

## The complaint

Mrs S complains that Volkswagen Financial Services (UK) Limited (trading as Audi Financial Services) (AFS) treated her unfairly because it won't acknowledge that she paid for service, maintenance and tyres to be included in a contract hire agreement.

## What happened

Mrs S took out the hire agreement (HA) with AFS in July 2020. The advance payment was About £1,620 and Mrs S agreed to pay monthly rentals of around £540 over the course of the four year agreement. Mrs S says these payments include an element for service, tyres and maintenance (SMT) and she was entitled to reclaim some tax on that. Shortly after she took out the HA, Mrs S asked AFS for a breakdown to show the SMT part and she's unhappy that AFS provided inconsistent information at first and then took months to respond properly – before telling her (in January 2021) that SMT wasn't included in the cost.

AFS accepted some boxes in the HA that refer to SMT are ticked but it says the dealer made a mistake - the associated cost wasn't actually added to the price and there's a nil amount showing for this in the HA. AFS offered to add SMT for the duration of the agreement - at no additional cost to Mrs S – as goodwill gesture and doesn't think it should have to do more. AFS suggested that Mrs S could add SMT to the HA retrospectively - at an additional cost of £32 a month plus VAT - if she still wanted to reclaim the tax.

Mrs S didn't think that was fair. She says the dealer quoted a monthly cost of £532 initially for hire, service and maintenance but not tyres. Then, having realised the steering wheel in the sourced car had a higher specification, offered to include tyres (as well as service and maintenance) *plus* the steering wheel for about £8 a month more than the previous quote. Mrs S didn't ask for this particular steering wheel – which the dealer told her would cost about £5 a month more – but she agreed to accept the car based on the offer. She thinks it's unreasonable to expect her to pay twice for SMT and she wants AFS to acknowledge that this was included from the outset.

One of our investigators considered the evidence. She accepts Mrs S intended to have SMT included as part of the HA - as this option is ticked on the face of the agreement. She also acknowledges there is a quotation that shows separate amounts for basic hire and service and maintenance. But she doesn't think this should override what's set out in the HA itself. She's satisfied that two boxes in the agreement - dealing with service and maintenance charges - contain a nil amount. She's not persuaded that Mrs S is already paying for SMT. And she considers AFS's offer to include SMT at no additional cost is fair. She doesn't recommend the complaint should be upheld.

Mrs S didn't agree. She asked for an ombudsman to review the matter and says (in summary):-

- she trusted the dealer so she didn't ask for a revised quotation after the steering wheel and tyres were added to her original quote;

- the boxes for SMT were ticked in the HA, she had no reason to think this wasn't included and she assumed the reference to "optional" maintenance charges at nil cost related to different products that she hadn't opted for;
- AFS consistently assured her that SMT was included in the HA and initially said it simply didn't provide the sort of breakdown she wanted for tax purposes – when she's aware (from other finance agreements) that it does;
- a third party garage did some work on her car in Autumn 2020 under the SMT element before AFS offered to *add* SMT as a goodwill gesture – so this must have been part of her HA already; and
- after she received the investigator's view she contacted the supplying dealer who said there was no mistake and confirmed SMT was included since inception.

Having considered the evidence available I was minded to uphold this complaint. I issued a provisional decision on November 2021 to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. What I decided provisionally - and why – is set out below and this forms part of my final decision.

### **My provisional decision**

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, 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.

After the matter was referred to me, I requested some additional information and AFS queried whether this complaint fell within the jurisdiction of the Financial Ombudsman Service. I explained why I thought it did in correspondence sent to the parties. And AFS confirmed it accepts that and has no further objection to us looking into Mrs S's complaint.

The role of this service is to resolve disputes between financial businesses and their customers informally. I'm not a regulator and I don't have the power to investigate the way AFS runs its business on a day to day basis. My job here is to consider the evidence provided by both parties (without taking sides) along with relevant law and industry guidance (amongst other things) and decide what I think is a fair and reasonable outcome in all of the circumstances.

I think the crux of this complaint is whether the amount Mrs S agreed to pay under the HA includes the cost of SMT. Mrs S says she was told that it did – at a monthly cost of about £30 on top of basic hire - and she's out of pocket if she can't prove that in order to reclaim tax on this payment. AFS, on the other hand, says the dealer made a mistake so, whilst relevant boxes in the HA are ticked to say SMT is included, the associated cost wasn't added.

