

The complaint

Miss I complains that Volkswagen Financial Services (UK) Limited (VWFS) irresponsibly provided her a hire purchase agreement which wasn't affordable.

What happened

In February 2016, Miss I acquired a new car financed by a hire purchase agreement from VWFS. An advance payment of £1,700 was made and Miss I was required to make 48 monthly repayments of around £155 followed by a final payment of around £5,378. The total repayable under the agreement was around £14,513.

The agreement was voluntarily terminated in September 2019, but an outstanding balance remained.

Miss I raised a complaint about irresponsible lending. This was investigated by our adjudicator and upheld. VWFS accepted the investigator's view upholding the complaint and also offered to refund the excess mileage charges that had been previously applied. After discussion about the settlement offer both parties agreed to the following settlement:

- Refund the deposit, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Pay a rebate (based on the difference between the rentals paid by Miss I and a fair usage amount) of £2,010.36 (44 x £45.69) adding 8% interest where applicable;
- Refund the excess mileage charge inclusive of 8% interest totalling £449.56 (which had already happened);
- Remove adverse information from Miss I's credit file; and
- Provide a certificate showing the tax paid on the refund as Miss I had requested one.

Following the refund being processed, Miss I challenged the amounts as she didn't think the deposit had been refunded. VWFS provided evidence to show that of the £1,700 deposit recorded in the agreement, £1,400 was dealer contribution. Miss I said that her previous car had been part exchanged and that this was the deposit amount.

My provisional conclusions

I issued a provisional decision on this complaint. I noted that as our adjudicator had upheld Miss I's complaint about irresponsible lending and VWFS accepted this, I didn't revisit that aspect of the complaint. Likewise, the redress recommendations were accepted by both parties including the refund of the deposit which I found reasonable.

While the principle of the deposit refund was agreed, the outstanding dispute was about how much Miss I paid as a deposit and as such would how much should be refunded. Therefore, my provisional decision considered what amount I thought VWFS was required to refund to resolve this complaint. I considered the following factors in making my decision:

- The hire purchase agreement included an amount of £1,700 as an advance payment. Of the total, £300 was recorded as a cash contribution and I understood this had been accepted as being refundable to Miss I.
- Miss I said that the remaining £1,400 was the part exchange value of her previous car. If this was the case, I said we would expect the full amount of £1,700 to be considered as the deposit paid by Miss I and therefore refunded along with the interest. However, VWFS said that £1,400 of the advance payment was dealer contribution and therefore not paid by Miss I.
- VWFS provided a screenshot of the transaction recording a £300 cash deposit and a £1,400 dealer contribution. The screenshot recorded a zero against the box for a part exchange and the other information in the screenshot correlated with the agreement.
- A copy of the dealer invoice also recorded the cash deposit of £300 and made no reference to a part exchange.
- VWFS said it searched its records and the dealer had done the same and it had no record of Miss I's previous vehicle being within its network.
- Miss I contacted the DVLA about her previous vehicle. The information provided confirmed the car was sold on 3 March 2016. Miss I provided copies of her bank statements from the time and these did not show an entry for sales proceeds from the car.

In this case, I thought that VWFS had carried out reasonable checks to identify whether Miss I's previous vehicle was part exchanged as part of her agreement. It hadn't been able to find any evidence of this and instead had evidence to suggest a dealer contribution was made. So, on balance, I found the evidence supported the £1,400 being a dealer contribution and Miss I making a £300 cash payment. Therefore, I found the deposit amount paid by Miss I was more likely than not £300 and as such this was the amount that should be included in the refund.

Miss I responded to my provisional decision. She provided a further timeline of events and documentation (some of which was duplication of documents already received). She said on 5 February 2016 the agreement was drawn up and she provided a copy of her bank statement and the log book for her existing car. The agreement was signed on 8 February and she collected her new car on 11 February. On the same day she collected her new car a MOT was carried out on her existing car which she says suggested the dealership had taken ownership of the existing car at that time. She said she had since visited the dealership that sold the car along with her documents and reviewed the documents including VWFS' screenshot and says the adviser thought the screenshot may be 'at odds' with what had happened. Miss I said the first time she was made aware of the dealer contribution was when her refund was being discussed and not in the sales process.

Miss I also disputed the rate at which statutory interest was applied. She said the interest on the credit card payment she made was higher than the 8% simple applied in the redress.

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.

When assessing a complaint, I take all evidence into account and in cases where the evidence is incomplete or contradictory, as is this case in this complaint, I make my decision based on the balance of probabilities. That is, what I consider most likely to have happened given the information provided and any wider circumstances.

As set out in my provisional decision both parties accepted our adjudicator's view upholding Miss I's complaint and the redress was also agreed, including the refund of the deposit. The remaining dispute relates to the amount of the deposit that should be refunded.

I have looked at the additional information Miss I has provided alongside the evidence I had previously received. It isn't disputed that an advance payment of £1,700 was made. This is set out in the hire purchase agreement and neither party has challenged this. Likewise, there is no dispute that Miss I made a payment of £300 as a deposit. She has evidenced this through her credit card statement and this is recorded as being paid on the dealer invoice.

The outstanding issue relates to the remaining £1,400 of the advance payment. The dealer invoice says this is due from Miss I. I have no evidence that she made this payment directly. The screenshot provided by VWFS records the £300 cash deposit and records £1,400 as a dealer contribution. VWFS has also said searches of its network didn't show the car Miss I says she part exchanged as being sold within its network. Against this, Miss I has provided a copy of her agreement with a handwritten note referring to a bank statement and log book being provided which could suggest a discussion about part exchanging her car. She has also provided evidence that the car was sold in early March 2016 and that an MOT was undertaken on the car the same day she collected her new car (even though the MOT wasn't due until July 2016).

On balance, having considered all of the evidence provided, while I accept that Miss I's existing car was MOT'ed and sold around the time she collected her new car, I do not find that the evidence she has provided is enough to say the car was part exchanged as part of the VWFS transaction. I say this because I have given weight to the screenshot provided by VWFS and the fact that there is no mention of a part exchange having taken place. So, while I know this will be disappointing to Miss I, on balance, I do not find I have enough to change my conclusion from my provisional decision that the deposit to be refunded is the £300.

I have also considered Miss I's comments about the interest rate applied to the refund. While I understand the point she has made, I think in this case the interest rate applied is fair. I say this because although Miss I paid the £300 deposit on her credit card, she could then have repaid this amount to reduce her costs. While I cannot say exactly what the cost of this payment will have been over the duration from payment to settlement, I think the usual approach of applying 8% simple interest is reasonable.

Putting things right

My provisional decision is that Volkswagen Financial Services (UK) Limited, should, as it has agreed (and to the extent this hasn't already happened):

- Refund the deposit of £300, adding 8% simple interest per year* from the date of payment to the date of settlement;
- Pay a rebate of £2,010.36 (44 x £45.69) adding 8% simple interest per year* where applicable;
- Refund the excess mileage charge inclusive of 8% simple interest per year*;
- Remove adverse information recorded on Miss I's credit file; and
- Provide a certificate showing the tax paid on the refund as Miss I has requested one.

*HM Revenue & Customs requires VWFS to take off tax from this interest.

My final decision

My final decision is that I uphold this complaint. Volkswagen Financial Services (UK) Limited should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 6 December 2022.

Jane Archer
Ombudsman