

## **The complaint**

Mr B complains about how Volkswagen Financial Services (UK) Limited trading as Audi Finance (VWFS) handled the end of his agreement and the collection of his vehicle.

Mr B is represented in this complaint by his daughter, Mrs W, but for ease of reference, I'll refer to Mr B directly throughout my decision.

## **What happened**

Mr B entered a hire purchase agreement with VWFS in October 2017 to acquire a used car.

In March 2020 Mr B contacted VWFS as his income had been affected by the coronavirus pandemic (Covid-19). Mr B decided to voluntarily terminate (VT) his agreement. This meant that Mr B could hand back the car, and there was a shortfall that needed to be paid.

Mr B asked VWFS if he could pay the shortfall in instalments, and they told him he could. VWFS told Mr B once the car had been collected, and the final payment calculated including any excess mileage and damage charges, they could set up a payment arrangement for the balance.

On 25 March 2020 VWFS sent Mr B a letter confirming the VT of his agreement. This letter set out that Mr B would need to pay the shortfall on the agreement within 14 days of the date of the letter.

Between March and June 2020 Mr B called VWFS to discuss a payment arrangement and the collection of the vehicle on a number of occasions. VWFS told Mr B on one occasion that the need to keep the car insured whilst it was in his possession had been relaxed, provided it was kept safe, and on another occasion that he needed to keep the car insured as he would be liable for anything that happened to it even if it'd been kept safe.

In June 2020 Mr B complained to VWFS that he was being chased for payment of the shortfall when the car hadn't yet been collected. Mr B was also unhappy with the delays in collecting the vehicle and told VWFS that he was incurring charges to store it in a secure location.

Collection agents collected and inspected the car for VWFS in August 2020. The report from the inspection notes damage outside of fair wear and tear and the cost to Mr B as follows:

- Front bonnet - paint chips – refinish - £110.40
- Rear bumper – scratched left corner – repair - £55.20.
- Left hand front wheel – scratched – refurb - £36
- Left hand rear wheel – scratched – refurb - £36
- Right hand front wheel – scratched – refurb - £36
- Right hand rear wheel – scratched – refurb - £36

- Left hand front tyre – tread 0mm – replace - £135.98
- Right hand front tyre – tread 1mm – replace - £135.98

Mr B complained about these charges to VWFS, as he felt they were within fair wear and tear, and he complained about the affect not paying the shortfall was having on his credit rating.

VWFS sent Mr B their final response to his complaint in November 2020. They said when Mr B discussed the option to VT his agreement in March 2020, they should have explained the impact a payment plan would have on his credit file. They said the letter explaining the VT did set out that the shortfall would need to be paid within 14 days, and as this hadn't happened, the reports to his credit file about the late payment had been made correctly, and so they wouldn't amend this.

VWFS said they couldn't collect Mr B's vehicle because of restrictions relating to Covid-19, and then delays in handling a backlog of collections. They said they wouldn't reimburse the charges Mr B incurred for storage of the vehicle because they hadn't agreed to them up front.

VWFS reviewed the damage charges and waived the charges for the bonnet chips and the scratched wheels, save for the left-hand front wheel, as the damage wasn't clear in the photos. They said the remaining charge for damage was £436.63. VWFS also offered Mr B £200 compensation as he'd had to call a number of times about a payment arrangement and hadn't been given the right information.

Unhappy with this, Mr B brought his complaint to this service for investigation. He said he'd like the damage charges waived, to be able to pay the shortfall in instalments without it affecting his credit file, and reimbursement for the costs of storing and keeping the vehicle insured, in order to keep it safe, during the time between the end of the agreement and it being collected.

Our investigator looked into everything and gave his view on Mr B's complaint. He said that although the letter sent to Mr B about the VT said the shortfall would need to be paid in 14 days, he thought it was reasonable that Mr B thought there would be exceptions to this, as he'd been told by VWFS that he could set up a payment arrangement and hadn't been told this would affect his credit rating. Our investigator said that any adverse information should be removed from Mr B's credit file, and if no payment plan was yet in place, then one should be arranged.

