

The complaint

Mr T complains that the car he acquired through a personal contract purchase (the finance agreement) with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (VWFS) was mis-sold. He says the amount he paid for the car, and therefore the amount of credit provided under the agreement, was higher than he had agreed.

What happened

Mr T entered into a finance agreement with VWFS in September 2017 to acquire a new car (car B). Prior to this he had agreed to acquire a different car (car A) but he was then told car A wasn't available. He says he agreed to acquiring car B on the basis that he wouldn't pay any more than had been agreed for car A. However, he says he has been charged a higher price for car B. He says the amount of credit provided was higher than had been agreed (£19,372 for car A and £19,958.88 for car B) and that his monthly payments were also higher (£268 car A and £274 car B). Mr T also noted a difference in the documents regarding the part exchange value of his previous car.

VWFS said the complaint was better dealt with by the dealership. It said that the finance agreement was for car B and that was the car Mr T had been provided with. Further information was provided by the dealership showing the sales invoice for car B and the signed documentation including the relevant financial details. The dealership said that two quotes had been found regarding the monthly payments - one relating to car A and one relating to car B. These showed a monthly payment amount of £285.63 for car A and £274.85 for car B. It noted that Mr T indicated on his demand and needs statement a monthly budget of £268. It said Mr T had a higher specification model for a lower monthly payment amount.

Our investigator didn't uphold this complaint. She explained that it was reasonable for this complaint to be considered against VWFS due to section 56 of the Consumer Credit Act 1974 which sets out that the finance provider can be held liable for information provided by the dealership as part of the sale process. She noted that there was a small difference (£7.50) between the price for the car noted on the order form for car A and the amount recorded on the finance agreement for car B but didn't consider this was material. She noted the comments Mr T made about the part exchange values but said that the figure included in the order form was an estimate and the actual amount was recorded in the finance agreement which Mr T signed.

Mr T didn't accept our investigator's view.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- I agreed with our investigator's comment that under section 56 of the Consumer Credit Act 1974 VWFS could be held liable for the information Mr T was provided with by the dealership that induced him to enter into the finance agreement.

- Mr T paid a deposit of £100 in August 2017 for car A but then the acquisition of car B, a higher specification car, was agreed. Mr T entered the finance agreement in September 2017 for car B and I would have expected him to have only done this had he agreed to the terms. Mr T didn't raise a complaint until 2020 which suggested he was comfortable with the terms of the agreement he signed.
- The order form Mr T provided had the vehicle price for car A recorded as £16,800. On the sales invoice for car B the vehicle price is £18,091.67. The order form Mr T provided for car B differs slightly from the sales invoice the dealership provided for car B. I relied on the sales invoice for car B to make the comparison with car A as this provided the final amounts for the transaction and linked to the numbers in the finance agreement.
- Car B was a higher specification and so a higher price would be expected. The same amount for delivery, first registration fee and 12 months tax were recorded on the documents for both cars. A discount was applied to the price for car A of £1,176 resulting in the amount due after VAT (including the charges noted above) of £19,573.80. On the sales invoice for car B, a higher discount was applied, £1,809.17. This brought the amount due to £20,363.99.
- I couldn't say exactly what was discussed when the agreement was entered. The agreement included the cash price of car B on which VAT was charged as £16,807.50. This was the vehicle price recorded in the sales invoice less the discount plus the delivery charge. This was only £7.50 higher than the vehicle cost for car A (before delivery and before discount).
- There were differences between the documents for the two cars regarding the part exchange amount and the settlement amount due on Mr T's previous agreement, but I understood the order form for car A included estimates. The part exchange amount was £1,005 higher in the invoice for car B than set out on the order form for car A. This was a benefit for Mr T, and I noted this benefit was greater than the difference in the agreements that Mr T had raised his concerns about.
- The settlement amount for Mr T's previous finance agreement was also higher in the sales invoice for car B than the order form for car A. The settlement amount in the invoice for car B was lower than the amount in the settlement quote Mr T provided but I noted the settlement quote was valid until 12 September and the sales invoice was dated after this which would account for the difference. Considering the net cost of settlement to Mr T based on the car A invoice this would have been £1,064 compared to only £861 for car B.
- Based on the documents provided, I found that Mr T received a higher contribution towards car B than car A and a higher part exchange value for his previous car. This suggested that the dealer was working to reduce the price differential between car A and car B. So, while I accepted that there was a difference in the price, based on the information provided, it appeared Mr T was given all the information he needed to know the costs involved and the contribution being made. I noted his comments about the monthly payment amount and the information in the quote he provided, but the dealership provided an alternative quote for car A that would have been higher than car B. The sales invoice clearly set out the cost of car B and the finance amounts involved. The finance agreement set out the monthly payments and final payment amount.

Overall, I noted Mr T's comments about him believing the car B would not cost more than car A, but I didn't find that I had enough evidence to say that a misrepresentation occurred. The information suggested that the dealership worked to reduce the cost of car B for Mr T and that Mr T was provided with the information he needed to make an informed decision about whether to go ahead with the acquisition of car B. He signed the agreement and had the amounts not been as he thought had been agreed, I would have expected him to have raised this at the time.

I didn't receive any further information in response to my 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.

Where the evidence is incomplete, inconsistent or contradictory, I have made my decision based on the balance of probabilities - that is what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr T's complaint is that he was mis-sold car B. Having looked through the information provided I do not find that I have enough to say that a misrepresentation occurred.

I accept that Mr T expected a similar deal on car B as had been agreed on car A, and I could see that there were differences in the documents suggesting that the dealer had tried to increase its contribution to reduce the price differential between the two cars. Car B was of a higher specification and as I set out in my provisional decision, I find the information was available for Mr T to decide whether to enter the agreement for car B and had he thought this wasn't reflective of his discussion he could have questioned this at the time.

As no new evidence was provided in response to my provisional decision, for the reasons I have previously set out, I do not find I can uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint against Volkswagen Financial Services (UK) Limited trading as Audi Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 April 2021.

Jane Archer
Ombudsman