DRN-5341497

The complaint

Mr G is unhappy with the way Volvo Car UK Ltd (VCUK) brokered a conditional sale agreement.

What happened

In 2023, Mr G had an existing finance agreement which was due to end in April 2024, so he wanted to use the car he acquired under that agreement as part exchange for a new car. Mr G visited a car retailer - who I will refer to as 'the dealership' - where he pre-ordered a new car. Mr G was entering into a conditional sale agreement with a finance company for the new car. The cash price was around £64,335.01 and Mr G paid a £500 deposit. There were three entities involved in the transaction: the dealership, VCUK and the finance company. On the Pre-Contract Credit Information document, provided to Mr G, VCUK was listed as a credit intermediary/broker.

Mr G said he settled on a part-exchange deal which included a customer loyalty bonus of £5,000. He said the deal was accepted in August 2023 when he paid the £500 deposit. And he was advised that the car would be available on the 26 January 2024. Mr G said two days before he was due to pick up the car, the dealership advised that the car would not be released, as there was an issue with the £5,000 customer loyalty bonus. And on 27 January 2024, Mr G said that he was advised that it was unlikely the deal would be honoured. So, he raised a complaint with VCUK. Mr G said that he had to use his savings plus make other financial provisions to pay the balloon payment on his current car to ensure he had a car to undertake his job.

Mr G has said he was informed by VCUK that he had to cancel the order to get the £500 deposit refunded. But he said he advised them he would not do so, because he was the wronged party as they were the ones who did not honour the agreement. So, he felt they should return his deposit without expecting him to cancel the order to effectively cover up their mismanagement.

In April 2024, VCUK responded to Mr G's complaint. In summary they said they received a request to amend Mr G's order on 16 January 2024 as the dealership had failed to include his part-exchange and the loyalty bonus whilst processing his order. In that correspondence they explained that when making changes to an order they reserve the right to review and change the terms, particularly when the changes made to the agreement make a material difference to services and/or products they are providing. They also said they reserve the right to decline to process amendments made to orders. They said that, as Mr G's financial contract had been signed in December 2023, they were unable to amend the order to include the loyalty bonus. To remedy the situation, they said they agreed in January 2024 for the dealership to offer a refund covering the customer loyalty bonus, which the dealership can claim back from them. On that basis, whilst they accept it is frustrating, they said they were unable to amend Mr G's order and did not think they acted unfairly.

In that correspondence they also said that although the dealership collaborates with VCUK, it operates as an independent business. Therefore, Mr G's complaint will be internally assessed and addressed according to their established procedures, and VCUK unfortunately

cannot intervene directly in resolving his concern. VCUK said they transmitted Mr G's concerns to the dealership. But as a goodwill gesture they said they are willing to pay Mr G £50 to reflect the time taken to issue their response.

Since Mr G was unhappy with VCUK's response, an investigator at Financial Ombudsman (Financial Ombudsman) looked at his complaint.

Our investigator thought that the dealership were not working independently, but acting as an agent for VCUK. The investigator though it was accepted that an error was made, which must have been disappointing for Mr G. The investigator said VCUK were part of the negotiations, and the evidence suggests the deal was mis-brokered, so they were of the opinion that VCUK should bear the responsibility for the consequences. They felt VCUK could have provided a refund to Mr G at an earlier stage, as they did not provide a car on the terms agreed and, as such, the finance agreement associated to that order did not go ahead. The impact of the new car not being provided to Mr G, meant he had to quickly find money from his savings to pay the balloon payment on his existing finance agreement to keep mobile. So, the investigator though VCUK should pay £250 compensation to reflect the impact of the situation on Mr G.

VCUK did not accept the investigator's outcome. So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 14 February 2025. In the provisional decision I said:

''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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I am very aware I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching, what I think is the right outcome. This reflects the informal nature of the Financial Ombudsman as a free alternative to the courts.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law, and, where appropriate, what would be considered to have been good industry practice at the relevant time.

In summary, I understand that VCUK have raised issues around jurisdiction, they have questioned whether the Financial Ombudsmen can consider Mr G's complaint against them. They have said they were not the prospective finance provider/creditor. VCUK said the dealership Mr G was dealing with are regulated by the Financial Conduct Authority (FCA). VCUK have provided a print-screen from the FCA register showing that the dealership is a separate regulated financial company and VCUK have stressed that the dealership is not an appointed representative acting on their behalf.

