

The complaint

Mr S has complained Volkswagen Financial Services (UK) Limited, trading as Lamborghini Financial Services, rescinded his hire purchase agreement and added a fraud-related marker to his record without refunding the money he paid towards the agreement.

What happened

In 2022 Mr S took out a hire purchase agreement for a high-value car with VWFS. Using two different accounts (a charge card and his business account), Mr S paid the £70,000 deposit and costs to get the car on the road. He also signed a direct debit instruction to pay £1,856.62 a month over the following four years.

Within four months, VWFS wrote to Mr S. They told him they were rescinding the agreement as they had evidence Mr S had supplied altered bank statements to support his original application. VWFS would be taking steps to take possession of the vehicle.

Mr S denied this had been the case. He'd used a third-party supplier to collate the necessary documentation. He'd not had time – as his wife was having surgery – to review the data himself and just provided the relevant link direct to VWFS. He was keen to keep the car and got in touch with VWFS to sort this out, and if needs be, pay the outstanding finance to take ownership. Mr S has told us he contacted VWFS by various means, but they wouldn't speak to him. Mr S was upset to discover VWFS had reported the car as stolen when he'd met all his financial obligations under the agreement. He brought his complaint to our service.

Shortly after the case came to our service, VWFS took possession of the car and arranged for its sale.

Mr S subsequently discovered his business bank accounts were being closed. He found out that VWFS had lodged a marker against his record with the fraud industry database, CIFAS. He confirmed this was part of his main complaint to our service along with getting his deposit back.

Our investigator reviewed the evidence provided to us by both VWFS and Mr S. She completed a detailed view on 21 April 2023. She didn't think VWFS had done anything wrong and wouldn't be asking them to remove the fraud marker. She also confirmed she wasn't in a position to ask VWFS to repay any funds to Mr S.

Mr S has asked an ombudsman to review his complaint as he firmly believes no marker should apply. He had nothing to do with the altering any of the bank statements and doesn't believe he had anything to gain from doing so. The whole series of events was having a large impact on his mental health and finances.

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've reached the same outcome as our investigator. I'll explain why.

Firstly it's clear the issues of whether VWFS could decide to rescind the agreement is closely tied up with why they felt they could do this and subsequently lodge a CIFAS marker against Mr S.

So I have considered both aspects.

The decision to rescind a finance agreement was because VWFS believed Mr S had made a false misrepresentation which allowed them to wind everything back. Essentially if they'd known the bank statements they'd reviewed had been altered when the application was made, they'd never have agreed to providing a hire purchase agreement to Mr S.

I have seen the bank statements at the heart of this. I appreciate Mr S has told us he didn't provide these to the third-party as these came direct from his bookkeeper. However it's clear to me that details on these statements have been falsified. The only person I believe that could have gained from this action is Mr S. Whilst I accept he's told us he didn't check the information the third-party put together, the responsibility was his to do this. Having not done so, I believe this means Mr S has supplied fraudulent information to support his finance application.

I accept VWFS could take steps to rescind the agreement.

It is clear what the requirements are prior to lodging a marker. Specifically:

"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted.

The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police."

So VWFS must be able to provide clear evidence that a financial crime was being committed and Mr S was involved.

VWFS were concerned that fraudulent information had been provided to them. This information enabled a false credit application to be made by Mr S. I appreciate Mr S disputes this was the case, but I don't agree. I can see VWFS felt they had sufficient evidence. In fact, as Mr S is aware they reported the car – the subject of the credit agreement – as stolen. They could see this was a high-value asset and wanted to ensure it didn't go missing.

I don't accept Mr S's argument that a third party falsified the date that was provided to VWFS. As I stated above, there'd be no grounds for them doing so as there's no gain. In fact there would be professional loss of reputation if the third party or Mr S's bookkeeper had falsified information.

Mr S has confirmed he still wants his deposit back now that VWFS has been able to sell the car. I'm not in a position to instruct VWFS to do this. He can, of course, consider what further legal steps he can take about this aspect.

I also note, as our investigator showed in her detailed view, that Mr S has not provided us with full information about his interactions with the third party despite being asked on numerous occasions. Following the view, Mr S asked for sufficient time to put additional evidence together. More than three months has now passed. Our service has received nothing further from Mr S to consider.

Overall I believe VWFS has made their case for lodging a CIFAS marker against Mr S. I won't be asking them to do anything further.

My final decision

For the reasons given, my final decision is not to uphold Mr S's complaint against Volkswagen Financial Services (UK) Limited, trading as Lamborghini Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 September 2023.

Sandra Quinn
Ombudsman