

The complaint

Mr P is unhappy with the end of contract charges applied by Volkswagen Financial Services (UK) Limited (VWFS) following the return of his car.

What happened

On 10 December 2014, Mr P was supplied with a new car through a hire purchase agreement with VWFS. The agreement was for £39,793 over 48 months, with 48 monthly payments of £397 and a final optional payment of £14,440, if Mr P wanted to purchase the car.

In August 2018 Mr P exercised his option to voluntarily terminate the agreement. The car was collected on 10 October 2018. Mr P was unhappy that VWFS then charged him an excess mileage fee, and charged him £404 for damage to the car.

Mr P says that VWFS weren't able to charge him for these issues as this contravened the Consumer Credit Act 1974 (CCA) as he'd paid the requisite amount. He also said he felt that the damages charged for were scuffs and scratches that he believed to be fair wear and tear. He said VWFS sold the car for higher than the end of lease cost, and they hadn't acknowledged that they sold the car for more than the final balloon payment.

VWFS said that the agreement allowed for the excess miles to be accrued prior to termination, and therefore the charge was consistent with the CCA.

They said the agreement Mr P entered into required him to keep the car in good repair and condition. They said the agreement included a clause that confirmed Mr P would be liable for any damage to the vehicle that wasn't fair wear and tear. They said the car had been inspected and they listed the damages as:

Bumper Front - dent exceeds the BVLRA guide tolerance as dents on the swage line are not acceptable: £138.00

Bumper Rear - scratch exceeds the BVLRA guide tolerance as scratches greater than 25mm are not acceptable: £55.20

Left Hand Front Wheel - scratches exceeds the BVLRA guide tolerance as scratches greater than 50mm are not acceptable: £36.00

Left Hand Rear Wheel - scratches exceeds the BVLRA guide tolerance as scratches greater than 50mm are not acceptable: £36.00

Right Hand Front Wheel - scratches exceeds the BVLRA guide tolerance as scratches greater than 50mm are not acceptable: £36.00

Right Hand Rear Wheel - scratches exceeds the BVLRA guide tolerance as scratches greater than 50mm are not acceptable: £36.00

They said they were satisfied that all damages exceeded what would be considered fair wear and tear as set out in the British Vehicle Rental and Leasing Association (BVRLA) Fair Wear and Tear Guide. They also said that the guide allowed for charges to be applied where they decide for commercial reasons not to repair damage before they sell it. They didn't uphold his complaint and said he owed £1,339 for the excess mileage and £404 for the damages.

Mr P was unhappy with VWFS's response, and he brought his complaint to us for investigation.

In May 2022, this service wrote to Mr P to inform him that VWFS had agreed to waive the excess mileage charge. The letter explained that the offer was in line with what the Financial Ombudsman Service expected in these types of situations.

Mr P said he was unhappy to pay any charges as he said there was no legal requirement to do so. He also said VWFS had sold the car for the full value of the final balance set out in the agreement, and this was the amount they would've received if he'd exercised the option to purchase the car.

He said he considered the matter closed because the event occurred more than four years ago.

Our investigator said the offer from VWFS to remove the excess mileage charge was fair. She also said it was fair for VWFS to charge Mr P for the damages. She said section 100 of the CCA said that *"...If the debtor has contravened an obligation to take reasonable care of the goods or land, the amount arrived at under subsection (1) shall be increased by the sum required to recompense the creditor for that contravention..."*. She said this meant that VWFS could charge for damages.

She also said that the damages were outside of the BVRLA guidelines so she felt it was reasonable for VWFS to charge for them. She also said that the same guidance allowed VWFS to charge even where the car is not repaired before it was sold.

Mr P didn't agree with the investigator. He said VWFS did not incur any losses or additional costs after he voluntarily terminated the agreement. So he's asked for an ombudsman to make a final decision.

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.

Having done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time. Mr P was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Mr P said he has met his obligations under the CCA as he says he's paid more than half. He also said VWFS shouldn't be able to charge for the excess mileage and the damages as the CCA doesn't allow for this.

I note that VWFS have agreed to waive the fee for the excess miles. I'm satisfied this is a fair and reasonable offer, and that this resolves that part of Mr P's complaint.

