

## **The complaint**

Mrs J complains that Volkswagen Financial Services (UK) Limited didn't credit her account with three monthly payments in line with the terms of a promotional campaign when she acquired a car by way of a Hire Purchase Agreement (HPA).

## **What happened**

Mrs J acquired a car by way of a HPA in August 2020. She says she was persuaded to acquire the particular model because of a promotional offer referred to as "3 months on us". She says the promotion stated:

*"We will pay your first three monthly payments on top of existing offers when you finance a new (car)."*

Mrs J says that the statement of her account doesn't show any credits from VWFS during the first three months of her agreement. She says that although she's not been required to make any payments during the first three months, she would've expected the outstanding balance to have come down – but it hasn't. She complained to VWFS.

VWFS investigated her complaint. It said the promotional offer worked on the basis of discounting the standard offer interest rates. This meant Mrs J would pay the same monthly payments as she would have done on its standard offer but the first three monthly payments would be £0. Mrs J wasn't satisfied with this response. She complained to our service.

Our investigator looked into her complaint. She said that under s56 of the Consumer Credit Act 1974 (CCA) VWFS was responsible for anything said by the dealer during negotiations which took place prior to the agreement being entered into. She said it wasn't possible to be certain what was said during those negotiations. She thought the promotion could've been explained more clearly to Mrs J. But, on balance she thought VWFS had done what it said it would do in the agreement. She referred to the product information which stated that the contribution from VWFS would be made by subsidising the interest rate. She thought that had happened here.

Mrs J disagreed. She said she'd got no contribution at all for her monthly payments. She hadn't received any documentation to say that the interest rate would be subsidised. She said she'd paid the total amount payable over 34 months, along with interest for 37 months.

Our investigator considered what Mrs J had said but she didn't change her view. She said that it was clear on the face of the agreement that the first three monthly payments were £0.

Because Mrs J didn't agree, the complaint was passed to me to decide. I issued a provisional decision in which I said:

***What I've provisionally 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.*

*I think it's fair and reasonable to expect VWFS to be able to demonstrate to Mrs J that she has received the benefits it promised her. Having considered everything here, I currently haven't been provided with enough evidence to satisfy me, on balance, that she has received the promised benefits. I'll explain why.*

*I've looked at the advertisement and the product guide for the promotion. The advertisement stated:*

*"We'll pay your first three monthly payments on top of existing offers...*

*Until 30 September we'll cover your first three monthly payments with up to 5.5% APR representative and provide deposit contributions between £700 and £16,000....*

*Better still, that's in addition to existing offers available...*

*[referring to the particular model which Mrs J purchased]*

- The first three months of payments are on us*
- 4.9% APR representative\**
- £3500 deposit contribution..."*

*I've noted that the APR stated in the HPA was 4.9%. VWFS has also provided details of the discounts it applied to Mrs J's agreement. These were:*

<i>Dealer contribution</i>	<i>£1370.00</i>
<i>Deposit Contribution</i>	<i>£2130.00</i>

*This confirms that Mrs J was given the benefit of the APR, and a total deposit contribution of £3,500 as set out in the advertisement.*

*Mrs J's complaint is about the statement that the first three months' payments are "on us." So, I've looked at what the product information guide said about the first three months' payments. It stated:*

*"It's really quite simple. Once a customer has chosen their vehicle, the vehicle cost (plus interest) is paid in three parts."*

*The three parts are described as:*

- "A deposit contribution paid by Audi UK*
- The customer pays nothing for the first three months of the repayment period. Audi UK contribute towards the cost of the first three monthly payments and in most cases, this covers the total cost. The customer pays the balance over 32- 45 months starting four months after the date of the agreement*
- An optional final payment."*

*The product guide then provides more detail about how the first three payments will be paid:*

*"How much will Audi UK contribute towards the first 3 monthly payments?"*

*The contribution is made by Audi subsidising the interest rate so that the customer receives the appropriate level of contribution....”*

