

The complaint

Mrs L complains about charges from Volkswagen Financial Services (UK) Limited ("VWFS").

What happened

In March 2018, Mrs L acquired a new car using a hire agreement with VWFS. The agreement was taken over 24 months and the permitted maximum total mileage as per the agreement was 20,000.

Around the time the agreement came to an end, Mrs L agreed with VWFS to extend its term. Mrs L extended the term of the agreement again with VWFS a couple of more times and on each occasion she was given a new maximum total mileage. VWFS say the final total permitted mileage following the informal extensions to Mrs L's agreement was 59,480 miles.

At the end of May 2022, VWFS contacted Mrs L to arrange collection of the car.

Mrs L contacted VWFS and enquired about buying the car. In an email to VWFS, she says her current mileage was 75,700.

Mrs L says a family member eventually planned to purchase the car.

A vehicle order purchase form was signed and completed by Mrs L and her family member. The form was issued on 23 June 2022 and it was valid until 21 July 2022. The hand-written date on the form says 20 July 2021.

Mrs L's family member also received a Vehicle Purchase Price quote on 24 August 2022.

On the same day, Mrs L contacted VWFS and she was told any excess mileage fee would be waived as the car is being purchased by them.

Mrs L says VWFS tried to take payment of the excess mileage fee. Unhappy, Mrs L complained to VWFS. She believes she shouldn't be liable for the excess mileage as they were purchasing the car.

VWFS responded to Mrs L and explained that excess mileage fees form part of the terms and conditions of the agreement she signed. They explained that she had done over 15,000 miles more than her total contracted mileage, and so they invoiced her £1,288.47 for excess mileage charges.

VWFS also explained to Mrs L that a quotation letter was sent. Within that letter, it said that any excess mileage will still be charged separately. They also acknowledged that Mrs L was told incorrectly that the mileage charge would be waived on the phone.

As a gesture of goodwill for the incorrect information Mrs L received from VWFS, they partially upheld her complaint and agreed to reduce the excess mileage charge by 20%. They confirmed that £1,073.73 remained payable.

Mrs L remained unhappy with VWFS's response and brought her complaint to our service. Mrs L says they paid a deposit to buy the car based on the information she was originally told, so she is unhappy she has to pay an excess mileage fee. She says she has also incurred unpaid direct debit fees.

Our investigator found that VWFS didn't need to do anything further. She found that VWFS's right to charge Mrs L for excess mileage is detailed within the original agreement. And that it was also detailed within the end of contract vehicle purchase order and a quotation letter. The investigator also found VWFS gave incorrect information to Mrs L and she thought VWFS's offer to reduce the excess mileage charges by 20% was a fair reflection of their error.

Mrs L disagreed with the investigator's outcome. Among other things, she said that the investigator failed to consider the current cost of living crisis. She also says they based the decision to purchase the car as they thought excess mileage fee would be waived. She says that no deposit for the purchase of the car was made until after she was told incorrect information. And had she been told correct information from the outset, the monies for the deposit would instead have been diverted to pay the excess mileage fee. She also says she would have ended her relationship with VWFS.

Our investigator responded and explained the purchase order was signed about a month before the phone call was made, so she thought Mrs L would've been aware of the excess mileage charges at this point, even though she was later told otherwise. She said the other information provided by Mrs L didn't change her opinion.

Mrs L still disagreed, so the complaint was passed to me to decide.

During my investigation, I contacted VWFS and enquired about their offer they made to reduce the charges by 20%.

I issued a provisional decision on 27 February 2023 where I explained why I intended to uphold Mrs L's complaint. In that decision I said:

"Mrs L complains about a car supplied under a hire agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mrs L's complaint about VWFS.

Ultimately, what I need to consider here is whether it is fair and reasonable for VWFS to charge Mrs L an excess mileage fee, given the circumstances. Following this consideration, I need to think about whether VWFS has acted fairly in how they have suggested to put things right.

Firstly, I have turned to the terms and conditions of the initial hire agreement Mrs L had signed. Within it, it says in section 10:

"10.1 You must make sure that the Vehicle does not cover more than:

...

10.1.2 the Maximum Total Mileage

10.2 When we ask, you must pay us the Excess Mileage Charge... for each mile covered by the Vehicle..."

The cost for excess mileage is listed on the first page of the agreement signed by Mrs L.

