

The complaint

Miss D is unhappy that Volkswagen Financial Services (UK) Limited trading as SEAT Financial Services ('SEAT') wouldn't cancel a hire purchase agreement she took out.

What happened

In May 2023, Miss M ordered a car through a dealership which I'll call 'T', which was to be financed by a hire purchase agreement with SEAT. Miss D paid a deposit of £2,000 and the agreement was for £19,989 over 49 months; with 48 monthly payments of £362.94 and a final payment of £8,437.50.

On 6 June 2023, Miss D advised T that the collection of the car would be delayed, and on 13 June she sent T an email saying she no longer wanted the car. She then contacted SEAT on 21 June to explain that her circumstances had changed, and she wanted to cancel the agreement. SEAT explained that she wasn't able to cancel the agreement and return the car to them, and she was only able to withdraw from the agreement.

Miss D wasn't happy with this, and she brought her complaint to the Financial Ombudsman Service for investigation. Miss D never collected the car from T, and SEAT's attempts to collect payments under the agreement were unsuccessful. As such, SEAT reported the missed payments to the credit reference agencies.

To resolve her complaint, Miss D said she wanted SEAT to void the agreement, reverse the impact to her credit score, refund the deposit she paid, and pay her £4,800 compensation. She also complained that SEAT failed to provide her with a witnessed copy of the agreement when she asked for this, and that T had pressurised her into the sale.

Our investigator said that Miss D was able to withdraw from the agreement with SEAT, but this would be separate to cancelling the car with T. And she would need to clear the finance with SEAT upon withdrawal – SEAT wouldn't take the car back. The investigator also didn't think the evidence supported Miss D's assertion that she'd been pressured into the sale, nor did it show that SEAT had cancelled the direct debit and so caused the arrears. As such, he didn't think SEAT had done anything wrong.

Miss D didn't agree with the investigator. She felt the investigator had relied on the terms of the agreement she'd signed, and not taken into consideration her conversations with T. She said she'd advised T she didn't want the car within the 14-day cancellation period, and she was never told she couldn't cancel the agreement. Miss D also said that she was pressured into the sale, as the salesperson kept referring to a deadline by which the paperwork needed to be completed by; and that *"by law ... a witness must be present when signing [the agreement]"* but this didn't happen.

The investigator explained why Miss D's comments didn't change his mind, and Miss D asked for an ombudsman to make a final decision. While this matter was waiting to be allocated to an ombudsman, Miss D said that her circumstances had now changed, and she's prepared to accept the car, but she wanted SEAT to remove the arrears from her credit file as doing so wouldn't cost them anything and was the *"morally correct"* thing to do.

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 overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss D was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've seen a copy of the agreement Miss D had with SEAT. This was signed by Miss D on 31 May 2024 and by SEAT on 30 May 2024. There's nothing in this agreement that requires Miss D's signature to be witnessed, nor is there any place within the agreement for a witness to sign. The signature from SEAT is there as they are a party to the agreement, and they didn't sign this as a witness to Miss D's signature. As such, from what I've seen, I'm satisfied the agreement was correctly signed.

Regarding the pressure that was put on Miss D to sign the agreement, Miss D has confirmed that she took the paperwork away to sign. So, the signing of the agreement wasn't done at T's premises. I have seen that T chased Miss D for the return of the signed paperwork, and for payment of the deposit.

On 29 May 2023, the day Miss D ordered the car, T emailed her and asked if the paperwork could be returned by 31 May 2023. They chased her for this in an email dated 31 May 2023, in which the phrase *"the sooner the better!"* was used, as well as an explanation that they were working on a 4-hour turnaround as it was the last day of the month. The same day, Miss D explained to T that she had been waiting for the deposit money to clear and would sort things shortly.

While this shows some urgency on T's behalf, most likely due to the month end, there's nothing to show me that Miss D was put under any undue duress to complete the paperwork and pay the deposit. What's more, as Miss D was dealing with matters remotely, she could have just ignored the emails if she didn't want to go ahead and didn't feel she could tell T this. As such, I can't agree that Miss D was pressured into signing the agreement.

As Miss D signed the paperwork away from T's premises, and a few days after this was supplied to her, I'm satisfied she had the opportunity to read the terms and conditions and could've asked any questions she had. The declaration just above where Miss D signed stated that by signing she *"agreed to be legally bound by the Terms of the Agreement"* and that she was aware *"of your right to withdraw from this Agreement as explained in Term 6."* Given this, I'm satisfied that SEAT made it clear that Miss D had the right to withdraw from the agreement, and under what terms.

The aforementioned Term 6 says:

"you have the right to withdraw from this Agreement, without having to give any reason ... the withdrawal period is 14 days, beginning with the day after the day on

which this agreement is made ... if you exercise that right to withdraw, you must repay us the Amount of Credit, and pay us the interest accrued on it."

The agreement was signed by Miss D on 31 May 2023, and she didn't tell SEAT she wanted to withdraw until 21 June 2023. I've noted this was outside of the 14-days allowable under Term 6. As such, by the time she contacted SEAT, Miss D no longer had the right to withdraw. However, notwithstanding this, SEAT was still happy for her to withdraw in line with Term 6 i.e., upon payment of the amount borrowed under the agreement, plus any accrued interest. Given the circumstances, I'm satisfied they acted reasonably by explaining this to Miss D. Term 6 didn't give Miss D the right to hand the car back to SEAT for them to sell, and clear the agreement this way, so I don't think SEAT did anything wrong by not offering this.

I'm aware that Miss D signed a separate agreement with T, that allowed her to cancel within 14-days under the distance selling regulations. And, from what I understand, she asked them to cancel within this 14-day period. However, SEAT isn't a party to this agreement, so I'm not holding them responsible for any failure that may exist in T not cancelling the agreement to supply the car. And, as T are a separate business, Miss D would need to raise any issues about this directly with them.

Turning to the payments, SEAT financed the car Miss D had ordered from T. And it's not disputed this car remains at T's premises, awaiting Miss D to collect it. While Miss D has chosen not to collect the car, this doesn't change the fact that, under her agreement with SEAT, Miss S should've been making payments of £362.94. Nor does it alter SEAT's obligations to accurately report how Miss D has maintained the agreement to the credit reference agencies.

I've seen a statement of account which shows the payments for June and July 2023 weren't collected as the direct debit was rejected. While SEAT could choose not to attempt to collect payments through their system, they are unable to cancel direct debits at customer's banks. As such, the direct debit would only fail if the customer had provided incorrect payment details, there were insufficient funds in the customer's account to pay the direct debit, or if the customer had cancelled the direct debit with their bank. And, if SEAT had chosen not to collect the payment, then it wouldn't show as a failed direct debit on their system.

Given this, I'm satisfied that SEAT isn't at fault for any failed payments. As such, they've acted reasonably by reporting any arrears to the credit reference agencies. And I won't be directing them to make any amendments to Miss D's credit file.

As part of this process, Miss D has offered to collect the car from T. And she's asked for SEAT to remove any adverse entries from her credit file. As I've said, I won't be directing them to do this. However, this is something Miss D is still able to discuss with SEAT directly.

My final decision

For the reasons explained, I don't uphold Miss D's complaint about Volkswagen Financial Services (UK) Limited trading as SEAT Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 5 March 2024.

Andrew Burford
Ombudsman