

## **complaint**

Mr W complains that after his car was written off, Volkswagen Financial Services (UK) Limited (VFS) misled him to believe that his finance agreement would continue if he bought a replacement car.

Mr W's partner has helped him with his complaint.

## **background**

The background to this complaint was set out in the provisional decision I issued in June 2017, a copy is attached and forms part of this decision.

VFS responded to say it accepted my provisional decision.

Mr W also responded. In summary he made the following points;

- VFS hasn't provided all the call recordings, this is crucial to making a decision on this case.
- In a call on 3 March 2016 VFS didn't make it clear the finance agreement would *only* continue if the insurer purchased the car. Its possible VFS has edited this call recording.
- VFS were made aware during calls on 11 March 2016 and 14 March 2016 that Mr W had ordered the new replacement car, and would've known the agreement had already been settled on 10 March 2016. VFS failed to warn him not to go through with buying the replacement car on 15 March 2016.
- VFS originally accepted it had given incorrect information, only changing its approach at the 11<sup>th</sup> hour.

In addition Mr W has made submissions about the insurer and the main dealer. As I previously explained in my provisional decision I'm unable to look at the issues he has raised about the main dealer when he brought the new car, with cash. This is because the events don't relate to Mr W's finance agreement. I appreciate Mr W feels that VFS is part of the same group as the main dealer, but they are separate entities.

Similarly I can't look at Mr W's concerns about the insurer as part of this complaint against VFS. As I've previously advised, he may wish to raise a complaint with the insurer. If he remains unhappy with their response, he can bring the complaint to us.

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## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint; including recent emails from Mr W's partner. Having done so, I'm not persuaded to depart from my provisional findings.

Mr W has made a number of submissions in response to my provisional decision. However, I will not respond to every point raised; I will focus on the points which I think affect the outcome of the complaint.

I appreciate Mr W thinks that information from the insurance company and all call recordings between himself and VFS are necessary to make a decision. However, when evidence is missing we reach decisions based on what we think is most likely to have happened in view of the other available evidence. And in this case VFS has provided call notes and I'm satisfied that I have enough information to make a decision.

*VFS didn't mislead Mr W into buying the replacement car.*

Mr W says during the call on 3 March 2016 VFS didn't make it clear the insurer had to purchase the replacement car for his agreement to continue. The advisor said "this would usually be the insurer's responsibility". Mr W says the use of the word *usually* indicates that he could buy the replacement car and the agreement would continue.

In hindsight, *usually* wasn't the best choice of words, but the advisor did go on to say "*this would usually be the insurer's responsibility because they are the ones giving you the new car*". Mr W has emphasised the word "usually" but I don't think the overall impression of the call was that he could buy a car and the agreement would continue, there was never any discussion about Mr W buying the new car during this call and the call concluded with both parties saying they would contact the insurer.

I think it was clear in this conversation that the insurer was getting the car, but if Mr W was confused about whether the advisor meant he could buy the car, I would've expected him to check this, but I haven't seen anything to indicate he did.

In a recent submission Mr W says he assumed he could buy the replacement car after getting confirmation from the insurer's loss assessor on 3 March 2016 that the cheque for the full amount would be sent directly to his partner, the main policy holder. Mr W then ordered the new car on 4 March 2016. I think this is crucial, as it appears that Mr W ordered the new car on the back of what the loss assessor said, rather than anything VFS had told him. So I don't think it would be fair to hold VFS responsible for this.

Mr W has indicated the call on 3 March 2016 may have been edited. However, the call recording is consistent with the call notes provided and I'm not convinced there is any evidence to suggest the call has been edited.

Mr W is unhappy VFS has only provided two calls; he thinks it may have deliberately withheld calls. VFS explained that its IT team were only able to locate two calls.

I agree that it's frustrating that VFS were unable to provide all the calls, but VFS has provided call notes and screen shots of its contact system. I've carefully reviewed these and I don't think there is evidence to show VFS misled him to believe he could buy the car himself and the agreement would continue.

