A couple of months later Mr H informed VWFS that the stop/start function of the car wasn't working. He'd taken it to a local garage to take a look at, as C didn't have availability at the time, and the battery for the car was found not to be carrying enough charge to allow the stop/start function to work. The battery had to be recharged overnight at the garage. The car went back to the garage on a couple of occasions to recharge. This all took place within six months of Mr H taking delivery of the car.

As I've mentioned above, the CRA includes appearance and finish and durability as aspects of satisfactory quality. And from the evidence I've seen I'm more persuaded than not that the appearance and finish of the car wasn't as a reasonable person would expect, when I consider the car was only two years old. Similarly, I'm not persuaded that a reasonable person would find it reasonable to need to recharge the battery on occasions to ensure all

the functions of the car worked as expected. The car had only covered approximately 19,800 miles at this point and was only two years old – which I'm satisfied is too soon for a battery to need recharging and, more likely than not, replacing.

With those things in mind I'm planning to conclude that the car wasn't of satisfactory quality at the point it was supplied to Mr H. C had already had the car back once following supply to respray certain parts of it. And the issue with the stop/start function due to the lack of battery charge occurred shortly after the initial attempt to repair the cosmetic damage, and only a couple of months after Mr H had acquired it. I'm more persuaded than not that the evidence shows the car wasn't of satisfactory quality at the time Mr H was supplied with it. I'm not persuaded that a reasonable person would expect these faults to occur within a short space of time of acquiring the car when I consider the age and mileage of it.

It's been some time now since Mr H notified VWFS about the stop/start issue and the lack of battery charge, and it seems that the relationship between Mr H and VWFS has become strained. So, whilst giving VWFS the option to repair or replace the battery is a solution under the CRA I'm not persuaded VWFS have done enough in a reasonable amount of time to try and rectify the situation with Mr H. Because of that, I now think the best resolution is for Mr H to be able to reject the car and hand it back to VWFS.

VWFS should arrange to collect the car from Mr H at no additional cost to him and end the PCP agreement with nothing more for him to pay. Mr H has had some use of the car, and it's only fair that he pays for that use. Mr H has confirmed the current mileage of the car as 19,984. I don't think it's reasonable for VWFS to keep all the monthly payments Mr H has made up to this point, when I consider the mileage he has covered in the car. Mr H has declared the car as SORN, as he wanted to reject the car back in September 2023 and didn't want to commit to paying the road tax for the car. The current mileage of the car confirms it hasn't been used since the last inspection report from Mr H's local garage in September 2023. As a result, I'm planning to ask VWFS to refund Mr H the monthly payments he's made since September 2023.

Mr H has also mentioned that he feels he was placed under pressure to conclude the sale with C when he went to look at the car. He has said that it felt like a 'formality' once he turned up at C, and the forms were just handed to him while the agreement was put in place. He has also said that a medical condition requires him to be given clear and unambiguous information to enable him to have the time to think about things and make a decision. He feels this didn't happen in this case. I appreciate what Mr H is saying, but I have to say I haven't seen any evidence, other than his testimony, which demonstrates to me that Mr H was placed under undue pressure to go ahead with the sale when he was in the dealership. Mr H was there with his parents, and I haven't seen anything to suggest Mr H and/or his representatives couldn't have asked for time to go through the paperwork or to rearrange the collection date of the car to give them the opportunity to go through the paperwork. I accept it's possible that C were pushing for the sale to go ahead, which may have made Mr H feel under pressure – but I can't conclude that undue pressure was applied, and that Mr H didn't have any other option other than to continue with the sale.

That said, it's clearly been a difficult time for Mr H, having taken delivery of a car that wasn't of satisfactory quality. He has explained the problems this has caused him in his evidence to our service – and I think VWFS should pay him compensation to reflect the upset this situation has caused him. I'm planning to award Mr H £200.'

Mr H responded and accepted the provisional decision. VWFS have also accepted the proposed outcome explained in the provisional decision.

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.

Mr H has accepted the provisional decision. VWFS have too. As such, in the absence of any additional information I see no reason to depart from the findings in my provisional decision.

My final decision

For the reasons above, I uphold this complaint. Volkswagen Financial Services (UK) Limited must:

- end the agreement with nothing further for Mr H to pay;
- collect the car at no further cost to Mr H;
- refund Mr H's deposit of £600;
- refund Mr H's monthly payments from September 2023 to the date of settlement, as he had stopped using the car at this point;
- pay 8% simple interest on all refunded payments, from the date of payment until the date of settlement;*
- pay Mr H £200 to reflect the upset he's been caused due to the car not being of satisfactory quality when it was supplied to him;
- remove any adverse information from Mr H's credit file in relation to this agreement.

*If Volkswagen Financial Services (UK) Limited consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr H how much they've taken off. They should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 October 2024.

Kevin Parmenter
Ombudsman