VCUK said the dealership was given a solution, (they could claim the £5,000 loyalty bonus back from VCUK at a later stage) but VCUK said the dealership ignored this. So VCUK

believe the liability for what happened should probably rest with the dealership and Financial Ombudsman should hold them liable as we have jurisdiction to consider a dispute against the dealership. Overall, VCUK believe that the dealership was not their agent.

I have considered everything VCUK have provided. Below, I will first explain why this type of a complaint is within the jurisdiction of the Financial Ombudsman to consider against VCUK. Then I will address if the VCUK should be held responsible for the action of the dealership and what the outcome of the complaint should be when taking those actions into consideration.

Mr G was entering into a conditional sale agreement, which is a regulated consumer credit agreement, and the Financial Ombudsman can look at these sorts of agreements. The rules which set out which complaints we can and cannot consider are set out in the FCA's Dispute Resolution Handbook (DISP). The DISP rules provide that, amongst other requirements, the Financial Ombudsman can consider a complaint under our compulsory jurisdiction, if that complaint relates to an act or omission by a firm in carrying out one or more listed activities, including regulated activities or any ancillary activities carried on by the firm in connection with them. The full list of activities can be found in the Handbook at DISP 2.3.1.

Article 36A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) sets out the specified activities of credit broking and from Mr G's Pre-Contract Credit Information document, I can see that VCUK acted as the credit intermediary/broker. So, VCUK did carry out at least one of those activities listed in Article 36A. As, most likely, they carried out the regulated activity of credit broking, so the Financial Ombudsman can look at a complaint that relates to that activity.

Mr G is unhappy with the way a conditional sale agreement was brokered, specifically he is unhappy the part exchange and loyalty bonus were not incorporated into the credit agreement, so I am able to consider Mr G's concerns against VCUK.

VCUK said they were not the prospective finance provider/creditor. They also said the dealership Mr G was dealing with, are regulated by the FCA, so the Financial Ombudsman have jurisdiction to consider a dispute against any of these two other companies. It may be the case that Mr G could have raised certain aspects of his complaint with the dealership and/or with the finance company and then referred them to the Financial Ombudsman if he was unhappy with the outcome. But Mr G chose to raise his complaint with VCUK and then referred it to the Financial Ombudsman. So, in this decision, I have to be satisfied that the Financial Ombudsman have jurisdiction to consider the complaint before me; the one against VCUK. And as I concluded above, we do have jurisdiction to consider credit broking activities against VCUK.

I know that VCUK feel that they should not be responsible for the actions of the dealership because, they say, the dealership was not acting as their agent.

VCUK said the dealership is an FCA regulated firm in their own right. I considered this, and the dealership may be a regulated firm by the FCA, but just because the dealership is a regulated firm that does not automatically mean that they also cannot be acting as an agent of another firm.

VCUK have also said that the dealership is not an appointed representative of VCUK. I have considered their points around this, but just because the dealership are not an appointed representative of VCUK under the FCA regulatory scheme, that still does not mean the dealership is not potentially acting as an agent of VCUK bearing in mind the common law principles of agency. So, I have considered common law principles of agency to establish whether the dealership acted with authority or apparent authority on behalf of VCUK.

First, I have not seen any evidence whereby VCUK expressly restricted or limited the dealership's authority to act on their behalf.

Secondly, I considered if the principle (here VCUK) made any representations to Mr G that would indicate that the dealership had authority to act on their behalf. So, I reflected on the fact that the dealership had access to VCUK's digital channels/systems where they were able to complete/facilitate credit forms and preorder the car. From the terms and conditions, provided by VCUK to Mr G, I can see that the dealership had significant involvement in the overall process of acquiring the car from start to delivery. The terms and conditions stated that the car will be delivered to the ''Retailer'' (here the dealership in question) and unless otherwise agreed, the pick-up location will be the premises of the dealership. Throughout these terms and conditions VCUK refer to the dealership as ''our Retailer''. VCUK also provided marketing information regarding the £5,000 loyalty bonus to the dealership. Part of this marketing material has a 'Customer / Dealer Process' and under this process it describes how VCUK and the dealership together will construct a new deal with the customer at the dealership via the standard online journey.

