DRN-5780697

The complaint

Mr M complains about a regulated hire purchase agreement he had with Volkswagen Financial Services (UK) Limited (VWFS). Mr M exercised his right to voluntary terminate the hire purchase agreement and is unhappy that VWFS has applied a charge for excess mileage.

Mr M believes that VWFS is not permitted to apply the excess mileage charge on voluntary termination and is unhappy that VWFS has not cancelled or waived the charge.

What happened

In September 2021 Mr M acquired a new car. An advance payment or deposit of £5,872.96 was paid and £20,747.04 was advanced under the hire purchase agreement to meet the £26,620 'cash price' of the car.

The total amount payable under the hire purchase agreement, assuming the agreement run full term and all repayments were made, was £29,745.56. In addition to the advance payment or deposit, Mr M was required to pay 48 monthly repayment of £248.70, followed by one final payment of £11,925.

Around November 2024, before the hire purchase agreement had run its full term, Mr M voluntary terminated the hire purchase agreement. The car was handed back but VWFS then issued Mr M with an excess mileage charge for exceeding the pro-rated maximum mileage set out within the terms of the hire purchase agreement.

Mr M complained about this and believes VWFS is not permitted to apply the excess mileage charge. Mr M has referred to amongst other things, the provisions of the Consumer Credit Act 1974 (CCA) and the terms of his hire purchase agreement. In particular, the Termination: Your rights section of the hire purchase agreement that Mr M believes prevents VWFS from applying the excess mileage charge.

The complaint was considered by one of our investigators and they explained in some detail why they did not consider Mr M's complaint should be upheld. They referred to various sections of the CCA, along with the terms of Mr M's hire purchase agreement. Amongst other things, the investigator found that the various sections of the CCA did not ultimately prevent VWFS from charging Mr M excess mileage and when looking at the terms of the hire purchase agreement between Mr M and VWFS, the excess mileage charges were clear.

Mr M did not accept the investigator's conclusions and asked for his complaint to be reviewed by an ombudsman.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties

and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr M had a hire purchase agreement with VWFS and this type of credit agreement has a provision that allows the consumer to voluntary terminate that agreement at any time before the final repayment is made. Mr M has referred to the Termination: Your Rights section of the hire purchase agreement and I accept this does set out that if Mr M has paid more than £14,872.78, any overdue repayment and taken reasonable care of the car he will not have to pay anything more. But as the investigator has set out, there are other considerations when determining if Mr M is required to pay anything more.

The investigator has set out in some detail the relevant sections of the CCA, and in particular s.99 and s.100, which sets out the right to terminate a hire purchase agreement and the liability upon termination. There is no dispute that Mr M has exercised his right to terminate the hire purchase agreement, as set out in s.99 (1) CCA. But s.99 (2) states that termination does not affect any liability under the agreement which accrues before termination.

In the centre of page one of Mr M's hire purchase agreement the Excess Mileage Charge terms are set out and refers to the maximum annual mileage of 12,000 and the maximum total mileage of 49,000. The terms state that if Mr M exceeds the maximum annual or total mileage he will be liable to pay an excess mileage charge and refers to clause 11 of the terms of the agreement.

While I accept clause 11 is on page four of the agreement terms, the initial reference to the excess mileage charge is on page one of the agreement and is in my view clear and prominent.

Having considered the wording of the excess mileage terms, like the investigator, I am satisfied the charge for excess mileage accrue during the agreement term. Mr M is allowed to exceed the maximum annual and maximum total mileage, but he would incur a charge for doing so. Having considered the terms of the agreement, I am not persuaded Mr M would be considered to have breached the term of the agreement by exceeding the maximum annual and maximum total mileage allowance.

The relevance of this is that the excess mileage charge is not therefore compensation or damages for breach of the agreement and they will therefore in my view fall within the definition of total price under s.189 CCA. The excess mileage charge has accrued prior to termination and would therefore fall under s.99 (2) CCA which states termination does not affect any liability under the agreement which has accrued before termination.

The Termination: your rights section within the hire purchase agreement is, like the Excess Mileage Charge, clear and prominent on page one of the agreement terms. I accept this makes no reference to excess mileage charges being applied and have considered whether s.173 CCA 'Contracting-out forbidden' would apply here. In summary, this section refers to a contractual term within a regulated credit agreement being void if it is inconsistent with a provision of the CCA that is for the protection of the debtor or hirer under the hire purchase agreement.

