

The complaint

Mr P complains that Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (“VWFS”) has acted unreasonably in relation to the final payment on his hire purchase agreement with it.

What happened

In December 2016 Mr P entered into a hire purchase agreement with VWFS for the supply of a car. Under the terms of that agreement Mr P and VWFS agreed that he would hire the car from it. They also agreed that if he wanted to purchase the car at the end of the agreement, (and he was not obliged to do this), he would make a final payment of £11,851.25. This final payment is known as a balloon payment.

Mr P complains that the value of his car has decreased dramatically solely due to the Covid-19 pandemic. He bases this he tells us on the valuations he has received from approved Audi dealerships. He therefore thinks the balloon payment is out of line with the true market value of his car. Mr P considers that it is therefore unfair for VWFS to seek to obtain the full contractual balloon payment from him. Rather, he suggests it ought to be obliged to accept a lesser payment which more reflects the car’s current market value.

Further, Mr P complains that because the part exchange value of the car is less than the balloon payment he will have to take out a loan to cover the shortfall.

For all of these reasons Mr P complained to VWFS.

VWFS’s response was that the amount of the balloon payment was a term of the contract. When Mr P entered into the contract he had accepted the contract in its entirety, including the amount of the balloon payment. Therefore, VWFS was entitled to rely on this term of the contract and hold Mr P to it.

Moreover, VWFS is unable to predict at the beginning of the agreement what future equity (if any) the car might have when the agreement ends. In particular, positive equity is not guaranteed. Further, there is no requirement that the final payment should be the same as the current market value of the car.

VWFS pointed out that when Mr P told it he needed time to apply for a loan, it had given him breathing space to do so.

For all of these reasons, VWFS did not agree it had done anything wrong, as a result it declined to uphold Mr P’s complaint.

Dissatisfied Mr P complained to this service.

Once Mr P’s complaint was with us, Mr P suggested that he would be willing to make a final payment of around £6,000-£7,000. This would be on the basis that this, according to Mr P, was the current market value of VWFS’s car.

VWFS also provided us with further information it let us know Mr P had last made a repayment in September 2020, which is when the agreement ended. At the time of writing to us VWFS told us that Mr P had had its car without paying for the use for 11 months.

One of our investigators looked into Mr P’s complaint. He did not recommend that it should be upheld.

VWFS accepted our investigator's recommendation, but Mr P did not. In brief, he rejected the recommendation on the basis that according to him, the Covid-19 pandemic had led to the car losing value to such an extent that the balloon payment was not reasonable. He repeated that it would be fairer to him if VWFS agreed to reduce the balloon payment to a figure which is closer to the car's value at the time when his agreement with it came to an end. This time he told us that that this value was, according to him, between £7,000 and £9,000.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach 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.

Both parties appear to accept that the requirement to make the balloon payment should Mr P want to buy VWFS's car is part of the contract between them. Albeit Mr P now thinks the amount he has to pay under this clause is unfair. I think it is reasonable to assume, as a starting point, that when a person reads and signs an agreement – they understand the terms of the agreement and they are agreeing to be bound by them. Therefore, on the face of it, it is fair and reasonable that VWFS is entitled to ask Mr P to pay the full amount of the balloon payment as set out in the contract.

Mr P wants to vary the amount of the balloon payment because he thinks, due solely to the Covid-19 pandemic the car is now worth less than the balloon payment. Although I agree this could in theory have happened I note that he has not provided any evidence from relevant third parties to show this. Therefore, I am not persuaded that the market value of the car as at September 2020 when the agreement ended, was less than the balloon payment of £11,851.25 due to the pandemic.

Even if I did agree that the market value of the car was less than the balloon payment due solely to the pandemic, which I don't, that would not mean I had to automatically uphold Mr P's complaint. The difficulty for Mr P here is just because Mr P wants VWFS to change the terms on which they have contracted, does mean it has to. VWFS is not obliged to vary this contractual term in these circumstances.

The Financial Conduct Authority who regulates VWFS has issued guidance ("the guidance") about how it expects regulated businesses to behave in relation to motor finance agreements during the period that Mr P complains about. In particular, the guidance applies in the exceptional circumstances arising out of the Covid-19 pandemic and its impact on the financial situation of motor finance customers. It is not intended to have any relevance in circumstances other than those related to coronavirus. I can see why Mr P might think that this guidance means that if the market value of the car has diminished then VWFS might be under a duty to reduce the balloon payment, but it is not.

Moreover, what VWFS says about a balloon payment is correct. In other words, there is nothing in the contract between Mr P and VWFS or in the law and regulations that apply to hire purchase agreements in general that means VWFS has to reduce the balloon payment.

The issue of the loan is a separate matter. Mr P's says he will need to take out a loan to cover the shortfall. As I have mentioned already I don't agree that the shortfall itself has come about due to the pandemic. But it appears that Mr P was expecting to have difficulty raising the loan as he was temporarily on furlough from his job. He has not said so explicitly but it is implied from what he says that this has caused him or would cause him financial difficulties. The financial difficulties in raising the loan appear to have come about only due to circumstances arising out of the pandemic. This part of his complaint is covered by the guidance. The guidance anticipates that firms should work with consumers to find an appropriate solution in these circumstances.

VWFS's records show that Mr P told it he was applying for a loan on 4 September 2020. In response VWFS offered Mr P breathing space to sort things out without detriment to him until 4 November 2020. It also explained in detail the other options that Mr P had both if he wanted to keep the car or alternatively if he wanted to give it back. It also stopped any action to terminate the agreement. In the circumstances, I am persuaded VWFS acted appropriately.

Mr P appears to feel strongly about this complaint. I therefore anticipate my conclusions above may disappoint him. I add some comments below to give Mr P some further context which may help him perhaps to temper his disappointment.

I can well understand why Mr P would be dismayed to find that should he go ahead and purchase the car, the part exchange value may be less than the balloon payment. I have already said I am not satisfied that the car has lost value due to the Covid-19 pandemic. In addition, many factors can impact on the value of a car, including factors like its appearance and mileage, that was always the risk that Mr P took when he entered freely into this agreement regardless of the pandemic.

Moreover, for the purposes of completeness I mention that buying the car from VWFS is not the only option open to Mr P. Should he not wish to buy the car which he considers overpriced he could simply return it to VWFS and not buy it.

Also, for the purposes of completeness I note Mr P has had possession of VWFS's car since September 2020 and has made no repayments. He suggests he is going to be out of pocket by at least $\pounds 2,851.25 = \pounds 11,851.25 - \pounds 9,000$ if he makes the final payment. But he has also had possession of VWFS's car for 17 months without making payment. It is arguable therefore that has derived benefit that he has not paid for. The benefit being $17 \text{ months} \times \pounds 295 \text{ monthly repayment} = \pounds 5,015$.

I think it is also fair to point out that if the car has lost value, this might impact VWFS too and might have benefitted Mr P too. I say this because VWFS most likely did base the monthly repayments, in part on the balloon payment i.e. the monthly payments were lower than they would have been to take account of the size of the balloon payment. Conversely if the balloon payment had been lower from the onset, Mr P's monthly repayments would most likely have been higher.

I don't say any of this to upset Mr P still further, far from it. But I do need to look at the whole picture.

For all of these reasons I have no fair and reasonable basis for saying VWFS must take any further action. It follows therefore that I don't uphold this complaint.

My final decision

My final decision is that I do not uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 May 2022.

Joyce Gordon
Ombudsman