I do need to consider whether or not it was reasonable for VWFS to charge Mr P for the damage to the car.

Section 99 of the CCA provides the right to terminate the hire purchase agreement. Section 100 of the CCA sets out the consumer's liability on termination:

"100 Liability of debtor on termination of hire-purchase etc. agreement.

(1) Where a regulated hire-purchase or regulated conditional sale agreement is terminated under section 99 the debtor shall be liable, unless the agreement provides for a smaller payment, or does not provide for any payment, to pay to the creditor the amount (if any) by which one-half of the total price exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination...

(3) If in any action the court is satisfied that a sum less than the amount specified in subsection (1) would be equal to the loss sustained by the creditor in consequence of the termination of the agreement by the debtor, the court may make an order for the payment of that sum in lieu of the amount specified in subsection (1).

(4) If the debtor has contravened an obligation to take reasonable care of the goods or land, the amount arrived at under subsection (1) shall be increased by the sum required to recompense the creditor for that contravention..."

Mr P says he's paid the requisite sum. I assume he means the "one-half of the total price" referred to in section 100 (1) of the CCA. But that ignores section 100 (4) which allows the creditor, in this case, VWFS, to charge where the debtor, Mr P, hasn't taken reasonable care of the car. So I'm satisfied that VWFS are able to charge for the damages following Voluntary Termination.

The agreement Mr P entered into also includes a clause that explains that there will be a charge if the car is not in a reasonable condition. The section of the agreement headed '*termination: Your rights*' explains that on voluntary termination the liability will be limited to half the total amount payable, and that if you have already paid that amount and '*have taken reasonable care of the goods*', you will not have to pay anymore.

So I then have to consider whether the charges for damages are reasonable. Mr P says they are not because he believes the damages are commensurate with the mileage he travelled.

There are industry standard guidelines published by the British Vehicle Rental and Leasing Association (BVRLA) which set out what is considered to be fair wear and tear when a car is returned at the end of a hire purchase agreement. So, I've considered these in deciding what it's fair for VWFS to charge Mr P on return of the car.

Dented front bumper

The BVRLA fair wear and tear standards say that dents on the swage line are not acceptable. I've seen the photos provided by VWFS from the collection of the vehicle, and the dents on the front bumper are visible on the swage line. So, I'm satisfied that the charge of £138 has been fairly applied for this item.

Scratched rear bumper

The BVRLA fair wear and tear standards say that surface scratches of more than 25mm are not acceptable. I've seen the photos provided by VWFS from the collection of the vehicle. The scratches on the rear bumper are shown alongside a ruler, and appear to be at least 50mm in length. So, I'm satisfied that the charge of £55.20 has been fairly applied for this item.

Alloy wheels

The BVRLA fair wear and tear standards say scuffs up to 50mm on the total circumference of the wheel rim and on alloy wheels are acceptable.

I've seen the photos provided by VWFS from the collection of the vehicle. The scuffs on all four wheels are clearly visible and appear against a ruler. I'm satisfied that the scuffs on each of the four wheels cover more than 50mm of the circumference. And so, I'm satisfied that the charge of £36 for each wheel has been fairly applied for this item.

Mr P feels it's unfair for VWFS to charge for the damages when they obtained a higher value than the final balloon payment when they sold the car. He also pointed out that they didn't repair the damages so he said they haven't lost out.

The BVRLA guidance I've referred to above, confirms that the charges can be applied even if the repairs were not done before the car was sold. So I'm satisfied it was reasonable for VWFS to charge as this was in line with agreed industry standards.

I appreciate this will come as a disappointment to Mr P, especially due to the passage of time since he returned the car, but I think that VWFS acted reasonably by charging for the damages to the car and I won't be asking them to amend their invoice.

Putting things right

VWFS should waive the excessive mileage charge as set out in their offer made to this service. They are entitled to pursue Mr P for the damage charges of £404.

My final decision

For the reasons explained, I uphold Mr P's complaint about Volkswagen Financial Services (UK) Limited .

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

Gordon Ramsay
Ombudsman