

The complaint

Mr S complains that Volkswagen Financial Services (UK) Limited, trading as Audi Financial Services, has terminated the hire purchase agreement under which a used car was supplied to him.

What happened

Mr S entered into a hire purchase agreement with Audi Financial Services in December 2018 for it to supply a used car to him. The car was about seven months old, had been driven for 5,934 miles and had a price of £33,850.

Mr S electronically signed the hire purchase agreement in December 2018 – he made an advance payment of £710.07 and agreed to make 48 monthly payments of £498.81 and a final payment of £16,482.50 for the car. The agreement included a maximum annual limit of 10,000 miles.

He contacted Audi Financial Services in January 2019 to change the details of his direct debit – but it didn't change them correctly so the payments due from Mr S weren't collected. It sent him an arrears notice in February 2019 and a reminder in March 2019 and it then sent him a default notice. He didn't take the action specified in the default notice by the due date so Audi Financial Services tried to contact him by phone and e-mail in April 2019 and asked him to contact it within seven days. He didn't contact it so it terminated the agreement in May 2019 and said that he would be contacted to arrange for the car to be returned or for the outstanding balance of his account to be repaid.

It instructed a third party to collect the car in June 2019 – and the car was seized by the police because on an unrelated issue and the third party collected the car from the police. Mr S contacted Audi Financial Services and said that he'd been out of the country for five months so he was advised to contact the third party but the car was sold and the proceeds of sale were credited to Mr S's account.

Mr S complained to Audi Financial Services and it said that it had noticed in April 2019 that the change to his direct debit hadn't been uploaded correctly so it tried to contact him by phone and e-mail but no call back was received. It said that it partially upheld his complaint as it should have updated his direct debit and it sincerely apologised.

Mr S wasn't satisfied with its response so complained to this service. Our investigator recommended that the complaint should be upheld in part. She said that Audi Financial Services failed to carry out Mr S's instructions in a reasonable time frame so should pay him £150 to compensate him for the inconvenience caused.

Audi Financial Services has accepted that recommendation but Mr S has asked for his complaint to be considered by an ombudsman. He says, in summary, that Audi Financial Services had no right to terminate the agreement unless it contacted him.

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to Audi Financial Services on 29 September 2020. In my provisional decision I said as follows:

"We offer an informal dispute resolution service and try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances - although we do take account of applicable law and regulations we also consider the overall situation - so it's possible that a court would reach a different outcome to the decision that I've made.

There doesn't seem to be any dispute that the reason that the payments were missed and the account went into arrears was because Audi Financial Services hadn't updated Mr S's direct debit details correctly – that isn't something for which he was responsible. It noticed its error in April 2019 but that was after it had sent him a notice of default and it phoned and emailed him and asked him to contact it. He didn't do so and he said that he was overseas (but he's since said that he was working away from home in this country) and it terminated his agreement two weeks after it had noticed its error. I don't consider that to have been fair or reasonable.

It would be reasonable to expect Mr S to have checked his bank account so he ought reasonably to have noticed that his direct debit wasn't being collected by Audi Financial Services. It sent him arrears notices and a default notice which he didn't respond to – but he says that he was working away from home and became aware of the issues with his account when he returned in June 2019 (but the information that he's provided about this is inconsistent) and, other than the deposit, he hasn't made any payment to Audi Financial Services.

I consider that it would be reasonable for Audi Financial Services to have withdrawn the default notice in April 2019 when it became aware that it had made an error about Mr S's direct debit. After it became aware of its error the only action it took was a phone call and an e-mail to Mr S asking him to contact it and it then terminated his agreement. I consider that it would be reasonable to expect it to have done more in these circumstances before it terminated the agreement.

Mr S has been asked to provide evidence to show that he would have been able to clear the arrears on his account before the agreement was terminated by Audi Financial Services – he's provided statements for his bank account for February to May 2019 which show that for the period in May 2019 covered by the statements the account didn't have a balance of more than £219.70 – and I'm not persuaded that he's provided enough evidence to show that he would have been able to clear the arrears on his account if he'd received a notice of arrears from Audi Financial Services.

