

## **The complaint**

Mr B complains that a car he has been financing through an agreement with Volkswagen Financial Services (UK) Limited ("VWFS") was misrepresented to him.

## **What happened**

I issued my provisional decision on this complaint earlier this month. An extract from that provisional decision is set out below.

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I know it will disappoint VWFS, but I'm expecting to agree with the investigator's opinion. But the redress I'm expecting to direct is a little different. Please let me explain why.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*Mr B acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*The relevant legislation explains that finance providers are liable for what they say and for what is said by a credit broker before the consumer takes out the credit agreement. It says that, in circumstances such as this, anything the supplier says will be deemed to have been said on behalf of the finance provider. So, if Mr B was given a false statement of fact, and if that false statement of fact induced him to enter into a finance agreement he wouldn't otherwise have entered into, I would think the agreement had been misrepresented to him and I'd ask VWFS to take some further action.*

### **Was there a false statement of fact?**

*I've seen an email sent by the supplier to Mr B a few days before he entered into the agreement. That email confirms the car has wireless Carplay and I think it's reasonable to assume it was sent to Mr B because he'd made that enquiry.*

*The supplier has now confirmed that the car does not have wireless Carplay. So, I think a false statement of fact was made.*

### **Would Mr B have entered into the agreement had it not been for that false statement?**

*I don't think so because:*

- *Mr B asked about the functionality before signing the agreement and that suggests it was an important feature.*
- *Mr B only asked to reject the car when he was informed the function wasn't available.*
- *Mr B was prepared to allow the business an opportunity to retrofit that functionality. I think that suggests there weren't other reasons he would have wanted to reject the car for. It seems he was happy to keep the vehicle if the functionality he'd been promised was available.*

*VWFS say it's a minor issue and it's disproportionate to allow Mr B to reject the car. They've explained that the functionality was available if the phone was hard wired. Whilst I accept others may not have seen the functionality as so important, I think it's clear Mr B did. It was, I believe, a reason he wouldn't have progressed with the deal and I therefore think VWFS should take some further action.*

### **Putting things right**

*We'd usually aim to put Mr B back in the position he would've been in had the error not occurred but as the lending here can't be undone that's not entirely possible.*

*As Mr B wouldn't have entered into the agreement had it not been for the misrepresentation, I don't think it's fair for VWFS to charge any interest or charges under the agreement.*

*Our investigator explained that as Mr B had had use of the car for about eight months when he provided his view on the complaint. He thought it was fair for him to pay for those eight months of usage.*

*But Mr B has now had use of the car for longer than that. So, I think he should pay for the use he's had from the car since he took receipt of it and until the point this complaint is settled. It's for that reason that I'm issuing a provisional decision to give VWFS and/or Mr B an opportunity to comment.*

*But I'm not persuaded the monthly repayments of over £525 a month that are listed in the finance agreement are a fair reflection of what fair usage would be. This is because a significant proportion of those repayments went towards repaying interest. As the investigator has set out, there isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr B's usage. So, I've thought about the amount of interest charged on the agreement, Mr B's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have this car. I think a fair amount Mr B should pay is £430 for each month he had use of the car.*

*I think it's clear that Mr B has also been a little inconvenienced by these matters. He's had to escalate his complaint to this service when I think it could have been resolved earlier and I'm therefore expecting to ask VWFS to pay him £100 in compensation.*

### **My provisional decision**

*For the reasons I've given above I'm expecting to uphold this complaint and to tell Volkswagen Financial Services (UK) Limited to:*

- *Cancel the agreement and collect the car with nothing further to pay.*
- *Refund any deposit Mr B paid and add 8% interest\* per year from date of payment to*

*date of settlement.*

- *Calculate how much Mr B has paid in total and deduct £430 for each month he had use of the car from the date he took receipt of it until the date of settlement. Refund the difference adding 8% interest\* per year from date of payment to date of settlement.*
- *Pay Mr B £100 to compensate him for the distress and inconvenience experienced.*

*\*If HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr B a certificate showing how much tax it's taken off if Mr B asks for one.*

### **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.

Mr B accepted my provisional decision but VWFS didn't. They said it wasn't fair and only seemed to appease Mr B. They said they'd be happy to consider a reduction in rentals past and future but thought the notion of rejection was disproportionate.

I've thought about what VWFS have had to say but those submissions haven't persuaded me to change my provisional decision. As I explained in my provisional decision I do think rejection is proportionate here. I accept others may not have seen the functionality as so important but I think it's clear from the evidence provided that Mr B did. It was, I believe, a reason he wouldn't have progressed with the deal. I don't think there's therefore any reason to consider an alternative redress.

### **Putting things right**

I've not been provided with any additional evidence that has persuaded me to change my provisional decision and that provisional decision now becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Volkswagen Financial Services (UK) Limited to:

- Cancel the agreement and collect the car with nothing further to pay.
- Refund any deposit Mr B paid and add 8% interest\* per year from date of payment to date of settlement.
- Calculate how much Mr B has paid in total and deduct £430 for each month he had use of the car from the date he took receipt of it until the date of settlement. Refund the difference adding 8% interest\* per year from date of payment to date of settlement.
- Pay Mr B £100 to compensate him for the distress and inconvenience experienced.

*\*If HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr B a certificate showing how much tax it's taken off if Mr B asks for one.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 March 2022.

Phillip McMahon  
**Ombudsman**

