

ACC Consultation Hub:

I wish to make a formal submission to the ACCC Report “*New Car Retailing Industry – a market study by the ACCC*” following my ongoing unsatisfactory experience with my (purchased new to special order) Skoda Fabia Combi vRS, purchased under lease and delivered 10 April 2013.

I sought to purchase a new car to replace an old Saab in 2012, placing a special order through [REDACTED] for a Skoda Fabia Combi (wagon) vRS model, in a metallic grey and with a sunroof, neither of which were available landed in Australia at that time.

Although slated for delivery in December 2012, the car was finally delivered by a car courier to me in Canberra on 10 April 2013.

The car was sourced by [REDACTED] on my behalf through what was then [REDACTED], Sydney, and received its immediate post-delivery (1500 kms) service at this location. Shortly after this, [REDACTED] closed for business. All subsequent service has been undertaken by [REDACTED] (Skoda) in Phillip, ACT.

My difficulties began while travelling to Sydney from Canberra on Saturday 31 October 2015, with about 66,000 kms on the clock, and still well within warranty. It turns out that the car had melted a piston, and damaged the engine. The remainder of this submission will discuss subsequent events.

Order of events:

Purchased car October 2012, delivered 10 April 2013 by courier.

I was aware (through an internet search and the VWWatercooled blog) that the engine in these cars had a tendency to consume excess amounts of oil, and that I needed to watch the oil level. [REDACTED] advised at each set service (15,000 km intervals) that the oil usage was ‘normal’ and was ok, and that my car was not at risk of damage (noting on the service invoice that the car was ‘to standard’).

On Saturday 31 October 2015, the *Exhaust Control Module (ECM)* [aka ‘engine light’] came on flickering on and off. I stopped, checked the oil and not finding anything visibly amiss continued on my way to a conference I was due at in Sydney. The car seemed to surge, and was rough running in traffic once I got to Sydney.

I contacted my dealer ([REDACTED]) and was put through to Skoda Roadside Assist. I was advised the car should not be driven, and the car was collected by tow truck to a Skoda dealer in Sydney ([REDACTED]) for inspection and diagnosis. [REDACTED] had the car in Sydney from **Monday 2 November to Friday 27 November 2015**. While at [REDACTED] the alternator was damaged (shorted by a mechanic), also damaging the cars ‘multifuse’. A part was sourced from another car on the [REDACTED] lot, and the engine diagnosis undertaken.

I was advised that:

- the sparkplugs were fouled with oil
- a compression test was done, returning 220 psi in cylinders 1 and 2, and 210 psi in cylinders 3 and 4. Apparently this was ‘within range’, though it seems a bit high for a mid compression engine with two forms of forced induction (engine is the VW 1.4l TwinCharge engine – supercharged and turbocharged) to me.
- I was advised I needed to undertake three by 1,000 km oil consumption tests, with the oil drained and tested at each stage. As I live in Canberra, and was not able to undertake these tests in Sydney, I asked [REDACTED] to do so on my behalf. Apparently this was not possible and the car was returned to me by car courier on a flat bed. On receipt, as the car was removed from the flat bed, the ECM light was on solidly. I was advised not to drive the car, and it was again collected and taken to [REDACTED] for inspection.

This was the 2nd time the car was towed in the 5 week period following the initial issue.

After a number of calls to [REDACTED], I was advised that the compression on cylinder 3 was down to 108 psi. The engine was pulled down and the piston was found damaged and needed replacement.

Unable to understand why a car which was less than 21 years old should have a damaged piston, I contacted a local independent VW specialist to be told that this engine had a reputation for damaging pistons, and had been subject to a service bulletin (I believe coded R2S2) in 2012 to address the excessive oil usage, and subsequent overheating and piston damage. I discovered that while my car was built after this bulletin, the engine had not been updated by Skoda in manufacture and did not meet VW (Global) standards for that car.

I was advised not to accept a repair, but to insist on a full crate engine replacement. VW/Skoda Australia was not prepared to consider this request. I was shown a copy of this bulletin by the dealer, but refused a copy as it was 'commercial in confidence'. I was advised by the dealer service manager (informally) that this engine in their experience was likely to fail between 5,000 kms and 90,000 kms. It is extremely unlikely that [REDACTED] would repeat this claim today as it would risk their dealer status. The advice concurred with the independent [REDACTED] however.

I sought advice from a solicitor as I considered that in these circumstances, the car sold and provided to me by VW/Skoda Australia was not fit for purpose, had suffered a catastrophic failure and should have been replaced, of a full refund offered. VW/Skoda Australia advised my solicitor that I would need to seek a discovery hearing to access the service bulletin, and that any such hearing would be vigorously defended. I was advised that I would need to lodge a \$20,000 deposit to proceed with a hearing, and that if I had any success, it was likely that costs would be awarded against me in any case. Clearly this was not an action I could afford, and so did not pursue. I did raise a case request with the ACCC at the time, and was advised that I would need to have an identical failure before the ACCC could enforce a remedy on my behalf.