Mr W says that during calls to VFS on 11 March 2016 and 14 March 2016, he let it know he was buying the car. He says if VFS had told him the insurer needed to buy the car at this point or explained that his agreement closed on 10 March 2016, he wouldn't have gone ahead with buying the car on 15 March 2016.

VFS says Mr W didn't tell it he intended to buy the car. It says that it agreed to return the cheque because the insurer had got in touch to say it no longer wanted to settle the agreement, but wanted to get a replacement car.

VFS' call notes show that the insurer contacted it on 11 March 2016 to advise it had sent a cheque to settle the account, but wanted to get the replacement car for Mr W. VFS advised it would need to complete its form to do this.

There isn't a call note for a call from Mr W on 11 March 2016, but I can see he called VFS twice on 14 March 2016. The call notes show that Mr W was requesting that the cheque from the insurer be returned. The first call was dropped when Mr W was put on hold. The notes show he calls back; "customer will contact the insurer for them to cancel cheque that has been sent to settle the finance as customer has been offered the nil cost invoice option – same brand and model".

It is clear that Mr W made VFS aware that he was getting a replacement car, but there isn't anything to indicate that he made VFS aware that the insurer was sending him the cheque for the full amount and he would be buying the car. The case notes on 18 March 2016 are clear that VFS were still expecting the insurer to source the car and complete its form.

It is clear that there was some miscommunication about what was happening, but from what I've seen I don't think VFS were the source of this. So I don't think it is responsible for Mr W purchasing the replacement car.

#### *cancellation of the agreement and the return of the cheque*

Mr W has said it wouldn't have been possible for VFS to put a new car under the agreement even if the insurer had sourced it; because the agreement had already closed down on 10 March 2016.

VFS says it processed the insurer's settlement cheque on 10 March 2016, as the insurer had advised it wanted to settle the agreement. It has since clarified that the agreement didn't close down on the same day, but automatically shutdown 10 days after the agreement cheque was processed.

VFS has provided a screenshot of its system notes that confirm Mr W's agreement closed on 20 March 2016 and not the 10 March 2016 as previously advised.

VFS explained that the bank returned the cancelled cheque on 17 March 2016, which it later returned to the insurers as requested.

As Mr W's agreement didn't close until 20 March 2016, I don't think it was wrong for it to tell Mr W on 14 March 2016 that the cheque could be returned.

#### *VFS gave permission to the insurer to source the replacement car*

Mr W says the insurer only decided to settle the account because VFS refused to give it permission to source the replacement car. As outlined in my provisional decision I'm satisfied that VFS didn't cause a blockage with the insurer getting the replacement car.

#### *customer service*

Mr W is unhappy VFS originally upheld his complaint, only to reject his complaint at the 11<sup>th</sup> hour, after locating two call recordings. He says that if VFS had retrieved the calls when he complained to it, he would've sold his car and got something cheaper to avoid the depreciation. He thinks VFS is responsible for this financial loss.

I know Mr W says he was never advised to sell his car privately, but he owned the car outright, so it has always been open to him to sell the car and continue with his complaint. I can see our adjudicator suggested this as a way forward and VFS offered to arrange for Mr W's car to be traded in during our mediation. So I don't think it would be fair to hold VFS responsible for this financial loss.

As I outlined in my provisional decision, I agree VFS didn't handle this complaint well, it also delayed letting him know his agreement closed in March 2016. And it only recently clarified when Mr W's agreement actually closed.

VFS accepts it didn't offer Mr W a good level of customer service and it has offered to write off £300 from the outstanding £27,070.44 balance. It's agreed to come to an arrangement for Mr W to clear the balance, if he completes an income and expenditure assessment. VFS has also confirmed that it hasn't recorded any adverse information on Mr W's credit file and it has agreed not to do this or add any charges/interest on the balance, if he maintains the agreed repayments.

I considered whether VFS should pay Mr W additional compensation because it had caused him confusion by previously advising that the agreement had ended on 10 March 2016. However, taking its offer into consideration, I still think this fairly reflects the customer service issues experienced by Mr W.

