

## **The complaint**

Mr M is unhappy with the excess mileage charge he had to pay when his hire agreement with Volkswagen Financial Services (UK) Limited (VWFS) ended.

## **What happened**

In March 2018, Mr M took out a hire agreement with VWFS for a new car. The agreement was due to last three years and included an annual limit of 10,000 miles after which extra charges would become payable. After around two years, Mr M had done quite a few miles less than this. So, he got in touch with VWFS to ask for a quote to reduce his allowable annual mileage for the last year of his agreement which, in turn, would lower his remaining monthly payments.

Mr M told us he wanted to reduce the mileage allowance from 10,000 to 5,000 for the final year of his agreement. But the revised agreement VWFS sent to him reduced his allowance by 5,000 for each year of his agreement instead of just the last one. This reduced the monthly payment by about £25 per month. It seems Mr M didn't realise VWFS had misunderstood what he wanted, and he duly signed the modifying agreement.

Then, in early 2021, Mr M decided to end his agreement a couple of months early. VWFS then told him there was an excess mileage charge to pay of just over £450 as Mr M had gone over the revised, lower limit. He reluctantly paid this and complained. Briefly, VWFS said he'd signed the modifying agreement, he was bound by the new terms, and the excess mileage charge had been applied correctly.

Mr M wasn't happy with this, so he brought his complaint to our service. One of our investigators looked into this case. In brief, she said Mr M had asked for the mileage reduction in good faith and VWFS should have done more to reflect this. She suggested redress based on Mr M getting a refund of the excess mileage charge but making a deduction to reflect that the payments he'd been making over the last part of the agreement were less than they otherwise would have been.

VWFS accepted our investigator's view. But Mr M didn't. Again, in brief, he said he should never have been charged the excess fee, and he also questioned the accuracy of the fee. As the matter remains unresolved, it's been passed to me for a decision.

I issued a provisional decision on 9 August 2022. In it I said:

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

*Having done so, I think this complaint should be upheld. But my suggested redress is slightly different to that of our investigator. I'll explain why. But first, I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here: was it fair and reasonable for VWFS to ask Mr M to pay an excess mileage charge?*

*If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. I've focussed on the details that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.*

*I've looked at the email trail between Mr M and VWFS from April/May 2020. I can see what he wanted to do was reduce his total mileage allowance by 5,000 miles for the last year of his agreement - that is, from the originally agreed 30,000 to 25,000. Instead, VWFS reduced his allowance by 5,000 miles for each of the three years, rather than just the last one – so, from 30,000 to 15,000.*

*I accept Mr M did sign the modifying agreement. But I'm satisfied this was a genuine oversight on his part. I think it was fair and reasonable for him to assume VWFS has understood what he wanted from the emails, especially the one he sent on 4 May 2020. This makes it clear he was looking to reduce his total allowable mileage under the agreement to 25,000, not 15,000. Indeed, when he made the request, he'd already driven nearly 16,000 miles and he told VWFS this at the time.*

*Taking all this into account, I'm satisfied VWFS should have done more to understand Mr M's request and he then wouldn't have gone over the milage limit. So, I'm also satisfied it's not fair and reasonable to expect him to pay the excess mileage charge. This means I need to decide what VWFS should do to put things right.*

*Our usual approach would be to put Mr M back in the position he would have been in, as far as possible, if VWFS hadn't misunderstood what he wanted. I can see Mr M wanted to reduce his mileage allowance for the last part of his agreement to lower his remaining monthly payments.*

*Based on the wrong allowance of 15,000 miles in total, VWFS reduce the payment by £25.08 to £216.11. Mr M made seven payment for this amount before ending his agreement early. But if VWFS, had correctly reduced his allowance to a total of 25,000, his remaining payments would have been slightly higher than this.*

*It's unfortunate that when we asked VWFS, it said it wasn't possible to tell us what the new payment would have been if Mr M's agreement had been correctly modified to a total allowance of 25,000 miles. So, I've used what I think is a fair and reasonable estimate.*