Our investigator thought that VWFS had no choice but to delay the collection of Mr B's vehicle as a result of restrictions relating to Covid-19. But they should reimburse the cost of Mr B having to tax and insure the vehicle between the end of the agreement and its collection. He didn't think VWFS needed to reimburse Mr B for the storage costs he'd incurred.

Our investigator said the damage charges that remained were fair but noted that they amounted to £363.13 and not £436.63 as set out by VWFS, so this figure should be amended.

Finally, our investigator said that VWFS should pay Mr B a total of £350 compensation for the distress and inconvenience caused.

VWFS accepted our investigators recommendations, but said that the damage charges were £436.63 including VAT.

Mr B didn't agree. He said he should be reimbursed for the storage charges, as he'd been told by VWFS that the car needed to be kept in a safe and secure location, and someone had tried to steal it from outside of his home, so he had no choice but to put the vehicle in storage. Mr B said he felt the compensation should be higher, as the impact on his credit file had been significant and sustained.

I issued a provisional decision on this complaint in November 2022 recommending that it was upheld. I made the following provisional findings:

*Mr B 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 B has raised a number of areas of complaint, and so I'll deal with each of them separately.*

#### *Payment of the shortfall and the impact on Mr B's credit file*

*Mr B has said that he wasn't told that if he continued with the VT of the agreement, he'd have to pay the shortfall within 14 days, and that if he entered a payment plan, it would affect his credit rating.*

*I've listened to the calls between Mr B and VWFS when the VT of the agreement was discussed. Mr B asked about paying the shortfall in instalments and was told that he could do this. He was told that once the vehicle had been collected, all charges would be established and then a payment plan could be set up for the balance.*

*VWFS sent Mr B a letter confirming the VT and shortfall information, which set out that the payment would need to be made within 14 days of the date of the letter. This letter was some time before the vehicle was collected from Mr B. So, I think it's reasonable that Mr B believed there would be exceptions to the payment requirement, as he'd been given different information on the phone when he queried how the shortfall could be repaid.*

*VWFS's system notes from these calls say that Mr B was made aware of the impact on his credit file, I've seen no evidence that this was discussed when Mr B called, so I'm satisfied that the impact of a payment arrangement on Mr B's credit file wasn't made clear to him before the VT happened.*

*I've thought about what action Mr B might have taken if he'd been given the information that the shortfall would've been due in 14 days, and that if he entered a payment arrangement to pay it over a longer term, this would affect his credit rating.*

*Mr B has explained the distress the affect to his credit rating has caused him, and he told VWFS in his complaint that if he'd known the correct information, he would've continued to make the monthly payments. At the time the VT was completed, Mr B had around nine more monthly payments to make before his shortfall amount would've been reduced to £0.*

*Based on the evidence provided by Mr B, I'm persuaded that if VWFS had provided correct information about the VT and payment of the shortfall when Mr B asked for it, that Mr B wouldn't have gone ahead with the VT of the agreement.*

*It's not possible to put Mr B back in the position he would've been in if the VT of the agreement hadn't happened, I can't direct VWFS to treat the agreement as though the VT didn't happen, and reinstate it, as Mr B handed his car back some time ago. But Mr B's credit file can be put back in the position it would've been in. So, I think it's reasonable, in the*

circumstances, for VWFS to remove all adverse information relating to the shortfall from Mr B's credit file, and to allow Mr B to repay the amount by way of a payment plan.

*I understand that a payment plan is already in place, but if it isn't VWFS should contact Mr B to arrange one, and I'd remind them of their obligation to treat Mr B with forbearance and due consideration.*

#### Delay in collecting the vehicle and costs

Mr B completed the VT of the agreement in March 2020, but VWFS were unable to arrange collection of the car until August 2020. VWFS have explained that this was due to restrictions arising as a result of Covid-19, and then a backlog in vehicles that needed to be collected once those restrictions had been lifted.