*The HPA did provide more information about the rate of interest and the first three payments. It said*

*“The Rate of Interest (calculated in the same way as the APR, but excluding fees) is 4.86% pa. The rate is fixed for the duration of this Agreement. The interest payable is calculated at the outset of the Agreement, and is included in the monthly repayments stated below. The APR is 4.9%...*

*The Total Amount Payable (comprising the Advance Payment, Amount of Credit, Acceptance Fee, Interest and Option to Purchase Fee) is £36,578.65.*

**Payment**

*You must make the Advance Payment to us when you sign the Agreement. You must then make: one repayment of £0.00 (which comprises an Acceptance fee of £0.00) on a date set by us ... followed by 33 monthly repayment of £390.15, on the same date of each successive month, save that there will be a Payment Holiday in month(s) 1,2 and 3, followed by a final payment of £16,563.70 payable 36 months after the date set for the first repayment.”*

*So, the HPA made clear that Mrs J wasn't required to make any payments to the account during the first three months. It didn't provide any reference, at all, to an interest subsidy or an interest contribution. The interest rate in the HPA was not discounted – it was the standard interest rate as stated in the promotion. And, despite what VWFS said in its final response letter, there's nothing in the HPA to support its assertion that a discount was applied to its standard offer interest rate or that the interest rate was subsidised.*

*When Mrs J queried why there hadn't been any credits to her account during the first three months, she contacted the dealer. She says she was expecting that under the terms of the promotion these first three payments would've been paid into her account. The dealer sent her an email dated 21 October 2021 which said:*

*“It's a bit tricky to explain in text. But, the three payments that Audi Finance are paying were applied to your purchase as an additional discount as part of your finance agreement. You won't be able to “see” the payments from Audi Finance as they would be paying money to themselves. The money has already been “paid” but as a total amount in the form of a discount.”*

*I'd just comment that even though a promotion might be “tricky” to explain, it didn't absolve the dealer from providing an explanation that was clear, fair and not misleading to its customer. I've also not been provided with evidence to support the statement made by the dealer about “an additional discount.”*

*I've noted that in its final response letter, VWFS told Mrs J it would provide her with a comparison which was based on the financial data which applied to her own agreement. It subsequently said it was not able to do this because the interest rate would have differed per person per application based on their financial circumstances.*

*I asked VWFS to provide a detailed calculation and explanation setting out how the total amount of interest referred to in Mrs J's HPA had been arrived at. This*

would've enabled me to see whether an interest subsidy had been made and whether it equated to three monthly payments. VWFS has not provided that information. Instead it has provided an example of how it says the interest subsidy worked.

Having looked at the example provided, I'm unable to apply it to Mrs J's specific arrangements. The example provided is for a different amount, a different deposit, a different term and a different representative APR. So, I've been unable to work out whether any interest subsidy was applied to Mrs J's agreement.

Having considered everything here, I'm currently satisfied on balance that VWFS stated that the first three months were "on us." I think that was the stated intention of the promotion and that was what it agreed to do. So, I don't think there was a misrepresentation. But, I'm not currently persuaded, on balance, Mrs J has received three months' payments "on us".

### **What needs to be done to put things right**

Because I'm not currently persuaded Mrs J received the promised benefit of the first three monthly payments, I've provisionally decided it's fair and reasonable to require VWFS to now put Mrs J into the position she would've been in if it had done what it said it would do – that is, contribute to the cost of the first three monthly payments. This will require it to re-work the account from its inception based on the original agreed amount of credit, term and interest rate – as set out in the HPA. It should then credit her account with the first three monthly payments, as set out in the promotion.

Mrs J has also been inconvenienced as a result of what's happened here. She's asked for explanations - but these haven't been provided. And, she's had to progress her complaint to our service. In these circumstances, I've provisionally decided it's fair and reasonable to require VWFS to pay her £150 by way of compensation for the distress and inconvenience she's experienced.