If the dealer simply got the price wrong then I'd expect AFS to have realised that fairly quickly – especially when Mrs S asked for confirmation of how much she was paying for SMT shortly after she took out the HA. Instead, AFS confirmed (in an email it sent her in September 2020) that SMT was included - at the specific cost of £31.19 a month. I appreciate AFS subsequently told Mrs S that the sender of this email also made a mistake and SMT was not, in fact, included. But, it looks as if there was some significant confusion about this for several months as I understand work done by a third party garage in the Autumn of 2020 was covered under the SMT element - which seems surprising if this wasn't included in the HA at that time.

I've considered the HA itself to see what that says about SMT. I can see two tick boxes – “*maintenance included*” and “*maintenance excluded*” - on the left of the first page - under the headings “*key financial information*” and “*maintenance options*”. I'm satisfied the “*maintenance included*” box has a tick beside it. Underneath that it says, “*if maintenance is included tick this box to apply*” and directly underneath there's another three boxes for “*service*”, “*maintenance*” and “*replacement tyres*”. I'm satisfied all three of these are ticked to confirm that SMT is included.

I think this suggests, at the very least, that the parties *intended* for SMT to be included in the HA. In fairness, I don't think AFS disputes that now (although it hasn't always been particularly clear about this in correspondence). But, AFS points to information set out on the right side of the first page (in the same box headed “*key financial information*”) where there's a nil charge for both “*initial optional maintenance*” and “*subsequent optional maintenance*”. AFS says this shows that the cost of SMT wasn't actually added.

I'm not persuaded it's that straightforward. If SMT charges weren't included in the HA, it's difficult to see why there's a date for maintenance charges to start - and the number of such charges - set out directly underneath the nil amounts. I can also see that the monthly cost and advance payment required for basic hire – as quoted to Mrs S in June 2020 – have increased by £84.57 and £28.19 respectively in the HA. I think this increase seems strikingly similar to the cost of adding SMT provided by both the dealer and AFS to Mrs S - in June and September 2020 - so I asked AFS about that.

AFS says changes in specification between the June quote and Mrs S taking out the HA explain the difference in price - and the quote dated 26 June was only one of several quotations provided at the relevant time. I asked for sight of these additional quotations but the dealer was unable to supply any. The dealer said they can't be printed off due to the passage of and supplied a screenshot instead. I accept this shows three undated interactions of some sort with Mrs S but it tells me nothing about changes in specification or price. The dealer said it would try and retrieve the additional quotes from archived paperwork but nothing else has been provided.

Mrs S says the June quotation is the only one she received. She acknowledges there were *two* changes to the specification during her discussions with the dealer. She says the first related to wheels and the related price difference was already included in the quote provided on 26 June. The second cropped up when the dealer realised the car had a better steering wheel and she was told this would cost about £250 and add about £5 a month to the original quote. As she hadn't requested the upgraded steering wheel, the dealer offered to include this *plus* service, maintenance *and* tyres (at a reduced rate) for another £8 a month. And, believing she'd be able to offset the SMT payment against tax, Mrs S accepted the increase.

I find Mrs S's evidence to be credible and consistent. She supplied additional evidence every time we've asked for it and made relatively detailed submissions throughout. I think she seems to have a fairly good recollection of events and I consider what she says happened here is generally supported by the paperwork and the other evidence I've seen, in that –

- three relevant boxes in the HA are completed to confirm that SMT was included;
- the price increase between the quotation dated 26 June 2020 and the HA seems consistent with the inclusion of SMT – both the advance and monthly payments appear to have increased by amounts that closely correspond to figures quoted by dealer and ASF for SMT; and
- a third party was paid for work done under the SMT element in Autumn 2020; and
- I've seen nothing (aside from the £5 or so a month for the steering wheel that Mrs S told us about) that explains why changes in specification resulted in an increase in

the advance and monthly payments between the June quote and the HA - despite requesting further information and allowing additional time for this to be provided.

I can't be certain what happened here exactly. On balance, I think the evidence suggests that the cost of SMT was probably included in this HA. But, if I'm wrong about that - as AFS suggests - then I consider the terms of the HA were misrepresented.

