

The complaint

Mrs G is unhappy that a car supplied to her under a hire agreement with Volvo Car UK Limited didn't have the service plan she requested.

What happened

On 3 June 2023, Mrs G ordered a new car which was to be supplied through a hire agreement with Volvo. Mrs G says that, upon placing the order, she requested the car be provided with a service plan. Testimony from the sales agent also confirms that Mrs G requested the car be supplied with a service plan, and they say they put this through on the order for her.

Mrs G signed the hire agreement in February 2024 and the car was supplied to her. A few months later a dashboard warning light came on to indicate the oil needed topping up. It was at this point that Mrs G discovered there was no service plan in place. So, she complained to Volvo.

Volvo said that the service plan option hadn't been selected when the car was ordered, and they didn't uphold her complaint. However, they did acknowledge service failing while dealing with the complaint itself. Mrs G wasn't happy with this, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator was satisfied that Mrs G had requested a service plan at the point of ordering. They didn't think it was reasonable for Mrs G to know that the service plan wasn't included as it wasn't mentioned separately on the agreement – the sales agent had advised her the service plan was bundled in with the subscription option, so Mrs G wouldn't have reasonably known to expect this to be listed separately. What's more, the investigator said the terms and conditions implied that some cars come with service plans without the need for this to be purchased separately.

Given this, the investigator said there had been a misrepresentation which induced Mrs G to enter into an agreement she otherwise wouldn't have. So, to put things right, the investigator said that Mrs G should be allowed to return the car, and the agreement should be unwound.

Volvo didn't agree with the investigator's opinion. They didn't think it was reasonable to rely upon the sales agent's testimony, due to the time that had passed, and because the option to select a service plan wasn't available through the online ordering system at the time. They also thought that any responsibility should lie with the supplying dealership, and not with themselves as the finance provider.

Because Volvo didn't agree, this matter has been passed to me to decide.

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. Mrs G was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've also taken into consideration section 56 of the Consumer Credit Act 1974. This states that any negotiations conducted by the credit broker or supplier of goods are deemed to be conducted in the capacity of an agent of the creditor, and that this includes all communications (including the advert) and representations made. This means that, in this case, any discussions, communication, or representations made by the sales agent in respect of the service plan were done so as an agent of Volvo, for which Volvo remain liable.

This is also a complaint about misrepresentation. For misrepresentation to be present there must (a) have been a false statement of fact, and (b) that false statement of fact must have induced, in this instance, Mrs G to have financed this particular car with Volvo.

Based on the evidence I've seen, I'm satisfied that Mrs G wanted a service plan. She's been consistent about this from the outset, and she complained to Volvo as soon as she became aware that there was no service plan included. What's more, I've seen testimony from the sales agent – who, as I've explained above, was acting in the capacity of an agent of Volvo – that says Mrs G wanted a service plan.

I've noted Volvo's concerns about the testimony of the sales agent, specifically that they remember ticking a box (which Volvo say wasn't there) to request a service plan is included. While I accept Volvo's concern that an individual can recall a specific action taken for a customer more than a year earlier, I'm not concerned with what specific action was or wasn't taken. What I am considering is whether Mrs G requested a service plan, and was told this was included. And I think it's reasonable that a sales agent would remember a customer who was insistent upon the inclusion of a service plan, even if they cannot correctly recall what specific action they took to request this.

What's more, I also need to consider the sales agent has said they believed the service plan was bundled in with the subscription option. And the specific term relating to the service plan doesn't specify that service plans are always listed as separate items on the agreement. As such, the fact that the service plan wasn't listed separately isn't something that should necessarily have flagged to Mrs G that there was actually no service plan in place.

My final consideration in this matter is Mrs G's insistence that she wanted a service plan as she didn't want to be liable for paying for the regular maintenance and servicing she was required to carry out under the terms of the agreement.

So, given the above, I'm satisfied Mrs G understood the car came with a service plan, even though it didn't; and that she wouldn't have financed the car without a service plan due to the additional financial liability this would entail. As such, I'm satisfied there was a misrepresentation by someone acting as an agent of Volvo, and Volvo now need to do something to put things right.

Putting things right

When looking to put things right I'm looking, as far as is reasonably possible, to put Mrs G back in the position she would've been had the misrepresentation not occurred. I've seen that, to resolve her complaint, Mrs G would accept a service plan to be put in place, at no cost to herself, or for Volvo to cover the costs of anything that would be covered under the service plan if a service plan couldn't be retrospectively applied. The investigator put this to Volvo as part of their opinion, but Volvo haven't accepted this. As such, as Mrs G can't be put into an equivalent position of having a service plan in place, I think it's reasonable that she be allowed to return the car.

As Mrs G has been able to use the car while it's been in her possession, I think it's only fair that she pays for this usage. So, I won't be asking Volvo to refund any of the monthly payments she's made. But, as there is no indication in the agreement that any deposit paid was an advance payment used to reduce the normal monthly payments over the term of the agreement, then any deposit should be refunded in full.

However, there is an annual mileage limit on the car, so it would be reasonable for Volvo to charge for any mileage in excess of what Mrs G is entitled to do, in line with the agreement. They are also entitled to charge for any damage to the car that falls outside of normal fair usage wear and tear, again in line with the agreement. But they are not entitled to apply the early termination charge, as the agreement is being unwound because of the misrepresentation.

Therefore, if they haven't already, Volvo should:

- end the agreement, ensuring Mrs G is not liable for any monthly payments after the point of collection (if any payments are made, these should be refunded);
- collect the car at no collection cost to Mrs G;
- remove any adverse entries relating to this agreement from Mrs G's credit file;
- refund the deposit Mrs G paid (if any part of this deposit is made up of funds paid through a dealer contribution, Volvo is entitled to retain that proportion of the deposit); and
- apply 8% simple yearly interest on any refunds, calculated from the date Mrs G made the payments to the date of the refund[†].

[†]If HM Revenue & Customs requires Volvo to take off tax from this interest, Volvo must give Mrs G a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Mrs G's complaint about Volvo Car UK Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 5 August 2025.

Andrew Burford
Ombudsman