

The complaint

X complains that SME HCI Limited, trading as Vivup, were unreasonable to ask him to pay a “disposal charge” when his bike hire agreement ended.

What happened

I issued my provisional decision on this complaint in August 2024. An extract from that provisional decision is set out below.

In July 2022 X made use of the Cycle to Work scheme and entered into an 18-month hire agreement with Vivup to hire a bike that would be funded through a salary sacrifice.

At the end of the 18-month hire period Vivup wrote to him and explained he now had several options. X chose to extend the hire period until 12 July 2025 at which point the ownership of the bike would transfer to him at no further cost. He was disappointed to find that Vivup then took a £527.88 “Disposal Fee” from his salary.

While he agreed that the “Consent Form” he’d signed when he agreed to the hire explained that a Disposal Fee would be charged, he noted that the FAQ’s detailed in the Salary Sacrifice Scheme (the Scheme) had suggested that was only due if the bike was collected and disposed of. He thought the contractual terms were, therefore, misleading and the terminology was unclear. He noted that Vivup had now changed the wording used in the Scheme and that they now referred to an “End of Agreement Fee” instead.

Vivup apologised for the confusion they’d created when changing the wording and they offered X £50. But they explained that the Disposal Fee was always payable regardless of whether they took the bike back or not. They said X had agreed to that when he signed the Consent Form.

Our investigator didn’t think Vivup had been unreasonable, but X did, and he asked for a decision by an ombudsman.

What I’ve provisionally 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.

I know it will disappoint Vivup but I’m expecting to uphold this complaint. I’ll explain why. Where the information I’ve got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities. I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point, it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

X acquired his bike under a hire agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it. The hire agreement

allowed for the term to be extended and the associated Scheme FAQs gave more detail about how the hire would operate.

When X agreed to his hire agreement the Consent Form he signed explained that he agreed his employer could deduct from his net pay the Disposal Fee plus VAT. The Disposal Fee was listed as £439.90 net of VAT (£527.88 incl VAT). There was, at that time, no explanation on the Consent Form about what the Disposal Fee related to.

The Scheme FAQs did provide further information. They explained:

“Q. What is the Disposal Fee for?

A. The Disposal Fee is the charge for the collection and disposal of the bicycle at the end of the loan period as there is no right to ownership through the Cycle to Work Scheme. Bicycles may be sold for a Fair Market Value at the end of the loan period under a separate agreement, although this cannot be guaranteed. The Disposal Fee paid may be offset against the Fair Market Value due [...].”

If the bike was collected and disposed of, I think a charge would have been reasonable in order to compensate Vivup for the extra work involved. But the bike wasn't collected or returned by X. He chose to keep it, and, in those circumstances, I would agree that, regardless of his signature on the consent form, it would be unreasonable to levy a charge.

Vivup say they changed the term from a Disposal Fee to an End of Arrangement Fee in April 2023. That was after X entered into the agreement with them and it wouldn't be fair to hold X to terms he hadn't agreed to. They also appear to have added an explanation to the Consent Form about what those End of Arrangement Fees are for, but I don't think that was reasoning that was supplied to X when he entered into the agreement with them; it seems the rationale he was provided with in the Scheme FAQ's was that the Disposal Fee was for the collection and disposal of the bicycle. And as that didn't happen, I don't think Vivup were reasonable to levy the Fee and they should refund it.

X has been inconvenienced by this issue. He's had to refer his complaint to this Service when I think it could have been resolved earlier. Vivup have already offered him £50 to compensate him for the confusion but I don't think that goes far enough. The issue has taken several months to resolve, and, in the circumstances, I think Vivup should pay him £100 compensation, less £50 if they've already paid that.

My provisional decision

To put things right I'm expecting to tell SME HCI Limited to:

- Refund the Disposal Fee adding 8% interest per year calculated from the date of payment to the date of settlement as X has been deprived of the money. If I'm wrong and the payment hasn't already been deducted from X's net salary, Vivup should waive the fee.*
- Pay X compensation of £100 for the distress and inconvenience caused (less £50 if that's already been paid).*

The parties' responses to my provisional decision

X didn't provide any further comments or information, but Vivup did, they didn't agree with my provisional decision and provided their rationale. They explained, amongst other things, that they “charge an End of Agreement fee to abide by HMRC rules. The value of the bike at the end of the hire is calculated using HMRC's valuation matrix. The employee needs to pay at least the value shown on the matrix at the point where the ownership transfers to them. If

the employee does not pay this figure, then a benefit in kind will arise on the 'transfer of an asset'. So effectively the fee offsets the tax value". They said that because of the HMRC rules they couldn't accept that a refund was due. But, in the circumstances, they were prepared to provide X with a "compensation payment" equivalent to the refund of the Disposal Fee that I had suggested in my provisional decision and inclusive of 8% interest. They were also happy to pay £100 compensation for the distress and inconvenience caused and they explained that X hadn't accepted the £50 they originally offered.

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.

I'm persuaded that Vivups offer of redress compensates X sufficiently and is effectively the same as I had suggested was appropriate in my provisional decision.

My final decision

For the reasons I've given above, I uphold this complaint and tell SME HCI Limited to:

- Compensate X for the confusion regarding the Disposal Fee by refunding it and adding 8% interest per year calculated from the date of payment to the date of settlement as X has been deprived of the money. If I'm wrong and the payment hasn't already been deducted from X's net salary, Vivup should waive the fee.
- Pay X compensation of £100 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 16 October 2024.

Phillip McMahon
Ombudsman