complaint

Miss N complains that Volkswagen Financial Services (UK) Limited trading as SEAT Finance has applied unfair charges after her vehicle had been repossessed. She wants the charges to be reduced or waived.

background

Miss N is represented in this complaint by a family member but for ease of reading I'll mostly refer to her.

Miss N tells us that in March 2018 she told SEAT that she wanted to return her vehicle as she was in financial difficulties. She says she notified SEAT collection agents, a company I'll refer to as *"B"* that the vehicle was in possession of a third party. Miss N explained that it had been removed from the estate where she lived. She says that she later received notification from SEAT, in May 2018, that the vehicle had been sold. And that she owed just over £1,800. But several months later she was told that recovery charges had been added and in September 2018 she says she received a statement which was for a further £1,195 + VAT.

SEAT said that Miss N's vehicle had been removed by the owners of the estate in which she lived due to it having been left in a damaged condition for so long. It said its recovery agents had paid the charges to have the vehicle released. And in accordance with the terms of the agreement these had been charged to Miss N. It accepted the liability letter of 18 September 2018 had been delayed longer than usual.

I issued a provisional decision on this complaint on 17 June 2020. I indicated that I was minded to uphold the complaint but only in part. I said I felt some of the additional collection and storage charges were excessive.

SEAT had earlier offered to reduce the outstanding balance to £2,314.64 (from £2,893.30) if Miss N paid this as a lump sum. I suggested that as Miss N was subject to a payment arrangement it was an offer she probably couldn't afford to accept. But I felt it was still the basis for a fair and reasonable settlement of this complaint. Provided the reduced figure was paid through the payment arrangement and not required as a lump sum. I also said I intended to reduce the award for distress and inconvenience recommended by our investigator from £400 to £100. I explained that the purpose of compensation wasn't to penalise a business. And in this case SEAT's error hadn't been in applying the additional charges. It had been the delay in informing Miss N of these.

Since my provisional decision SEAT has replied accepting my provisional decision providing the £100 distress and inconvenience award was deducted from the arrears. Neither Miss N nor her representative have replied.

As no new information has been supplied, I'm not minded to change my provisional view. This is largely repeated in my final decision which is set out below.

my findings

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

I can see that Miss N has had an unpleasant experience in the circumstances surrounding the repossession and termination of her agreement. And I understand why she'd be concerned at the additional financial loss this has incurred.

Miss N's hire purchase agreement is a regulated consumer credit agreement and our service is able to consider complaints relating to it.

There's a complex background to this complaint and some facts are still unclear. But given the length of time after the events in question, I'm unlikely to receive any additional evidence to clarify this any further. So I'll have to work with what I've been given so far.

Where information is incomplete, unclear or contradictory - as some of it is here - I reach my conclusions on the balance of probabilities. That is, what I think is most likely to have happened in light of the available evidence and the wider surrounding circumstances.

Miss N wished to terminate the agreement due to financial difficulties. It appears a voluntary termination (VT) might have been possible as repayments had reached the 50% level. This is the point in a hire purchase agreement where a consumer can return goods without further cost. This is subject to payments being made up to date. And the payment of other contractual charges which have accrued or do so as a result of the termination.

Contact notes I've seen indicate that in June 2017 Miss N would've been able to terminate the agreement upon the payment of arrears of £349.02. At that point she asked for *"breathing space"* to help sort her finances out. And she was given until 28 July 2017. I can't see any further contact being recorded until a default notice was issued on 19 October 2017. And the agreement was terminated on 6 December 2017. The outstanding debt at that time was recorded as £3,268.43.

On 10 January 2018 Miss N advised B that the vehicle had been damaged. But it wasn't until 21 February 2018 that SEAT's collection agents B were able to locate the vehicle. At some point - it's not exactly clear when - the vehicle had been moved from where it had been parked and taken to storage. This may have been done by a third party acting on behalf of property agents for where Miss N resides. It was recovered by B on 22 March 2018.

Charges of £600 (release fee); £252 agent's fees; and £582 tow truck costs were added to Miss N's account in September 2018. Although she'd received a statement dated 31 August 2018 which had showed her closing balance at that date to be £1,700.38.