*The original monthly payment was £241.19. This was then reduced by £25.08 due to the 15,000-mile allowance reduction. But Mr M only wanted to reduce his allowance by 5,000. It seems that VWFS wouldn't have been able to do this as the total mileage allowance would need to be divisible by three to reflect the term of the agreement.*

*But I can see it could have reduced it by 6,000 to a total of 24,000 – 40% of what it did actually reduce by. So, I think it's fair to estimate his new monthly payment would only have reduced by around 40% of £25.08, that is £10.03. I appreciate it's unlikely this would have been a linear calculation, but I'm satisfied it's a fair and reasonable estimate in the circumstances here.*

*This means Mr M would have been paying £231.16 a month for the seven payments he made up to when the agreement ended. That's £15.05 more than he actually paid. So, to put things right, I think VWFS needs to give Mr M a refund of the £454.32 excess mileage charge he paid, but it should deduct £105.35 (7 x £15.05) from this.*

*This leaves £348.97. VWFS should add 8% annual simple interest to this amount, calculated from the date he paid the excess mileage charge to the date of settlement. If VWFS thinks it's required by HM Revenue & Customs to deduct income tax from the interest amount, it should tell Mr M how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.*

*For completeness, I'll now turn to Mr M's query over the actual calculation of the excess mileage charge. I can see that Mr M has based his calculation on excess mileage of 4,699 at 6.98 pence per mile. His figure of 4,699 is based on a 15,000-mile limit. But as Mr M ended his agreement early, the 15,000 limit is reduced on a proportional basis to reflect this. So, the excess mileage was actually more than his calculations. Also, the 6.98 pence per mile charge was subject to VAT as set out in the hire agreement.*

*Taking the above into account, I'm satisfied VWFS' calculations are in-line with what I would expect. But, given that I'm asking VWFS to refund the excess mileage charge, this is now a somewhat moot point.*

I gave both parties time to reply to my provisional decision. Mr M said he was minded to accept my decision. But he did ask me to consider some additional points. Briefly, Mr M said it was clear to him that VWFS's conduct, systems and controls didn't meet the required regulatory standard. He also said the 8% interest only provides a very limited amount of compensation for the financial loss, distress and inconvenience he's experienced in dealing with this matter. He asked that I consider if additional compensation is fair and reasonable here.

VWFS replied saying it had no further evidence or information to send.

### **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 M has commented on VWFS's conduct, systems and controls. The systems and controls VWFS has in place are internal matters for it to decide. I have no remit to direct VWFS to change any of these. That's a matter for the regulator, the Financial Conduct Authority.

But what I can look at is if those systems and controls, along with VWFS's conduct, have meant Mr M has been treated unfairly and unreasonably. Here, as set out above, I'm satisfied he was treated unfairly and reasonably. That's why I've upheld this complaint.

I would also confirm that both here and in my provisional decision, I've considered at length if additional compensation should be paid. I've decided it shouldn't. I fully appreciate the time it's taken to resolve things. I've also taken into account that using financial services isn't always problem free and, to a certain extent, dealing with such problems is a necessary part of everyday life. Also, in very general terms, complaint handling as a stand-alone activity isn't a regulated activity and doesn't fall within the remit of this service – it's not something we would usually award compensation for

I'm satisfied Mr M experienced a financial loss. My decision compensates him for that loss. There's nothing in the available evidence to indicate he suffered any financial difficulties due to this loss. My award of 8% annual simple interest does take into account the time that has passed.

In summary, having considered afresh all the available evidence and arguments, including the responses to my provisional decision, I see no reason to change the outcome I reached in that provisional decision.

### **My final decision**

My final decision is Volkswagen Financial Services (UK) Limited should pay Mr M £348.97 together with 8% annual simple interest on this amount, calculated from the date he paid the excess mileage charge to the date of settlement.

If VWFS thinks it's required by HM Revenue & Customs to deduct income tax from the interest amount, it should tell Mr M how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

This final decision marks the end of the Financial Ombudsman Service's review of this complaint. This means we are unable to consider the merits of it any further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 September 2022.

John Miles

**Ombudsman**