### **My provisional decision**

For the reasons given above my provisional decision is that I intend to uphold this complaint about Volkswagen Financial Services (UK) Limited. I intend to require it to take the following actions:

- Re-work Mrs J's account from inception based on the original agreed amount of credit, term and interest rate – as set out in the HPA.
- Credit the first three monthly payments to the account.
- Provide an updated statement of account to Mrs J.
- Pay Mrs J £150 by way of compensation for the inconvenience she's been caused as a result of what happened here.

Mrs J responded to my provisional decision. She said she accepted the decision.

VWFS also responded to my provisional decision. It asked for further clarity about how I thought this complaint should be resolved. It explained it wouldn't be able to re-work the payments due on the account as its systems wouldn't be able to perform that calculation. The reason for this was because the particular sales campaign was no longer valid.

In these circumstances it instead offered to:

- Credit to the account three monthly payments (3 x £390.15) together with 8% simple interest\* on this amount from 24 January 2021 to the date of payment.
- Reduce the monthly payments for the remaining term of Mrs J's agreement (approximately 12 months) to £284.01 per month.

Alternatively, VWFS said it could make a payment direct to Mrs J's bank account of £1,170.45 together with 8% simple interest\* on this amount from 24 January 2021 to the date of payment. There would then be no change to the payments she was making to her agreement. The reason for that was because the compensation payment would not have been applied in part payment of the total amount still outstanding under the agreement.

I asked Mrs J for her comments about what had been proposed. I explained that I thought it was important that the actions I required VWFS to take to resolve the complaint should be capable of being implemented in a way which was straightforward and which provided clarity about what she could expect to happen. And, having considered what VWFS had said, I thought their proposals were fair and reasonable. I explained that I still also intended to award £150 compensation for the inconvenience she'd experienced.

Mrs J said she was willing to proceed on the basis that the compensation payment would be made directly to her bank account with no change to the payments she's required to make under her HPA.

So, I now need to make my 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.

I've considered the responses to my provisional decision. Neither of the parties has said anything in response to my provisional decision to indicate they disagree with my view that this complaint should be upheld. So, I haven't changed my view that this complaint should be upheld.

There has been discussion about how the complaint should be resolved. I've considered the comments made by both VWFS and by Mrs J about the actions I thought VWFS needed to take to resolve this complaint. Having done so, I've changed my view about the actions VWFS should be required to take here to put things right.

As I've set out above, it is important that VWFS should be able to implement the actions I require it to take to resolve the complaint in a way which is straightforward and which achieves a fair outcome. And, it's also important that Mrs J should have clarity about what she can expect. Both parties have given their views on how that can best be achieved.

Having considered the proposal made by VWFS and the comments about that proposal from Mrs J, I've now decided it's fair and reasonable that this complaint should be resolved in the following way.

VWFS should pay £1,170.45, together with 8% simple interest\* on this amount from 24 January 2021 until the date of payment, directly into Mrs J's bank account.

For avoidance of doubt, there will be no change to the residual payments Mrs J is required to make under the terms of the HPA with VWFS.

In addition VWFS should pay Mrs J £150 for the inconvenience she experienced as a result of what happened here.

### **My final decision**

For the reasons given above, I uphold this complaint about Volkswagen Financial Services (UK) Limited. I now require it to take the following actions:

- Pay £1,170.45, together with 8% simple interest\* on this amount from 24 January 2021 until the date of payment, directly into Mrs J's bank account; and
- Pay Mrs J £150 by way of compensation for the inconvenience she's been caused as a result of what happened here.

Mrs J should continue to make the payments she is required to make under the terms of her Hire Purchase Agreement with Volkswagen Financial Services (UK) Limited.

*\* If Volkswagen Financial Services (UK) Limited considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mrs J it should tell her how much it's taken off. It should also give Mrs J a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 29 November 2022.

Irene Martin  
**Ombudsman**