

The complaint

Mr T, complaining on behalf of Partnership F (three partners), feels that Volkswagen Financial Services (UK) Limited has treated the partnership unfairly regarding end of contract charges for damage to a car it had hired from it.

What happened

The partnership took out a hire agreement with Volkswagen for a new car in 2016. At the end of the contract it returned the car. Volkswagen then invoiced (dated 16 February 2019) the partnership for damage to the car totalling which totalled £442.75. Volkswagen then removed one item damaged from the list leaving an outstanding amount of £392.11. Mr T disputes the level of damage to the car and says its fair wear and tear. So he complained to Volkswagen.

Volkswagen considered this and referred to industry guidance about fair wear and tear, that of the British Vehicle Rental and Leasing Association (BVRLA). It compared the damage to the car with the guidance and didn't agree with Mr T so said the charges should be paid. Unhappy with this Mr T complained here.

Our investigator felt that one of the damage issues wasn't supported by the evidence, but the rest were. Accordingly the investigator upheld the complaint and felt that the outstanding balance should be £336.91, and that Volkswagen were acting fairly in seeking that to be paid to it. Volkswagen accepted this position, but the partnership did not. So this complaint comes 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.

Where the information I have is incomplete, unclear or contradictory (as some of it is here) I base my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

From the beginning of this dispute some costs of repair have been removed. As it stands now Volkswagen seek payment under the hire agreement for the costs of the following, which Partnership F disagrees with;

- Repairs to Left-hand front and left-hand rear doors and refinish left-hand rear door
- Refinish quarter panel left-hand rear and repair quarter panel right-hand rear
- Replace flasher side repeater left-hand front

Mr T disputes the level of damage and says its fair wear and tear. But Volkswagen disagree. It says Partnership F had to take reasonable care of the car and it points to the guidance it follows on fair wear and tear, that of the BVRLA.

Volkswagen has provided an independent inspection report and photographs of the damage to support its position. Mr T says it's not as bad as Volkswagen makes out and has supplied a witness statement and comments about the damage.

I've considered the evidence here very carefully, particularly the pictures of the damage that Volkswagen has said is present and also the witness statement provided by Partnership F. I should add that the witness statement provided by Partnership F does detail the handover of the car for inspection by the last person in possession of it. However it doesn't give any details or comments regarding the state of the car (specifically any damage) at that time. So it doesn't help Partnership F's position significantly in terms of the damage that Volkswagen says was present.

Volkswagen has said the inspection was conducted by an experienced vehicle inspector in accordance with BVRLA fair wear and tear guidelines. It has provided details of this independent inspector and the firm the individual works for. So I'm satisfied this is an independent report.

It is clear from this witness statement and the inspection report that the car was handed over and inspected on the same day. I've not seen any persuasive evidence of damage being done between handover and inspection on that day. Accordingly any damage I find to have been present at the inspection on balance fairly sits with Partnership F. So I now consider the items charged for and decide whether Volkswagen has treated the Partnership Fairly.

Repairs to Left-hand front and Left-hand rear doors and refinish Left-hand rear door

Regarding the left-hand rear door the photograph shows a clear scratch. A ruler has been placed in close proximity to show its length which is significant in my view. In response Partnership F has said it appears fresh and that its witness has said there wasn't a scratch there when it was handed over. So both parties accept there is damage. And bearing in mind there is no persuasive evidence of any damage being done to the car between handover and inspection on balance I think it more likely that the damage was present when the car was handed over.

The damage on the left-hand front door is less obvious and I agree with Partnership F that one of the images seems to be more relevant to the flasher side repeater left-hand front damage than this door. However I can see dents in the left-hand front door. Partnership F says from the photo it seems to be a smear that can be wiped. I must however remember that the images provided isn't the entirety of the evidence. The photographs are provided as supporting evidence to the inspector's examination. In effect the inspector has said that there is damage and the photographs are provided to support his position. Clearly these photos could have been better. However from my consideration of this photo I think on balance that there are small dents in the immediate vicinity of the ruler.

I appreciate Partnership F's comments about the rain droplets in the photo both regarding this part of the car and more generally. I also note its comments about what could have happened outside of its control and that the evidence isn't "conclusive". But as I've explained the test I have to apply is balance of probabilities. It is not 'beyond reasonable doubt' or even the higher test of certainty. On considering the evidence available I'm satisfied on balance of probabilities that Volkswagen is treating Partnership F fairly in regard to the doors as I'm satisfied that there is damage needing to be repaired and that Partnership F can be charged for this fairly under the agreement.

Refinish quarter panel left-hand rear and repair quarter panel right-hand rear

I've considered the pictures of these panels. I note that in its comments on these pictures Partnership F has accepted there is damage to one of the panels but as said it looks 'fresh'. It has also pointed to what its witness has said to it about the state of the car that it "*was clean as far as he was concerned*". I've considered this carefully. But I note that in the witness statement given shortly after handover there is no persuasive comment about the state of the car and that what I've quoted above doesn't categorically state that there was no damage to the car at all. And Partnership F are accepting there is some damage but suggests it's not responsible for this.

I can see from the image of the left-hand rear quarter panel there is a significant scratch of some length and indeed width and apparent depth. So I think this requires repairing and its fair for Volkswagen to ask Partnership F to cover that cost.

As for the right-hand rear quarter panel I note Partnership F's comments. I also note that in this photo (and some others) there are reflections of the surrounding area and indeed other cars which isn't always helpful. Having said that in this image I think the reflection is helpful in that it helps me appreciate the dent present just above the arrow on the ruler which is in close proximity. Accordingly I don't think Volkswagen has treated Partnership F unfairly in charging it for these repairs.

Replace flasher side repeater left-hand front

Partnership F has said one of the images here shows damage but isn't "conclusive" and the other image "*looks fine without damage*". I've considered the other image and its clear to me that it isn't in focus unlike the first photo image. Having said that I can see the damage in both photos albeit its somewhat clearer in one of the photos. I don't think Volkswagen has treated Partnership F unfairly here as I'm satisfied it is damaged.

Partnership F has argued about the charges applied and has pointed to some of the mistakes made in the amounts quoted. I've considered the report and the original invoice which are consistent on the charges for damage. Just because some of these have been misquoted in the correspondence afterward doesn't mean the correct amounts shouldn't be applied under the agreement.

I've also considered the costs in relation to the repairs needed. These are in line with what this service expects for such repairing and refinishing work. So I'm satisfied there is nothing unfair in the costs applied.

Overall, as I've said, the test I must apply is balance of probabilities. I'm satisfied there is damage to the respective areas of the car as Volkswagen has said. I think considering there is no persuasive evidence of the car being damaged between handover and inspection (on the same day) that it is likely that this damage was done to this car whilst Partnership F was in possession of the car. So I think it only fair that it pays those repair costs.

Putting things right

Bearing in mind Volkswagen has accepted that the evidence doesn't support all the repair costs it applied originally I am partially upholding this complaint. Having said that Volkswagen has treated Partnership F fairly in asking it to pay £336.91 for the damage I've described above and has done so in line with the industry guidance on fair wear and tear. So it is entitled to ask Partnership F to pay that. And if Partnership F refuses to pay Volkswagen is entitled to use collection firms and other processes to recover the monies fairly owed.

My final decision

For the reasons I have explained, my final decision is that I partially uphold this complaint about Volkswagen Financial Services (UK) Limited as not all of the charges should be applied. However Volkswagen has asked Partnership F to pay £336.91 and has done so fairly.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 11 February 2021.

Rod Glyn-Thomas
Ombudsman