Friday 15 Jan 2016 - I was requested to only deal with the dealer aftersales principle, [REDACTED]. Me [REDACTED] advised that the engine repair would include additional oil injectors below the piston to reduce further overheating risks. I was advised 'off the record' that he had in previous years advised VW that this engine had a likelihood of failure due to piston overheating, and that the Rev II (oil injectors) change should have been applied. The Rev II change added oil injectors below the pistons, and a software revision to ensure more effective cooling. I was advised that this information was advised to VW Group dealers for this engine in 2012, some months prior to my car being built and delivered.

Wednesday 20 Jan 2016 – was contacted by [REDACTED] seeking permission to take the car for an overnight test drive.

Thursday 21 Jan 2016 – Following the test drive, I was contacted again, and advised the car needed new spark plugs. I sought confirmation that the plugs had been replaced by [REDACTED] as claimed in November 2015, but [REDACTED] claimed this was not the case.

Monday 25 Jan 2016 – Kept waiting at dealers for a time, but was able to finally collect the car. The car had been with a dealer since 31 October 2015 – **a total of 107 days, or 3 and a half months off the road.**

I note that I had maintained my lease payments at full rate throughout this period – neither dealer were able to estimate the likely time taken to repair, being required to seek clearance from VW/Skoda Australia for each individual part and step throughout the repair process. I made very clear at this time my concern that the car was not fit for purpose, and had suffered a significant reduction in second hand value and a depreciation greater than I would otherwise have suffered as a direct result of the faults and repair. At no stage would VW/Skoda Australia accept liability for a faulty car, or faulty engine, leaving me with a car off the road for 25% of its life at that stage.

As the car is under lease, my fuel and running costs are pre-paid from salary as an automatic deduction, as part of the lease fee. I was provided with a couple of hire cars for the period the car was off the road, but had to cover all running costs and fuel above my budgeted lease cost. One hire car was damaged in a car park by an

unknown party – costing me an excess fee as well. At the time the car was returned (25 Jan 2016), I had incurred a total cost of \$4,471.51 (made up of \$1,149.61 fuel and one way rental fees, and \$3,321.90 in foregone lease payments). At no stage would VW/Skoda Australia agree to reimburse some or all of these expenses.

Sunday 14 Feb 2016 – The ECM light came on again, while driving in Canberra. The car was towed again to [REDACTED] (I had it for 2 weeks between failures), where a misfire was found recorded on cylinder 1. This did not show up again on test, and the car was returned to me.

Friday 26 Feb 2016 – Drove to Sydney. Car unable to maintain speed in cruise control (losing more than 20 km/h if I lifted my foot off the accelerator. ECM light back on intermittently, with the car surging badly between 110 km/h and 60 km/h. I was nearly rear ended in Sydney due to a sudden loss of power.

Friday 4 Mar 2016 – ECM light back on *again* while driving around Canberra. Advised not to drive the car, other than to bring it back in to [REDACTED], which I did on the Monday (7 March). All four cylinders mis-firing.

Thursday 10 March – DSG Gearbox ‘sticky’, not changing smoothly or easily. Significant vibration evident at idle and low speed. The service log ([REDACTED] – 15214052, 10/3/16) notes:
‘ECM has returned once again. Inspected and carried out GFF, Faults logged for misfire all 4 cylinders, Erased ECU learnt values, Carried out latest SW upgrade (ECU), Road tested over multiple night, No misfire counted on any cylinders. All ok.’

Following the engine rebuild, my fuel consumption increased from the average (and advertised) 6.1 l/100 km to an average of 8.12 l/100 km – and increase of 31%. Excessive fuel consumption has and continues to be an issue – I understand that the Rev II repair uses fuel to cool the engine, especially when overheated during a period of misfire. I note that one of the key purchase deciders was a reportedly good for class fuel consumption. I no longer have this benefit, with consumption ranging from an **average 7.7 to 12l/100 km** depending on the level of misfire and distance travelled each day. This remains between 25% and 50% more than anticipated.

Wednesday 27 Apr 2016 - Car returned to [REDACTED] 29 April 2016 for further repair – replace all fuel injectors.

Friday 10 June 2016 – fuel usage 37.9l for 425 km (8.9176 l/100 km; or 43.8% above standard).

Friday 15 July 2016 – returned to [REDACTED] with concerns re fuel consumption. Service log [REDACTED] – 15226598, 15/7/16) noted no faults, returned average 6.2 l/100 km on test. No issues found with oil consumption.

Monday 25 July 2016 – More misfires on trip home from Melbourne – some hesitation and stumbling – averaged 9.1067 l/100 km, 45.4% above standard.

Saturday 21 Jan 2017 – ECM light on, oil temp to ranging between 99 and 103 degrees (hot) on way home from Sydney.

Monday 30 Jan 2017 – Car booked in to [REDACTED] again to address ECM issues. Returned **Friday 10 Feb 2017**.

Friday 14 April 2017 – ECM light again. No response from [REDACTED] when contacted this time.