Considering the overall relationship between the two companies and the fact VCUK granted the dealership access to use their systems for setting up the credit agreement and ordering of the car, I think a reasonable person would consider that VCUK was making a representation to Mr G that the dealership has authority to act on VCUK's behalf. And I think Mr G relied on this representation when he ordered the car and decided to enter into a conditional sale agreement. I also think it was not unreasonable for Mr G to rely on this representation. So I think, even if the dealership had no express authority to deal on behalf of VCUK, I think most likely they had apparent authority under the common law principles of agency. As such I think most likely VCUK is liable for the actions of the dealership.

But even if I got the agency aspects or the application of the law wrong, which I do not think I have, considering the specific circumstances of this case I think it would be fair and reasonable to depart from the law. I say this because it was not fair that Mr G was stuck with no recourse as both companies were blaming each other and no reasonable options were provided to him. And, considering VCUK allowed the dealership to have a significant involvement in the car acquiring process, it is not unreasonable that they should be held responsible for the dealership's actions bearing in mind how this specific credit broking took place.

It is not in dispute that Mr G was not provided with a car on the terms agreed and the finance agreement associated with the car order did not go ahead which caused him distress and inconvenience, as he had to quickly find money from his savings to pay the balloon payment on his existing finance agreement to keep mobile. But VCUK said that they were told by the dealership about the part-exchange and the loyalty bonus when it was way too late, and they said the fault for this either lies with the dealership for not informing them correctly or with Mr G for not ensuring the details submitted were accurate. As I already concluded above, VCUK should be held responsible for the actions of the dealership, but I will now consider what they said about the fact that Mr G did not ensure that the contract had the right details before he signed it.

The initial error was that the part-exchange and the loyalty bonus were not incorporated into the system and hence were not on the contract even though they were promised to Mr G. But VCUK have said that when Mr G signed the financial contract, he should have read and known it to be wrong. So, they feel that he has contributed to the inconvenience and distress he suffered which should be reflected in any redress awarded. And I tend to agree, I think Mr G most likely could have done more to question the information contained in the agreement as it is generally held that, when someone signs a document, they are taken to have read

and understood it. So, I have taken into consideration VCUK's points on this when thinking about the compensation due to Mr G.

When considering the impact on Mr G, I have also thought about the fact that Mr G could have cancelled the car order sooner than he did. He was informed by VCUK that he had to cancel the order to get the £500 deposit refunded. And I understand that he did not want to do this because he was the wronged party, as VCUK did not honour the agreement. But I think at that time he knew he already could not have the car on the original terms, so it would have been reasonable for him to mitigate his losses in order to have the £500 deposit back sooner.

When deciding how much compensation VCUK should pay Mr G I have also taken into consideration that they did try to find a work around for the problem. VCUK did attempt to ensure Mr G received this loyalty bonus by asking the dealership to pay Mr G the loyalty bonus which the dealership could claim back from them later. Overall, taking everything into consideration, including the fact that Mr G too could have done a bit more to mitigate the impact the situation had on him, I think it is fair and reasonable that VCUK pay Mr G a further £100 in addition to the £50 already offered for a total of £150 compensation to reflect the distress and inconvenience caused to him.

My provisional decision

For the reasons given above, I intend to uphold this complaint and direct Volvo Car UK Ltd to pay Mr G a total of £150 in compensation.''

I asked both parties to provide me with any additional comments or information they would like me to consider by 28 February 2025.

VCUK responded and said they have nothing further to add.

Mr G responded and said he accepted my provisional decision. However, he said he was still disappointed that VCUK have not offered an apology which was all he was after.

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've also considered again my provisional findings.

Following my provisional decision, Mr G said that he was still disappointed that VCUK have not offered an apology. But I cannot practicably direct VCUK to give a sincere apology, not least because a forced apology can be seen as insincere. When we direct a business to put things right, we often tell them to pay compensation, to acknowledge the mistakes made and the impact it had on the consumer. And I believe that, in my provisional decision, I have arrived at an outcome that is fair and reasonable, which Mr G said he agrees with, so I do not think that asking VCUK to issue an apology is needed.

Considering Mr G had no other comments to make, and VCUK had nothing further to add, I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

My final decision

For the reasons given above, and in my provisional decision, I direct Volvo Car UK Ltd

to pay Mr G a total of £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 March 2025.

Mike Kozbial
Ombudsman