The consequences of the termination are severe for Mr S – the car has been repossessed, he's expected to pay the outstanding balance on his account (which has been kept as £10,414.53 since July 2019), he's lost the advance payment of £710.07 that he made for the car and adverse information will have been recorded on his credit file. I don't consider that to be fair or reasonable in these circumstances.

The car has been sold and Mr S's agreement has been terminated and I don't consider that it would be appropriate for me to require Audi Financial Services to provide him with a replacement car or to reinstate his agreement. When the car was collected in June 2019 it's mileage was recorded as 25,004 – so in seven months Mr S had driven nearly 20,000 miles in the car. But he'd agreed to a maximum

annual mileage of 10,000 and hadn't made any payments for the car, other than his deposit.

These are unusual circumstances and in determining what I consider to be fair and reasonable I have to take account of all of the evidence and the actions of both Mr S and Audi Financial Services. Audi Financial Services accepts that it made an error in not dealing with Mr S's direct debit correctly, I consider that it would be reasonable for it to have withdrawn the default notice in April 2019 when it became aware that it had made an error about Mr S's direct debit and that it would be reasonable to expect it to have done more in these circumstances before it terminated the agreement.

But Mr S was able to use the car to drive nearly 20,000 miles in seven months and I consider that he ought reasonably to have known that he hadn't made any of the monthly payments to Audi Financial Services required under the agreement and he didn't respond to the default notice and other communications from Audi Financial Services until after his car had been collected from the police by the third party. He's also provided inconsistent information to Audi Financial Services and this service.

The balance of Mr S's account after the car has been sold and his agreement terminated is £10,414.53 and, because of the errors that it's made, I consider that it would be fair and reasonable in these circumstances for Audi Financial Services to reduce that amount by the deposit of £710.07 that Mr S paid for the car and a further £150 because of the distress and inconvenience that these events will have caused Mr S. That will reduce the outstanding balance on the account to £9,554.46. If Mr S pays that amount to Audi Financial Services within 28 days of my decision I consider that it would also be fair and reasonable for it to remove any information about the hire purchase agreement from his credit file.

If Mr S doesn't pay it that amount within 28 days of my decision, I consider that it would be fair and reasonable for it to amend the adverse information that it's recorded about the agreement on Mr S's credit file to show that the amount of the default was £9,554.46 and that it should try to agree an affordable repayment arrangement with Mr S for that amount. If Mr S is experiencing financial difficulties, it's required to respond to those difficulties positively and sympathetically".

So subject to any further representations by Mr S or Audi Financial Services, my provisional decision was that I was minded to uphold this complaint in part.

Both Mr S and Audi Financial Services have accepted my provisional decision though Mr S says that he can't pay the outstanding amount in one sum but wants to sort this out and set up a repayment plan.

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.

As both Mr S and Audi Financial Services have accepted my provisional decision, I see no reason to change the outcome that I reached in my provisional decision.

Putting things right

I find that it would be fair and reasonable for Audi Financial Services to reduce the outstanding balance on Mr S's account to £9,554.46. If Mr S pays that amount to Audi Financial Services within 28 days of my decision I consider that it would also be fair and reasonable for it to remove any information about the hire purchase agreement from his credit file.

If Mr S doesn't pay it that amount within 28 days of my decision, I consider that it would be fair and reasonable for it to amend the adverse information that it's recorded about the agreement on Mr S's credit file to show that the amount of the default was £9,554.46 and that it should try to agree an affordable repayment arrangement with Mr S for that amount. If Mr S is experiencing financial difficulties, it's required to respond to those difficulties positively and sympathetically.

My final decision

My decision is that I uphold Mr S's complaint in part and I order Volkswagen Financial Services (UK) Limited, trading as Audi Financial Services, to take the actions described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 December 2020.

Jarrold Hastings
Ombudsman