

## **The complaint**

Mr P complains that a car he took on finance from Volkswagen Financial Services (UK) Limited (VWFS) was misrepresented to him. Specifically, he says that he was not told that the Infotainment Pack that came with the car was a subscription service; after three years, he would have to pay extra for it.

## **What happened**

In October 2017 Mr P entered into a four-year hire purchase agreement with VWFS for a used car. The dealership's paperwork recorded that the car was an ex-demonstrator and that Mr P had taken some dealer options (a 3-year wheel option, a tow-bar and paint protections). No factory options were selected.

Mr P says that the dealer showed him the car's features, including its Infotainment Pack, which including the car's navigation system, lane assist and phone connectivity.

Mr P later found out that the Infotainment System was in fact a subscription service. Whilst a three-year subscription was included in the price, after that he would have to pay an additional sum (over and above the hire purchase payments) to keep that service. He said that this had not been explained to him by the dealership and that, if it had been, he would not have agreed to the terms of the hire purchase agreement. The subscription was extended for a year, but Mr P said he believed it was indefinite.

Neither the dealership nor VWFS accepted Mr P's claim, and he referred the matter to this service. Our investigator did not believe that Mr P had a valid claim either, and so he asked that an ombudsman review the case.

## **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 P has explained that his complaint is about what he sees as the dealership's failure to explain the subscription service to him. But the complaint he has brought to the Financial Ombudsman Service is about VWFS, as the financial service provider. It is however to be treated as agent for the dealership, meaning that it is responsible for statements made or not made by the dealership. And, as the finance provider and owner of the car, it is responsible to Mr P if the car and its features do not comply with the hire purchase agreement.

With that in mind, I have considered first of all whether it was a term of the contract that an ongoing subscription to the Infotainment System would be included.

The hire purchase agreement described the car by reference to the make and model, mileage, registration date, registration number and chassis number. It did not include any reference to other features. That is what I would expect.

The dealership's paperwork included more information about the car – colour and trim. But it did not say anything about the Infotainment System being a subscription service or that only a limited subscription was included in the price.

The contractual paperwork was, therefore, silent on the issue of the subscription. I do not therefore believe that I can fairly say that an extended subscription was included in the price. The manufacturer generally includes a three-year subscription with new cars (although it may be less, depending on the model). I do not believe therefore that there was an agreement to include an indefinite subscription.

Mr P's main argument however is that the dealership did not explain the subscription model to him. By failing to do so, it misrepresented the true position.

I accept that the dealership demonstrated the features of the Infotainment System. I accept too that there was no discussion of the subscription model. That is, Mr P did not ask about it (and indeed had no reason to do so), but neither did the salesman offer any explanation. He did not, for example, say that an open-ended subscription was included.

A misrepresentation is a false statement of fact or law which is made by one party to a contract and which induces the other into that contract. As I have indicated, I do not believe that any statements were made about the subscription service in this case. Mr P says however that the salesman should have told him about it and that, by not doing so, he misrepresented the position.

Generally, however, a misrepresentation cannot be made by silence. There is no overriding duty, for example, on a salesperson to explain all the details of a product to a prospective buyer. There are exceptions of course. Some types of contract require full disclosure. And in this case, I do not believe it would have been fair for the salesman to keep quiet about the subscription if, for example, he had known it was an important issue for Mr P. And, if there had been any indication that Mr P was acting under a misunderstanding, I would have expected the salesman to correct that misunderstanding.

As I have said though, there was simply no discussion of the subscription model in this case and no suggestion at the time that Mr P would not have proceeded if he had known the true position. In the circumstances, I do not believe I can fairly say that the salesman was under any duty to raise it. I am not persuaded therefore that there was a misrepresentation by silence.

I note that the investigator took the view that, even if Mr P had known about the subscription service, he would have proceeded with the hire purchase agreement in any event. However, because I do not believe there was any duty on the dealership to explain the subscription, I do not need to address that question.

### **My final decision**

For these reasons my final decision is that I do not require Volkswagen Financial Services (UK) Limited to take any further steps to resolve 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 19 August 2022.

Mike Ingram  
**Ombudsman**