I'm satisfied this service can look at what was said in pre-contract negotiations in this complaint about AFS under section 56 of the Consumer Credit Act 1974 (CCA). And, for the reasons I've set out above, I think it's likely the dealer told Mrs S that SMT was included - at an additional cost on top of basic hire. And I'm not persuaded it was unreasonable for her to rely on that when she decided to take out this HA.

Mrs S works in the financial sector and she told us she always takes out the service and maintenance element when she hires a car. She said she has done so for many years and one of the main reasons she accepted this particular HA was because it offered a specific tax advantage - she would be able to claim back 100% of the VAT on her service and maintenance payment. I think that sounds plausible. And I am minded to find Mrs S is unlikely to have entered into this particular finance agreement if she hadn't been told that SMT was included.

Where a misrepresentation has been made we'd usually require the business to take steps to put the consumer back in the position they would have been in if that hadn't happened. So, one option here might be to require AFS to cancel the HA and take the car back. I've seen nothing to suggest that Mrs S is unhappy with the car - or any other aspect of the HA for that matter and I don't think that's a fair or proportionate remedy overall.

I have thought about AFS's offer to add SMT retrospectively - at no additional cost. But, I don't think that's reasonable - as Mrs S would still be out of pocket in that she'd be unable to reclaim the tax anticipated at the outset. I don't think it's right that Mrs S should lose out financially in this situation. So I also considered whether it would be fair for AFS to add SMT at no cost in line with the offer *and* reimburse Mrs S for the tax refund she's lost out on. I suspect it may be difficult to work out how much tax is likely to be refunded over the life of the agreement with any certainty and I'm not persuaded this would provide an appropriate remedy in the circumstances.

Taking everything I've seen so far into account, I am minded to find it would be fair and reasonable for AFS to re-structure the HA to include the cost of SMT from the outset. AFS will then be able to supply the relevant paperwork to Mrs S for her tax records and she can reclaim any tax due as appropriate.

It's clear that Mrs S feels frustrated and she's been very anxious about what happened. I can see she considers AFS has prolonged matters unnecessarily - by providing conflicting and confusing information at times - and it took far too long to provide a proper response to her complaint. She indicated in her complaint form that she would like AFS to apologise in addition to taking steps to put things right. I don't think an apology that's required (rather than provided voluntarily) is likely to be particularly meaningful here. I realise Mrs S has been very concerned to ensure that she was reporting the right information for tax purposes. I understand that's particularly important to her - in view of the nature of her job especially. And I think she's likely to have experienced some distress and inconvenience as a result of what happened. So I'm minded to find AFS should pay Mrs S £75 compensation in recognition of that.

I invited the parties to consider what I'd said and make further submissions, subject to which, I intended to uphold this complaint and require AFS to re-structure the hire agreement to

include the cost of SMT within the existing payments, provide relevant paperwork to Mrs S for her tax records and pay Mrs S £75 compensation for distress and inconvenience caused.

#### *The responses received from the parties*

AFS provided some additional information including a quotation that the dealer sent to AFS dated 29 June 2020 which does not include SMT. AFS says the cost of SMT was not actually included in the agreement. It acknowledges mistakes were made but says it is technically unable to reinstate the finance agreement in the way that I've suggested. As an alternative, AFS offered to add SMT (worth about £1,500) for the duration of the HA (at no additional cost to Mrs S) and pay Mrs S another £310.56 (based on the £6.50 or so tax she'd probably have been able to reclaim on SMT of just over £32 a month over 48 months).

AFS thinks this is fair overall because Mrs S has indicated previously that she didn't intend to use the car for business for the life of the HA – meaning she wouldn't be able to reclaim tax for the *whole* time she has the car.

Having considered what AFS said as well as additional evidence provided, I was minded to find AFS's offer was fair and proportionate overall. I contacted Mrs S and explained why. I acknowledged she'd only received the quote dated 26 June 2020 but I thought it was more likely than not the dealer made a mistake. And, whilst I accepted Mrs S was led to believe that SMT formed part of the cost of the finance, I was minded to find it probably wasn't included in the amount charged. As Mrs S wants to keep the car and she's unlikely to use it for business purposes for the duration of the agreement (and won't therefore be in a position to reclaim tax for the whole period), I thought the offer was reasonable. I was satisfied it means Mrs S will have SMT for the duration of the HA, she's not out of pocket in respect of the amount of tax she's likely to have reclaimed and she's compensated for distress and inconvenience.