As part of the terms and conditions of the agreement Miss N was required to look after the vehicle whilst it was in her possession. And she must bear some responsibility for it being seized. This has added to the normal costs that are associated with returning a vehicle. In principle, I don't think it's unreasonable for SEAT to look to her to pay the costs it incurred in recovering its property.

SEAT was under an obligation to take reasonable steps to mitigate any losses. It's told me it refused to pay storage costs incurred prior to 21 February 2018. This was the date when it became aware the vehicle had been seized. So I can see it had some awareness of the duty to mitigate.

But it took about a month between when the vehicle was located and the date of collection. That suggests a lack of urgency in seeking its recovery. As the indicated cost of storage was apparently £55 per day - which appears manifestly excessive - I think it was incumbent upon SEAT or its agents B to act more expeditiously than they did. It's not apparent why it should've taken more than a few days to have the vehicle collected.

I've also not seen information to show how a charge of £582 for a tow truck is justified. There is some reference in SEAT's notes about the vehicle being taken to Nottingham after recovery. But given that this is over 100 miles from where Miss N resides - which I presume is in close proximity to where the vehicle was recovered - I'm not sure how this charge arises. Once a vehicle has been returned the cost of onward transport would normally be a business cost. It would be reasonable to expect Miss N pay the cost of recovery to a local SEAT collection point but I don't think she should be liable beyond this.

Collection agents acting for SEAT wrote to Miss N on 24 February 2020 with an offer of settlement. The letter indicated that if Miss N paid a sum of £2,314.64 this would be accepted in full and final settlement. I appreciate this offer was probably well intentioned but it also appears to be insensitive. The offer was conditional upon a lump sum payment being made.

As far as I'm aware Miss N had previously entered into a payment arrangement of £13.61 per month. I've not been informed that this has changed. The full debt total referred to in the offer letter was £2,893.30. The last statement of account I'd been supplied with prior to this was dated 28 January 2019 when the debt stood at £3,066.33. That reduction in the debt appears consistent with the payment arrangement being ongoing. So the offer to Miss N was, on the available information, one she could never afford.

Nonetheless I think it provides a basis for a fair and reasonable settlement of this complaint. Instead of requiring the lump sum, SEAT should accept the lesser sum of £2,314.64 by means of the current payment arrangement. Or, if required, a new arrangement based on the revised figure. That would have much the same effect as reducing the additional collection charges which I've already indicated I think are excessive.

Our adjudicator recommended that SEAT should pay £400 to Miss N for distress and inconvenience. I think that was somewhat over generous. Compensation isn't meant to penalise a business. But to reflect any distress and inconvenience experienced by a consumer. I appreciate that the addition of charges would've been an unpleasant shock for Miss N. Given her precarious financial position it would've been upsetting as she was working to reduce her debt. But SEAT's error wasn't so much the fact of making the charges as the time it took to notify Miss N that they were being applied.

I accept that Miss N would have been potentially misled by receiving the letter dated 31 August 2018 which read:

"The shortfall amount included in the closing balance includes any sums which you have failed to pay in full under the agreement when they became due (whether or not included in a previous notice) is: £1,700.38".

I intend to award Miss N £100 as I think that's a more appropriate sum.

In summary, I find that Miss N should be required to contribute towards the costs of collection which arose from her failure to look after the vehicle. The original charges imposed were, in my opinion, excessive. Now that SEAT has made an offer which is fair and reasonable I'm satisfied this is a sufficient basis on which to determine the complaint.

It's not our usual approach to require that awards for distress and inconvenience are deducted from arrears. But there's nothing to prevent SEAT from asking Miss N if she's willing to permit this.

my final decision

For the reasons given above my final decision is I'm upholding this complaint but only in part.

In full and final settlement of this complaint I now require Volkswagen Financial Services (UK) Limited trading as SEAT Finance to take the following action:

1. Accept £2,314.64 as the balance owing on this account as of 24 February 2020. (Any payments made since this date to be credited);

2. Pay £100 to Miss N for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 29 August 2020.

Stephen D. Ross
ombudsman