Mr W previously indicated that he might sell his car privately to offset this against the outstanding balance. Alternatively if Mr W wants to trade his car in with the main dealer, he should contact them directly to arrange this; he could then pay VFS a lump sum to reduce the remaining balance. Otherwise Mr W may have the option of taking a loan out to repay the balance in full.

I sympathise with Mr W's position, he has ended up with a car he doesn't want and still owes VFS the outstanding balance on his account. I know he will be disappointed with my decision, but I don't think VFS are responsible for him buying the new car.

I'm not saying Mr W can't take this further; he has already indicated to me that he may take this matter to court. However, I am saying this is my final decision, so we will not consider this complaint against VFS further.

### **my final decision**

For the reasons given I think Volkswagen Financial Services (UK) Limited's offer is fair.

If Mr W accepts this offer, Volkswagen Financial Services (UK) Limited should;

- write off £300 from the outstanding account balance of £27,070.44.
- come to an arrangement for Mr W to repay the outstanding balance, after he completes an income and expenditure assessment.
- not record any adverse information on Mr W's credit file or add any interest/charges on the outstanding balance, if Mr W maintains the agreed repayments.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 August 2017.

Karen Dennis-Barry  
**ombudsman**

## **Provisional Decision**

### **complaint**

Mr W complains that when his car was written off, Volkswagen Financial Services (UK) Limited (VFS) incorrectly told him he could buy a replacement car and continue with his finance agreement.

Ms T has helped Mr W with his complaint.

### **background**

Mr W got a car on finance with VFS in April 2015. The car was in an accident in January 2016 and was written off by his insurer. Mr W wanted to get a replacement car and continue with his existing finance agreement.

There was contact between VFS and Mr W's insurer's about getting a like for like car under his insurance policy. VFS asked the insurer to provide details about the car it was purchasing. The insurer later told VFS it would settle the finance agreement, as it no longer wanted to go ahead with buying a replacement car.

Mr W says VFS told him *he could buy* a like for like car and his existing finance agreement would continue, as long as he didn't stop paying his direct debits. However, this information was incorrect as the finance agreement would only continue, if the insurer purchased the replacement car, which could then be transferred under the finance agreement.

Mr W bought a replacement car in March 2016 for £32,224 with cash he'd set aside for a deposit on a house. However, the insurer sent VFS a £27,070.44 cheque to settle the finance and sent Mr W a cheque for approximately £5,000. VFS processed the cheque and the finance agreement was automatically closed.

After Mr W got in touch with his insurer, it cancelled the cheques it issued and sent the total payment for the value of the car to Mr W. This has left an outstanding balance of £27,070.44 on the finance agreement, which VFS says Mr W is liable to pay.

Mr W complained to VFS, he didn't think it was fair it was asking him to pay the remaining balance. He wanted VFS to put his new car under his old agreement. In its response VFS accepted Mr W had been given incorrect information. It explained it couldn't put the new car under a finance agreement, as he owned it outright.

Mr W remained unhappy so he brought his complaint to this service. VFS offered to write off £300 from the outstanding balance; Mr W rejected this offer. Our adjudicator thought there had been some miscommunication between VFS, the insurer and Mr W. He didn't think VFS were totally responsible for what happened.

As Mr W had explained that the new car was no longer suitable for his needs, our adjudicator tried to mediate between VFS and Mr W. As the parties didn't agree the complaint was passed to me for review.

I let both parties know I didn't think VFS were solely to blame for what happened, as it didn't appear the insurer was clear with Mr W about its intention to settle the finance agreement.

I tried to mediate between the parties to resolve the complaint. VFS initially accepted my recommendation to arrange for the main dealer to buy back the car and offset the car value (approximately £18,000) from the outstanding balance. I thought Mr W should pay VFS £455.40 per

month, (his monthly repayments under the old finance agreement) from his last repayment date to the date he handed in the car. I also recommended VFS write off the remaining balance £1,739.

Mr W disagreed; he made a counter offer, which VFS rejected. So I advised the parties I would make a final decision.