Tuesday 25 April 2017 – ECM light fixed on again, on trip home from Armidale. Collected by tow truck **26 April 2017**. Car returned **Monday 19 June 2017** – a total of 51 days not available this time. Fuel consumption still very high. Service log [REDACTED] – 15263308, 19/6/17) notes:

‘The ECM light is on, a repeat of what has happened before for the past 3 years. The engine has an horrible rattle and is not driving well. (my report to [REDACTED]) (my phone # - Refer [REDACTED]).

- As discussed multiples roadtest and various workshop testing, were able to consistently replicate fault, replaced ignition coils and spark plugs (again – apparently not done, even though I was advised they had been)

after fuel system flush, no further misfire. (I was also advised that the bonnet had been damaged by an oil leak within the dealers workshop, necessitating a respray... [REDACTED] did undertake a minor plastic repair to the bumperskin at no charge (my fault) at this time).

Saturday 8 July 2017 – ECM, hesitation and stumbling on way down to coast via Bemboka and Candelo. Abandoned trip at Candelo as I considered the risk of being stranded near the coast was too high. ECM on all the way back to Canberra, travelling slowly to avoid overheating. Further misfires while driving around Canberra **Wednesday 12 July 2017**.

Thursday 10 Aug 2017 – Again on the road to Sydney – car rough (bucking and hesitating). Stopped near Campbelltown to set GPS for remainder of trip into Sydney airport. On re-entering highway, the ECM, all dash lights and the EPC light came on. The EPC light indicates the car has stepped into ‘limp home mode’, limiting speed and function. Called [REDACTED] and notified. At the airport, the light cleared though the car remained hesitant and uncertain. Drove the car home to Canberra – similar issues on way home.

Friday 18 Aug 2017 – ECM light on again driving around Canberra – harsh misfires.

I experienced further misfires throughout the week, returning the car to [REDACTED] **Tuesday 29 August 2017**. The car remains at [REDACTED] to date.

All in all, I note the car has been **off the road for more than 12 months in total with the SAME ECM, misfire or engine failure** throughout the 4.5 years I have owned it. VW/Skoda Australia appear to have withdrawn parts and financial support for the dealer at this stage, despite not yet having resolved the engine failure at any time throughout the 3 years I have suffered with it.

I note that at no stage have VW/Skoda Australia authorised a *full and complete list of replacement parts and labour* applied to my car since 31 October 2015, and that the only record I have access to is a limited report prepared by [REDACTED], as quoted above in some circumstances. [REDACTED] did after much debate provide me with a redacted invoice following the major engine rebuild, but have since advised that not all the parts identified as being replaced were actually replaced at the time. This has resulted in the ignition coils, spark plugs and fuel systems being replaced more than once.

I was also advised by VW/Skoda Australia directly following the faults in late 2016 that the fuel used in the first instance was at fault, and that the repairs should not have been undertaken under warranty. When I sought copies of the fuel tests made by [REDACTED] at the time, I was advised that testing had not occurred, and that the dealer had no evidence as to whether my car was subject to bad fuel or not. Following my protest, and advice that I would re-enter legal proceedings, Skoda stood down on this claim. I am left thinking that Skoda simply attempted to bully and harass me in order to avoid their lawful obligations and duty under Australian consumer law. It is the complete distrust and offensive approach taken by VW/Skoda Australia which has upset me the most. If this were a reputable company, VW/Skoda should have replaced the entire vehicle in the first instance, accepting their lawful liability in providing a car which did not meet VW standards for production, and one where the engine has suffered such significant failures across the global market. (I understand that VW have experienced misfire and oil overheating engine failures for the 1.4 TwinCharge engine in up to 80% of cases in the UK, India, Australia and Canada. (sourced from Briskoda.com and other online sources).

I note the ACCC report recommendations include:

#3.1 “Where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to a refund or replacement without needing to prove a ‘major’ failure”. I believe that any ‘reasonable man’ would judge the constant engine failures I have experienced with this car as **major failures** – in so far as without a functioning engine, a car is a useless piece of sculpture, which cannot be used for its primary purpose – that is – to provide transport.

I believe that a suitable remedy should consist of:

Full replacement of the vehicle with a new vehicle to a similar standard, noting that this model has been discontinued, and the engine ceased production; or

Full refund, including all costs associated with the lease – in effect, to Skoda to pay out the lease in full, and also refund me the value of the car as at the time of the initial failure (c\$25,000), or pass title of the car unencumbered to me so that I can sell it and replace with a more reliable brand.

I am also prepared to support any class action against VW/Skoda Australia and VW Group for any breaches of consumer law as may be carried forward by the ACCC, and put my car up as an example of misuse of corporate power against consumers. It must be that VW Group is held to account for the abusive and deceitful practices and approach taken against me and any other consumers suffering in the same way.

That there is not a simple and immediate remedy available for Australian consumers in the face of corporate abuse such as this beggars belief, and is shameful.

Anthony Valentine Barford.

[REDACTED]

[REDACTED]