

complaint

Mr E complains about problems he has been having with a car purchased through a hire purchase agreement with Volkswagen Financial Services (UK) Limited ('VWFS').

background

Primarily, Mr E complains about a rattling noise which has been coming from the rear of the car which he says he noticed a few weeks after he financed it from new.

In its final response letter VWFS confirmed that there is a known issue with the particular model of car, however it would not uphold Mr E's complaint as it said that not every car is affected by this issue and there is no safety problem. It concludes that the manufacturer is in the process of working on an adjustment to improve the noise.

Our adjudicator recommended this complaint be upheld. He considered that Mr E's car did suffer from a knocking noise, and that this was an inherent fault. He concluded that, in the particular circumstances, Mr E should be able to reject the car and have the finance cancelled, with a partial refund of his payments to reflect his impaired usage.

VWFS disagreed with the adjudicator. In summary, it says that a road test could not demonstrate the noise from the car and the rear shocks have been replaced.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where evidence is unclear or in dispute I make my findings on the balance of probabilities – which is to say, what I consider most likely to be the case based on the available evidence and wider surrounding circumstances.

Mr E has complained about several problems with the car, however, I consider the core of his complaint relates to an ongoing rattling noise from the rear. Mr E says this is loud and begun relatively shortly after purchase. I find Mr E's claim to be credible, and the action he took of promptly complaining and returning the car to the dealer is consistent with this.

Mr E's claim is supported by an email he received from VWFS in May 2014 confirming that a dealership was able to replicate the knocking noise on certain road surfaces. VWFS has said that not all cars of this model are affected by this issue. However, based on the information available to me, including Mr E's credible submissions, I am persuaded that his car does suffer from this issue.

From the evidence available, including the submissions of VWFS, I am persuaded this is a recognised manufacturing fault. And, therefore, I consider it is something which has been present in the car since the point of sale.

VWFS has also said that it is not a safety related problem. However, I do not consider that this means that it is not an inherent defect. I consider a loud knocking noise of the kind described by Mr E (even if it is intermittent) to be unacceptable on a brand new vehicle. VWFS confirmed that the manufacturer is working on a fix – which further persuades me that it is a significant problem.

I consider that Mr E has acted reasonably and reported the issue to the dealer within a reasonable time. He tried to formally reject the car but was not allowed to do so. Furthermore, I consider that he has given the dealership reasonable opportunity to fix the problem but it does not appear to have happened. The shock absorbers were recently changed but there is no persuasive evidence that this is the manufacturer approved fix, or that it has successfully resolved the problem. In fact, the technician who worked on the car (and changed the shock absorbers) was unable to replicate the fault, which gives me less confidence that it has been successfully addressed.

Mr E says he is not confident the car has been fixed and he does not want it back as he has lost faith in it. I consider it fair and reasonable in this instance that Mr E should now be able to reject the car, and have the hire purchase agreement cancelled and deposit refunded to him. I am satisfied that he has travelled several thousand miles in the car so VWFS can fairly retain his monthly payments from the start of the agreement until 5 June 2014 when it was returned to the dealer for further work (and not collected). However, I do consider that Mr E's usage has been somewhat impaired by the fault. I consider a refund of 10% of these monthly payments to fairly reflect this impaired use. Also, I note that shortly after purchase Mr E paid for some protective film to be applied to the car bodywork. In this instance, I consider it fair that Mr E is also refunded for this additional expense.

My final decision

My final decision is that I uphold this complaint and direct Volkswagen Financial Services (UK) Limited to:

- cancel Mr E's finance agreement and take possession of the vehicle at no further cost or inconvenience to him;
- refund Mr E's deposit;
- refund 10% of each of his monthly payments up to 5 June 2014;
- refund his total monthly payments from 5 June 2014 to the date of settlement;
- reimburse the £595 he paid for the protective film coating; and
- pay yearly simple interest at 8% on all refunded payments from the date of each payment to the date of settlement.

If VWFS considers it should deduct tax from the interest element of my award it should provide Mr E with a certificate of tax deduction so he may claim a refund if appropriate.

Mark Lancod
ombudsman