For similar reasons as the investigator has already set out, I'm not persuaded the contractual terms of the hire purchase agreement relating to the excess mileage charges are an attempt to contract out of the provisions, or protections, of the CCA. I again refer to s.99 and s.100 CCA that set out what can be charged under voluntary termination and it is within these sections that specify the liability of Mr M upon voluntary termination, rather than the prescribed contents of the Termination: Your Rights notice, which is required to be included and unchanged by the regulations.

The Termination: Your Rights section could arguably be considered a contractually binding term on Mr M and VWFS that limits the amount Mr M is required to pay on voluntary termination to the amount set out in this section. If this statement was in isolation within the contract then I may be more persuaded by this. But as already set out, the broader terms and conditions of the hire purchase agreement are clear about the excess mileage charge being payable should Mr M exceed the maximum annual and maximum total mileage allowance. The initial section is again in my view clear and prominent, situated on page one.

Clause 11.4 refers to the impact or consequence on the mileage allowance if the agreement is terminated early and that any excess mileage charge will be recalculated using the reduced maximum total mileage.

When considering the contract in full, and not just the Termination: Your Rights section in isolation, I do not consider the Termination: Your Rights section is a contractually binding term setting out the maximum Mr M would ever be required to pay. Or therefore that the excess mileage charge cannot be applied.

I have noted what Mr M has said about a separate case heard in the County Court, plus an outcome reached by an alternative Ombudsman scheme. But I am not persuaded by either of these that his complaint should be upheld against VWFS or that the CCA explicitly prevents a credit provider from charging an excess mileage charge.

While a County Court judgment is of course helpful in understanding what the court has decided in that case, it does not set a precedent for every other case about excess mileage. Also, I note the alternative Ombudsman scheme outcome refers to there being a mistake in the drafting of the statements in that specific case. Which would I am sure would have impacted the clarity of the contractual terms and therefore the broader circumstances.

Also, as I hope is clear from above, although have found in this instance that excess mileage charges can be applied, the reason for this is very fact specific and determined by, amongst other things, the specific contractual terms of Mr M's hire purchase agreement. While I appreciate it will be of little comfort to Mr M, there may be other instances, specifically where there are different contractual terms to those here, that may render the excess mileage charges not chargeable.

I have also considered what Mr M has said about the impact of the additional mileage on the value of the car when compared to the value of the car with lower mileage. Mr M agreed to the terms of the hire purchase agreement when he acquired the car and that included not driving the car over the agreed annual or total mileage for the £248.70 each month. Those terms also set out the impact and cost of exceeding the maximum annual and total mileage and it would be unreasonable now in my view for Mr M to simply step away from the terms he agreed, especially where those terms were clear and in my view unambiguous. And where I have found the CCA does not prevent an additional charge for excess mileage being applied in every case.

Finally, I note that Mr M has said that at the time of taking out the agreement he pointed out that he would be giving the car back after three years and he was referred to the Termination: Your Rights section of the and told he would not have to pay any more on termination. I note this does not feature in Mr M's initial complaint to VWFS or to our service and has only been raised after the investigator shared their initial view not upholding the complaint. I may have expected such a claim to have been set out at the very outset if Mr M believes he was misled at the time of entering into the agreement.

Mr M states that he referred the Termination: Your Rights Section of the agreement to the salesperson but I consider it more likely than not that having read this section of the agreement, which Mr M would have done to refer it to the salesperson, he would have read the section above it, which was the Excess Mileage Charge section.

The Excess Mileage Charge section of the agreement is immediately above the Termination: Your Rights section and as already mentioned, clearly sets out the implications and cost of exceeding the maximum annual and/or maximum total mileage. This section also refers to the excess mileage charge being payable in addition to the amounts specified in the Termination: Your Rights section.

It should therefore have been clear that an excess mileage charge could apply if Mr M exceeded the maximum mileage and this would be in addition to the amount specified in the Termination: Your Rights section. Had Mr M been told he would not be required to pay more than the amount specified in the Termination: Your Rights section, I would have expected Mr M to have questioned how this appears at odds with the Excess Mileage Charge section immediately above.

Overall, I'm not sufficiently persuaded that Mr M was misled at the time of taking out the hire purchase agreement about not being required to pay anything more than the amount specific in the Termination: Your Rights section.

My final decision

I fully appreciate my decision here will come as further disappointment to Mr M but for the reasons set out above, I am not persuaded there are sufficient grounds to instruct VWFS to write off the excess mileage charge.

My final decision is that Mr M's complaint against Volkswagen Financial Services (UK) Limited is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 February 2026.

I remind Mr M that this final decision is the last stage in our process and should he want to continue his dispute with VWFS, he will need to do so through alternative means, such as the courts.

Mark Hollands
Ombudsman