DRN-5846440

The complaint

Mr J complains that Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (VWFS) unfairly applied excess mileage and damage charges after he voluntarily terminated a hire purchase agreement.

What happened

In October 2021, Mr J was supplied with a used car through a hire purchase agreement with VWFS. The cash price of the car was £28,950. He made an advance payment of £289.50 and the agreement was for £28,660 over 49 months; with 48 monthly payments of £479.07 and a final payment of £13,015. At the time of supply, the car was around one year old and had travelled 14,500 miles.

The agreement set out that Mr J had an annual mileage allowance of 10,000 and a maximum total mileage of 55,333. It said that if he exceeded this allowance, VWFS could apply an excess mileage charge of 8.4p for each additional mile. It said that if the agreement was terminated early, the maximum total mileage would be reduced proportionately to reflect the actual period of use – which would be used to calculate any excess mileage charge.

In March 2025, Mr J chose to exercise his right to terminate the agreement early. The agreement set out that before this could happen, VWFS was entitled to the return of the car and to half of the total amount payable under the agreement – which was £18,154.93 – less any amounts already paid by Mr J. As Mr J had already paid more than this over the course of the agreement, there was nothing further for him to pay at that stage. VWFS arranged for the car to be collected and inspected. It wrote to Mr J and said it was applying the following charges:

- Excess mileage – 26,696 miles at 8.4p (inc VAT) - £2,242.46.
- Rear bumper scratch - £66
- Alloy wheel scuff - £72
- Total charge - £2,380.46.

Mr J made a complaint, as he didn't think VWFS was entitled to apply the charges and didn't agree they were enforceable. He also felt any damage to the car fell within fair wear and tear. VWFS said the charges were applied correctly in line with the terms of the agreement. The complaint was referred to this service. One of our Investigators considered the complaint and didn't uphold it. They were satisfied the excess mileage charge had been applied correctly in line with the agreement terms and the Consumer Credit Act 1974 (CCA). They also thought the agreement was clear about how the charge would be applied in the event of early termination. In summary, they said:

- S99 of the CCA sets out the right for a consumer to terminate a hire purchase agreement early, and S100 sets out their liabilities when doing so.
- In brief, on termination a consumer is liable to pay at least half of the 'total price' of the agreement. 'Total price' is defined by S189 of the CCA as the total sum payable

under the hire purchase agreement. It doesn't include charges for items that are payable as compensation for breach of an agreement. This means that any charges for breaches of the agreement are in addition to any liability for termination.

- S99 sets out that any liabilities that the consumer accrued prior to termination aren't to be affected by the termination.
- The agreement sets out that the excess mileage charges accrue with each mile covered in excess of the mileage allowance. The term was clear that the charge accrued before termination and therefore not affected by the termination.
- The terms of the agreement don't set out that exceeding the mileage allowance is a breach of the agreement, so the charges are therefore included in the total price of the agreement.
- So, the mileage charge accrued prior to termination and counted towards the total price of the agreement. Mr J's accrued liability under S100 therefore included the charge.
- The credit agreement set out the details of the excess mileage charge clearly, and was clear that it would be payable on voluntary termination of the agreement if the pro-rated mileage allowance had been exceeded.
- When considering the agreement as a whole, they were satisfied it was clear that the charge would be applied in addition to the voluntary termination charge. They were satisfied it was fair and reasonable for VWFS to apply the charge.

Mr J didn't agree, and asked that the complaint be referred to an Ombudsman for a final decision. So, it's been passed to me to decide. I wrote to Mr J to explain that I was also minded to conclude that the damage charge had been applied fairly. I've now reached a final decision on the matter, taking all of the charges into consideration.

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 decision on the balance of probabilities – what I think is more likely than not 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. Mr J was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means I can consider a complaint about it.

I'll address each of the charges applied by VWFS in turn.

Excess mileage charge

The terms of the hire purchase agreement allowed Mr J to use the car for the duration of that agreement. This use was subject to certain conditions, such as maintaining and taking care of the car, and only driving a maximum mileage each year and throughout the life of the agreement. The agreement set out what would happen if Mr J didn't meet those

requirements.

The CCA sets out the right customers have to voluntarily terminate hire purchase agreements, and their liability when doing so. The agreement sets out that if terminated early, VWFS would be entitled to the return of the car and £18,154.93. The agreement also set out that an excess mileage charge of 8.4p per mile would apply if either the annual or total mileage was exceeded – and that this charge was due in addition to the voluntary termination liability.