Mrs S didn't agree. She said (in summary):-

- She feels the crux of this dispute still hasn't been understood, by AFS in particular, in that SM was always intended to be included in the contract so the total figure should have been re-calculated and apportioned to show the correct SMT element - having already shown the SM element at the quotation stage.
- I didn't supply sufficient details of the additional information received from AFS or explain why this caused me to change my mind about the outcome;
- The new information I have referred to is dated 29th June 2020 has no bearing when her contract was signed three days before;
- This was based on the quote of the same date, which was the only quote ever supplied by the dealer for the exact specification and included SM within the total monthly cost, this quotation is for £532.80 and included S and M so it's illogical to suggest that the figure of £540.58 includes no S, M or T;
- AFS said the dealer made errors but it wasn't prepared to change the HA or offer financial restitution and she wants an apology - which would go some way to restoring the relationship;
- AFS also made errors – it said it wasn't possible to produce a breakdown including SMT which is wrong as it has now produced the relevant figures;
- She doesn't accept the HA can't be re-instated - she has seen such alterations made previously by AFS;
- the HA had three instalments paid up front plus another 47 monthly payments so compensation should be for 50 payments not 48 and the compensation offered is insufficient in any event, for the combination of dealer and AFS errors and failing to resolve things sooner;

- She set out to satisfy HMRC and her accounting requirements only but now feels compensation should reflect the stress, anxiety and considerable time that she spent on the matter; and
- she would like an official letter from AFS stating that her vehicle is covered by full SMT for the life of the HA so she doesn't have problems in the future when maintenance or repairs are required.

### **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.

For the reasons I've set out already, I remain of the view the cost of this agreement was probably misrepresented. In this situation, I can't require AFS to proceed as if the misrepresentation was correct however so I've considered all of the evidence provided and the comments made by the parties in order to decide how best to put things right.

AFS says it can't re-instate the agreement for technical reasons and I think it has offered a fair and proportionate alternative resolution to this complaint. Mrs S has confirmed that she wants to keep the car and I'm satisfied the offer means she will receive the SMT she expected for the duration of the HA and she won't lose out financially - in that she'll be compensated for VAT she's likely to have been able to reclaim. I've taken on board what Mrs S says about the number of instalments but I'm mindful that she told us previously that she didn't acquire this car with the intention of business use for the duration of the HA and she'd probably retire within that period. I appreciate plans change, and I understand the impact of the pandemic may mean Mrs S will work for longer than she originally intended, but I can't be certain that she'll do so for the entire time.

Taking everything into account, I remain of the view, on balance, that amount offered is more than enough to compensate Mrs S for the loss of any VAT she's likely to have reclaimed. And I think this is sufficient to include the £75 compensation I was minded to award for distress and inconvenience. I realise Mrs S feels she should be paid more in light of her time and effort spent pursuing this matter. I have no doubt that's been frustrating. But we don't usually make a specific award for someone's time - or calculate this using a set amount, like an hourly rate. I have considered the impact of what happened and the inconvenience Mrs S is likely to have experienced spending time dealing with this matter. And I find AFS's offer is fair and reasonable in all the circumstances.

Mrs S told us that she'd like a letter from AFS that confirms the SMT offer so as to avoid any potential issues when she takes to a dealership for work going forward. AFS agreed to provide that when the complaint is concluded and I think that sounds reasonable. I'm not going to require AFS to provide an apology as well – for the reasons I've given already.

Working out what's fair and reasonable in a situation like this one is not a scientific exercise. I realise this decision doesn't provide the outcome that Mrs S wanted and she's likely to be disappointed. Mrs S is not obliged to accept what I've said however and, if she doesn't, then it remains open to her to pursue this matter by any other means available.

### **My final decision**

My decision is I uphold this complaint. For the reasons I've explained, I think AFS's offer (as set out above) is fair and reasonable in all of the circumstances. And I require Volkswagen Financial Services (UK) Limited (trading as Audi Financial Services) to provide SMT for the duration of the HA at no additional cost to Mrs S (and confirm that in writing) and pay Mrs S £310.56 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 12 May 2022.

Claire Jackson  
**Ombudsman**