VFS took another look at Mr W's complaint and advised it no longer accepted it had given Mr W incorrect advice. It has now provided call recordings and system notes.

As new information has been provided, which has changed my view on the complaint, I'm issuing a provisional decision.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Including Mr W's recent email.

Mr W has made detailed submissions; I don't intend to respond to every point raised. My role is to focus on the issues which I think will affect the outcome of the complaint.

Mr W has recently raised additional concerns in respect of the main dealer when he bought the new car, with cash. As the events don't relate to Mr W's finance agreement with VFS, I can't consider these issues against it. Mr W will need to raise his concerns about the mis-sale of the upgraded car and the GAP insurance directly with the main dealer.

#### *VFS didn't give Mr W incorrect advice*

Mr W says that after his car was written off, VFS told him if he continued to pay his direct debits, *he could buy* a replacement car and his existing finance agreement would continue. Mr W says VFS confirmed this during several calls.

I've summarised two call recordings provided by VFS below;

1 March 2016 call - Mr W calls to give permission for his insurer to discuss his account. VFS gives Mr W the settlement figure for the agreement and asks him whether he would like an explanation on the closing down of the agreement. Mr W declines this. The advisor tells him to continue making his direct debit payments, until the finance is settled.

3 March 2016 call - Mr W explains the insurer says it's unable to get a replacement car as VFS is asking it to provide information it can't get until it buys the car. The advisor explains VFS will accept a like for like replacement car under the existing agreement, but explains that the insurer will need to get the car, then give it the car details and provide a nil cost invoice. There is no discussion relating to Mr W buying the car outright.

I note from Mr W's timeline that he says he had two additional conversations with VFS in February 2016, where he is also guaranteed he could buy the car and the existing finance agreement would continue. However, VFS has shown me its system notes and there are no records of any calls from Mr W during February 2016, the first call recorded is 1 March 2016.

Even if I were to accept Mr W was in contact with VFS during February 2016, I think it's unlikely there would've been any discussion about Mr W buying the car himself at this point. This is because at this stage, all the parties were aware the insurer was seeking to get the replacement car.

I know Mr W feels strongly that VFS gave him incorrect advice. But from the call notes and call recordings I'm satisfied Mr W was told his agreement could continue if a like for like car was found by the insurer, but I've not found anything to suggest VFS told Mr W *he could buy* the car himself and this could be added to the agreement. So I don't think VFS gave Mr W incorrect advice.

*VFS gave the insurer permission to get a like for like car*

Mr W says VFS wouldn't give the insurer permission to buy the car, unless it provided details of the new car, including the chassis and registration number, which was impossible to provide as the insurer hadn't bought the car yet. Mr W says the insurers decided to settle the finance agreement, because of the information VFS were requesting.

On 23 February 2016 the insurer emailed VFS to ask for permission to source a like for like car and keep the existing finance agreement running. VFS responded the next day asking it to provide the correct registration details of the written off car and the agreement holder's details, as it had provided Mr W's partner's information.

The insurer emailed VFS again on 2 March 2016 to request permission to source a replacement car. VFS responded on the same day saying "We are pleased to confirm for you to proceed with the like for like vehicle replacement". It then went on to detail the process of getting the new car transferred to the existing finance agreement, including providing the details of the new car and providing a nil cost invoice.

On 3 March 2016 the insurer requests the settlement figure from VFS. In an email to VFS it explained it was no longer happy to proceed with sourcing the replacement car.

I think it's clear VFS did give the insurer permission to source the replacement car on 2 March 2016, but also outlined what the insurer would need to do once it got the car, including giving it the new car details.

I don't think VFS request was unusual, as it would become the owner of the replacement car, it would need this information to complete the transfer under the existing finance agreement. When VFS later asked the insurer in an email why it didn't go ahead with getting the car, it simply said it chose not to, it made no mention of this being due to the information requested by VFS.

More recently Mr W has said VFS insisted on him continuing with the existing finance agreement and pushed him into going for a like for like car option. However, I've not seen anything to suggest this is the case. In the call 3 March 2016 Mr W makes it clear that he wants to continue with his existing agreement, so he doesn't lose out on his previous repayments. And it's clear that it was Mr W's insurers who contacted VFS to request its permission to get a like for like car for him.