A letter with a quote for the cost of the car was sent to Mrs L's family member. Within the letter, it explains clearly that any excess mileage will still be charged separately.

Additionally, an end of contract purchase order issued on 23 June 2022 and valid until 21 July 2022 which VWFS has provided shows a box ticked. Alongside the ticked box, it says:

"I understand that... is purchasing the vehicle and that I am aware and accept liability for outstanding... excess mileage charges as outlined within my agreement..."

This purchase order was also signed by Mrs L.

So I'm satisfied that VWFS can fairly charge Mrs L for excess mileage charges under the agreement she had signed. However, VWFS has accepted they made a mistake in telling Mrs L the excess mileage fee would be waived.

VWFS has explained the quote they provided to purchase the car was based on the mileage the car had done. They explained had the mileage been lower, the value of the car and the purchase price would have been higher. But they say Mrs L (and in turn, her family member) had benefited from a lower re-sale price due to higher mileage but at the same time she is still liable to pay the excess mileage charges. I think VWFS's comments here are fair and reasonable.

VWFS, as way of an apology for their mistake, offered to reduce the excess mileage charges due, by 20%. I've gone on to consider the impact of VWFS's mistake on Mrs L and whether their offer is fair in the circumstances.

Considering things here, Mrs L is still liable to pay the fee, irrespective of the incorrect information given. So, while Mrs L thinks the fee should be waived, in part, for being told the incorrect information, I don't think this would be a fair way to resolve things. I say this because, I don't think it would be fair for Mrs L to be waived from her contractual obligations for a mistake VWFS had made, considering Mrs L had full use of the car and went beyond her maximum total mileage on her agreement.

It's important to point out here that, despite the incorrect information, Mrs L's family member would not have been able to purchase the car at the price they did without Mrs L paying the excess mileage charge. And, had the car been returned, Mrs L also would've paid the excess mileage charge.

Mrs L says they solely made the decision to purchase the car at the end of the lease based on what she was told. I've thought carefully about this.

I can't say for sure what Mrs L would have done if she wasn't told the incorrect information. But on balance, I don't think it is likely the decision to purchase the car was on the basis the fee would be waived.

I say this because, the purchase order form which Mrs L signed was valid until 21 July 2022. While the hand-written date on the order form says 20 July 2021, I think it is likely it was meant to say 20 July 2022 and I think it was likely signed on 20 July 2022, given the form was issued on 23 June 2022. VWFS have provided their customer contact notes and it shows that Mrs L was given the incorrect information by VWFS in August 2022. So, Mrs L and her family member had agreed to purchase the car before being told the incorrect information.

While I don't know for sure, I haven't seen enough to persuade me that if Mrs L was given the correct information, she wouldn't have gone ahead with selling the car to her family member. I say this as, as I explained above, she had initially agreed to the sale before she was given the incorrect information. And, presumably her family member needed transport. So, she would've had to pay the excess mileage charge and then find another car. So I don't think it is most likely they would have walked away from buying the car if they weren't told the incorrect information.

Thinking about things here, a 20% reduction in the fee to be paid is fair, considering the impact of VWFS's mistake and how long it took VWFS to correct their mistake.

However, I enquired with VWFS as to their calculations in the offer they made. They said in their final response to Mrs L that they would reduce the fees by 20% to £1,073.73. But a 20% reduction of the £1,288.47 fees charged should be £1,030.78. Considering VWFS said they would reduce the excess mileage fees by 20%, I think they should honour this.

Mrs L believes our service hasn't considered the impact of the current cost of living crisis. She also says she cannot afford to pay the charge. I'm sorry to hear that Mrs L may be having financial difficulties, but I don't think it is fair for VWFS to remove the charge when Mrs L is contractually obliged to pay it. If Mrs L is having difficulty making the payment to VWFS, I would expect them to treat her with forbearance and due consideration, and consider a suitable repayment plan, if appropriate."

I set out that I intended to uphold this complaint. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses to the provisional decision

VWFS responded and said they accept my provisional decision.

Mrs L hadn't responded to my provisional decision before the deadline I set.

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.

As VWFS accepted my provisional decision and Mrs L hadn't responded, I see no reason to depart from its conclusions.

My final decision

For the reasons I've explained, I uphold this complaint and instruct Volkswagen Financial Services (UK) Limited to reduce the charge for its excess mileage fee to £1,030.78.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 12 April 2023.

Ronesh Amin
Ombudsman