*I appreciate that keeping the car past the end of the agreement caused some inconvenience for Mr B, but I don't think VWFS could've taken any other action due to the restrictions imposed by Covid-19.*

Mr B has said that he incurred costs in keeping the vehicle past the end of the agreement. He said he was told by VWFS that he needed to keep the car safe, and in order to do this, he had to arrange for secure storage of the car, which cost a total of £4,157.

Mr B said his house had been broken into in an attempt to steal the car, so he felt he had no choice but to incur the fees for storage.

VWFS said they wouldn't reimburse the cost of storage as they hadn't provided written consent for it beforehand.

Mr B wasn't responsible for the delay in collecting the vehicle. And although VWFS were unable to collect it, I don't think it's reasonable that Mr B is responsible for the cost of keeping the vehicle safe as he didn't use it after the agreement had ended.

*I've listened to the phone calls Mr B made to VWFS between the end of the agreement and the collection of the vehicle. It's clear that Mr B attempted to understand who would be liable if something happened to the vehicle, and how he should keep it safe. I think VWFS could've given Mr B clearer information about this. Their advice was contradictory in respect of who would be liable, whether the car needed to be insured, or what action Mr B should take to ensure the car was safe.*

*I can appreciate why Mr B felt the need to move the car into secure storage with the information that he'd been given, but I think he could've mitigated his losses here. Mr B has said that the cost to insure the vehicle was £300 a month. Mr B was charged £4,157 to store the vehicle for around five months. I think it would've been reasonable for Mr B to keep the vehicle insured instead. This would've reduced Mr B's cost for keeping the vehicle safe and ensured that he wasn't liable if something happened to it.*

*In the circumstances, I find that VWFS are not responsible for the storage costs incurred by Mr B, but that they should pay Mr B what it would've cost him to keep the vehicle insured between the date the agreement ended and the date the vehicle was collected. Mr B will need to provide evidence of the cost to insure the vehicle immediately prior to the end of the agreement for VWFS to calculate this.*

#### Damage charges

*Mr B signed a hire purchase agreement in October 2017. The terms of the agreement set out that the vehicle must be returned at the end of the agreement in good repair and condition, in line with industry standards of fair wear and tear, beyond which it allows VWFS to charge for the costs of either repairing and / or refurbishing the vehicle, or the cost of the consequent reduction in the sale value of the vehicle.*

*It's clear from the agreement that Mr B was responsible for returning the car in good condition.*

*I've considered whether the charges applied by VWFS are fair and reasonable.*

*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 in respect of a hired vehicle. So, I've considered these in deciding what it's fair for VWFS to charge on return of the car.*

*VWFS have already agreed to remove the charges for the bonnet and three of the scratched wheels, so I haven't considered these further.*

#### *Rear bumper*

*The BVRLA fair wear and tear standards say that surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable, provided they can be polished out.*

*I've seen the photos provided by VWFS from the collection of the vehicle, and the scratch to the rear bumper is over 25mm long with the primer showing. So, I'm satisfied that the charge of £55.20 has been fairly applied for this item.*

#### *Left hand front wheel*

*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, and whilst the damage to the wheel isn't measured, I'm satisfied that the scuffs clearly cover more than 50mm of the circumference. And so, I'm satisfied that the charge of £36 has been fairly applied for this item.*

#### *Front tyres*

*The BVRLA fair wear and tear standards say that all tyres must meet minimum UK legal requirements.*

*The collection agents have measured and recorded the tread depth on all four tyres. The two front tyres are recorded as 0mm and 1mm. Current minimum UK legal requirements are 1.6mm of tread depth. So, I'm satisfied that both front tyres are outside of legal requirements and the charge of £271.96 for their replacement has been fairly applied.*