S99 sets out that any liabilities which accrue prior to termination aren't affected by the termination. This means Mr J is liable to pay any charges which have built up prior to the termination of the agreement, and that these charges are in addition to the other liability for early termination. Section 11.1 of the agreement outlines:

"If the Vehicle covers more than:

- *the Maximum Annual Mileage in any succeeding period of 12 months starting from the making of this agreement; and/or*
- *the Maximum Total Mileage;*

you will be liable to pay us the Excess Mileage Charge shown on page 1. That liability will accrue with each mile covered by the Vehicle in excess of those Mileages. You must discharge that liability by paying us the charge on demand."

Based on this, I'm satisfied that any excess mileage charge applicable under the agreement will have accrued prior to termination. It follows that Mr J is liable to pay a charge in the event that the annual or maximum total mileage is exceeded - and that this is consistent with what is allowed to be charged under S99 of the CCA.

The first page of Mr J's agreement contains a section headed 'Excess Mileage Charge', which states:

"The maximum annual mileage is 10000 and the maximum total mileage is 55333. If you exceed the maximum annual or total mileage, you will be liable to pay an Excess Mileage Charge in addition to any sums owed by you under this Agreement from time-to-time, including those amounts specified below under the heading "Termination: Your Rights". (…) The Excess Mileage Charge payable pursuant to clause 11 of the Terms is 8.4p (incl. VAT) per mile."

I'm satisfied the excess mileage charge is set out clearly. The section immediately below this is headed 'Termination: Your Rights'. This section contains specific wording which VWFS was required to include, and in summary sets out that if Mr J has paid at least half the total amount payable he won't have to pay anymore. I've considered whether this conflicts with the rest of the agreement, specifically the excess mileage charge section – and I don't think it does. The excess mileage charge is prominently explained directly above the termination section and sets out that the charge was applied *in addition to* any other sums.

Having read all of the terms of the agreement as a whole, I don't think the agreement is either unclear or misleading concerning the charges for excess mileage. I think it explains that the excess mileage charge can be applied in addition to other charges for voluntary termination.

Section 11 of the agreement sets out how the excess mileage charge is calculated and applied in more detail. Section 11.4 sets out:

"If this agreement terminates early, we will reduce the Maximum Total Mileage in the proportion which the actual period of hire bears to the period of hire originally agreed. Any Excess Mileage Charge will be recalculated using that reduced Maximum Total Mileage."

11.5 goes on to reiterate that this charge is payable in addition to any other sums – including the voluntary termination charge. Overall, I'm satisfied that the agreement sets out how ending the agreement early would impact the calculation of the excess mileage charge. VWFS calculated the charge based on the pro-rata mileage accrued up to the date the agreement was terminated – and I'm satisfied it did so in line with the above terms.

Damage charges

Under the terms of the agreement, Mr J is responsible for any damage beyond fair wear and tear upon the car's return. The British Vehicle Rental and Leasing Association (BVRLA) sets industry guidance on what is considered fair wear and tear – which I've taken into account. The guidance is generally intended for new cars that have been returned at the end of their first finance agreement – so is mainly used to assess damage to cars that are a few years old.

In this case, the car was around a year old when it was supplied to Mr J – and was around four and a half years old at the time of inspection. Taking this into account I'm satisfied the BVRLA guidance is relevant – but I've considered that the car had already driven more than 14,000 miles before it was supplied to Mr J. I haven't seen any photos or other evidence to suggest that there was any damage at the point of supply.

The BVRLA guidance says surface scratches of 25mm or less – and a maximum of four scratches on one panel – is acceptable. The photo of the rear bumper shows several small scratches and scuffs – some of which exceed 25mm. Even if the scratches didn't exceed 25mm, there are more than four on the bumper.

The BVRLA guidance also says scuffs of up to 50mm along the total circumference of the wheel rim is acceptable. The inspector's photo shows two scuffed areas around the wheel rim – and based on the measuring tool in the photo it's clear the scuffed area exceeds 50mm in total.

So, I'm satisfied the damage to both the rear bumper and LHF wheel went beyond fair wear and tear. It follows that VWFS was entitled to apply a charge for the damage in line with the terms of the agreement. And I don't find that the amounts its charged are out of line with what I'd normally expect for damage of this nature.

I appreciate this will come as a disappointment to Mr J, but for the reasons I've explained I don't find that VWFS made an error or that it treated him unfairly by applying the excess mileage and damage charges. So, I don't require it to waive the charges or do anything further.

My final decision

My final decision is that I don't uphold Mr J's complaint about Volkswagen Financial Services (UK) Limited trading as Audi Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 16 January 2026.

Stephen Billings

Ombudsman