*cancellation of the agreement*

Mr W says VFS shouldn't have cancelled the finance agreement because it was aware he wanted to continue with his finance agreement and knew he was supposed to receive the cheque for the value of the car directly; so he thinks VFS were wrong to close his account.

Even though Mr W had been in touch with VFS on 3 March 2016 to advise he wanted to continue with his finance agreement; his insurer had also been in touch with VFS to request the settlement figure to settle the outstanding finance.

Looking at the contact log and emails, I've not seen anything to suggest VFS were aware the cheque should've been sent directly to Mr W. It's clear the insurer had told VFS it was no longer getting a replacement car, but settling the finance agreement. When VFS received the settlement cheque, it processed it and this automatically closed Mr W's finance agreement.

It appears the insurer may not have been clear with Mr W about its decision to settle the finance or if it had, Mr W hadn't understood this. However, as VFS acted upon the insurer's instructions to settle the agreement, I don't think it made an error when it closed his finance agreement.

Mr W says VFS should've re-opened his account when he contacted it on 14 March 2016 to request the cheque back. However, this isn't possible once a finance agreement has been closed.

Mr W also complains VFS delayed returning the cheque to the insurer. I can see VFS received the settlement cheque on 10 March 2016, which is when it ended the finance agreement. Looking at the contact notes the insurer contacted VFS on 15 March 2016 to advise it would be cancelling the cheque; but only requested the return of the cheque on 21 March 2016; VFS notes show it returned the cheque two days later, so I don't think VFS delayed returning the cheque.

#### *customer service issues*

VFS accepted in its final response it had given incorrect advice to Mr W. So it is very disappointing VFS has only recently been able to locate the call recordings, which show this isn't the case.

Mr W says that if VFS had retrieved the calls when he first complained to it, he probably would've sold the car earlier and bought a cheaper car to mitigate his loss, but now his car has significantly depreciated. He thinks VFS are responsible for this financial loss.

Whilst I accept the car has depreciated, Mr W owns the car outright so it has always been open to him to sell the car and continue with his complaint. In addition VFS offered to arrange for Mr W's car to be traded in with the main dealer, when we tried to mediate between the parties. So, overall I don't think it would be fair to hold VFS responsible for the depreciation of Mr W's car.

In addition Mr W is unhappy VFS didn't let him know his finance agreement was cancelled, he was only made aware of this in July 2016 when he got a statement and arrears letter. I don't think this delay was good customer services.

VFS has offered to write off £300 from Mr W's outstanding balance to reflect the level of customer services received. It has agreed to come to an arrangement for Mr W to repay the outstanding £27,070.44 balance, if he completes an income and expenditure check. VFS has confirmed it hasn't recorded any adverse information on Mr W's credit file and it has agreed not to do this nor add any interest/charges to the balance; if he maintains his agreed repayments.

Mr W has indicated he may sell his car privately or trade it in with the main dealer to offset this against the remaining balance. If Mr W still wants to trade his car in with the main dealer, he should contact them directly to arrange this; he could then pay VFS a lump sum to reduce the remaining balance.

Alternatively Mr W may have the option of taking a loan out to repay the balance in full.

I know Mr W will be disappointed with this outcome, but in the circumstances I think VFS' offer is fair and I won't be asking it to do anything else, unless there is new evidence that changes my mind.

#### **my provisional decision**

My provisional decision is Volkswagen Financial Services (UK) Limited's offer to resolve the complaint is fair.

If Mr W accepts this Volkswagen Financial Services (UK) Limited should;

- write off £300 from the outstanding account balance of £27,070.44.
- come to an arrangement for Mr W to repay the outstanding balance, after he completes an income and expenditure assessment.
- not record any adverse information on Mr W's credit file or add any interest/charges on the outstanding balance, if Mr W maintains the agreed repayments.

Karen Dennis-Barry  
**ombudsman**