*The total damage charges for these three items is £363.16. VWFS have told this service that they've added VAT to these charges, and this is why Mr B was asked to pay a total of £463.63.*

*I haven't seen any evidence that persuades me that VAT should be added to the charge payable by Mr B. The agreement allows VWFS to charge for the costs of either repairing and / or refurbishing the vehicle, or the cost of the consequent reduction in the sale value of the*

*vehicle. So, VWFS don't have to show that they've undertaken repairs to the damaged areas. But, where no repairs have been completed and the charges have been used to compensate VWFS for the damage to the vehicle, I wouldn't expect them to be subject to VAT.*

*So, I think VWFS should amend the charge for damages to £363.16.*

### *Distress and inconvenience*

*Our investigator recommended that VWFS pay Mr B a total of £350 compensation, and VWFS accepted this. Mr B said he should receive more, as the information on his credit file has had a sustained impact on him.*

*Mr B has been put to distress and inconvenience in having to make multiple phone calls to try and set up a payment plan, incorrect information being given in respect of the shortfall and any effect on his credit file, the adverse information registered on his credit file for an extended period of time as a result of this, and unclear information being given about how to keep the car safe prior to collection.*

*I've carefully considered the overall impact the situation has had on Mr B, along with this service's published information on what we consider and the levels of compensation we award in certain situations. All things considered, I think £350 fairly reflects the distress and inconvenience caused to Mr B.*

VWFS responded to my provisional decision to say they had nothing further to add.

Mr B responded to my provisional decision. He said the compensation amount wasn't adequate, as the reporting to his credit file had caused prolonged and severe distress and inconvenience. Mr B also said he should receive some of the storage costs for the vehicle back, as it was clear that VWFS had provided incorrect information.

### **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.

Neither party has raised any new arguments or sent me new information to consider in respect of the removal of the information from Mr B's credit file or the payment of the shortfall. So, for the reasons set out in my provisional decision, VWFS should remove all adverse information from Mr B's credit file in respect of the shortfall amount and allow the shortfall to be repaid by way of a payment plan.

Neither party has raised any new arguments or sent me new information to consider in respect of the damage charges. So, for the reasons set out in my provisional decision this charge should be amended to £363.16 for Mr B to pay

Mr B has said that he should receive some of the storage costs back as VWFS gave him incorrect information about keeping the vehicle safe. As I set out in my provisional decision, I think Mr B could've mitigated his losses here, by keeping the vehicle insured rather than placing it into storage. So, I'm satisfied that VWFS aren't responsible for the storage costs, but it's fair for them to pay Mr B what it would have cost him to insure the vehicle between the date the agreement ended and the date the vehicle was collected.

Mr B has said he can provide evidence of these costs, and these should be sent to VWFS so that they can arrange this payment.

Mr B has provided further information about the impact the effect on his credit rating has had on him, and the distress and inconvenience this has caused over a prolonged period of time. Mr B has asked for the compensation to be increased.

I've carefully considered again the overall impact the situation has had on Mr B, considering everything he'd told this service previously and in his recent communication, along with this service's published information on what we consider and the levels of compensation we award in certain situations. All things considered, I remain satisfied that £350 fairly reflects the distress and inconvenience caused to Mr B.

### **My final decision**

My final decision is that I uphold this complaint and Volkswagen Financial Services (UK) Limited trading as Audi Finance must:

- Remove all adverse information from Mr B's credit file in respect of the shortfall amount.
- Set up a payment plan for the shortfall if one isn't already in place.
- Pay Mr B what it would've cost him to keep the vehicle insured between the date the agreement ended and the date the vehicle was collected, Mr B will need to provide evidence of his insurance costs prior to the end of the agreement before this can be paid.
- Amend the damage charges to leave £363.16 for Mr B to pay
- Pay Mr B a total of £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 February 2023.

Zoe Merriman  
**Ombudsman**