

complaint

Mr M complaint is about misrepresentation of his hire purchase agreement with Volkswagen Financial Services (UK) Limited (Audi). He says he agreed to a three year repayment period but the agreement was made out for a four year term. He wants the agreement to be amended back to a three year period.

background

Mr M tells us he entered into a hire purchase agreement with Audi in 2017 for the supply of a new vehicle. He says he believed the agreement was for a repayment period of three years. But when he was provided with his first annual statement he noticed the term had increased to four years. Mr M doesn't believe he signed a four year agreement.

Audi told us it had activated and paid out on the agreement based on the paperwork it held on file. It said this related to a four year agreement. And that as Mr M had signed the agreement, this indicated the information was correct.

Our adjudicator didn't recommend the complaint should be upheld. In his view letter, he set out a detailed timetable of events. He found that Mr M had signed two finance agreements. He explained that this had arisen as Mr M had asked for the registration date of his new vehicle to be delayed. This had enabled him to take advantage of a later registration plate (67 as opposed to 17). This would come into effect if the vehicle was first registered after 1 September 2017. He said the first signed agreement had shown a 36 month repayment term but had been with the vehicle having a 17 plate. The second signed agreement with the vehicle showing a 67 plate was for 48 months. He noted that the invoice for the latter vehicle also showed an increased cash price together with additional features being included. He felt it reasonable to expect that the details of the agreement would've been checked by Mr M prior to signing.

Mr M didn't agree with the outcome and said he didn't think it was fair to use "*probabilities*" to reach a decision. He felt he had provided *facts*. As it's not been possible to resolve this complaint an ombudsman's been asked to make the final decision.

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 Mr M feels strongly about this matter and I understand that he'd be concerned to find himself having to make repayments over 48 months if he expected the agreement to only last for 36 months.

Where the information I'm given is 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. I don't apply the law - directly - but I do take it into account. And were this matter to be determined by a civil court that would be the test applied.

I accept that Mr M originally intended to enter into a three year agreement. I've seen an email dated 8 August 2017 which he sent to the dealers before the first agreement was signed. In this email Mr M raises a query about the term of the agreement. He notes that the agreement is for 10k miles "over 47 + 6" payments and he refers to a previous email which related to 12,000 miles and "35 +6 payments". The email concludes "*please advise*". I infer from this that Mr M wished for some clarification regarding the duration of the proposed agreement.

But it's not unusual for arrangements to be altered if circumstances change. I suspect Mr M did what many motorists would've done given the timing of the proposed deal was close to a change in registration plates. He opted for a later registration date. As the first agreement signed showed the 17 plate registration it was necessary for a new agreement to be drawn up to reflect the change to the 67 plate.

I understand Mr M accepts he signed two sets of documents - one when the vehicle was first ordered in August 2017 and the second upon collection of the vehicle in September 2017. But he doesn't believe he signed for a four year deal.

The first agreement document I considered appears to bear Mr M's signature and is dated 10 August 2017. This agreement shows the vehicle as being first registered on 1 September 2017. And indicates a cash price of £35,637.15. It relates to a three year agreement with an advance payment of £7,574; 35 monthly payments of £404; and final payment of £16,458.75.

The second agreement also appears to bear Mr M's signature and is dated 29 September 2017. I understand this is when he collected the vehicle. This agreement shows the vehicle having been first registered on 30 September 2017 - which accords with the preference Mr M had indicated. The vehicle cash price on this agreement is £37,527.68; the advance payment is £7,574; 47 monthly payment of £404; and a final payment of £14,345.00.

I'm not sure why the cost price of the vehicle increased. It maybe that this was due to the longer term of the agreement - and therefore increased mileage allowance. Or it may be that there was simply a price increase. Whatever the reason, it doesn't affect my decision as the detail was recorded on the face of the agreement. And even a quick inspection of the document would have shown this. If the price was increased but the monthly payments were to remain the same it would seem inevitable that the term of the agreement would have to be extended to reflect this.

Mr M had previously raised a query about the proposed length of the agreement. So it's not unreasonable to infer that if he was dissatisfied with the terms of the later agreement - which was prepared to reflect the change in registration plate - he'd have said so at the time. I find that Mr M had been provided with the necessary information about this agreement in order for him to make an informed decision as to whether to proceed. And I've seen nothing to suggest the terms of the agreement were misrepresented.

Mr M has indicated he was unaware the agreement had been made out for four years until he received his first annual statement. But I've seen a letter dated 3 October 2017 from Audi to Mr M. This is by way of a welcome letter and confirms the schedule of payments. It shows the first payment is due on 29 October 2017. The date for the final (lump sum) payment is shown as 29 September 2021. In other words a four year term. I can't say whether Mr M read this document but in the light of its content it lends further support to the view that the agreement which had just been activated was for four years.

In September 2018 - when he raised the issue with the dealership where he'd signed the agreement - Mr M received a reply suggesting the duration was for three years. But our adjudicator dealt with this in his opinion letter and it appears to have arisen out of a misunderstanding. The dealership has apparently been taken over and the sender of the reply didn't have access to earlier records. And so was unaware of a signed four year agreement post-dating the three year agreement to which Mr M seemed to be referring. Although this inadvertent error occurred I think it's simply an administrative mistake which doesn't affect my overall conclusions.

I accept it's easy to make assumptions about the content of agreements and it can be tedious to check paperwork. But it's a reasonable expectation that before signing an agreement a consumer will check the document. But even where this doesn't happen, it doesn't mean a business can't rely on a signed agreement. Here there were significant differences between the two signed documents and not just in terms of the duration of the agreement. The cash price of the vehicle and the final lump sum payment also varied significantly. And they're matters I'd expect to be uppermost in a consumer's mind when it came to finalising and checking details of an agreement.

I've reached the same conclusion as our adjudicator and for much the same reasons. On a balance of probabilities, I find the agreement which Mr M took out was that which contained the later vehicle registration date and was of four years duration. And I consider he ought reasonably to have known this. I don't find there was any misrepresentation of the agreement.

In the light of my findings - which I understand will come as a disappointment to Mr M - I'm not upholding this complaint.

my final decision

For the reasons given above my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 April 2020.

Stephen D Ross
ombudsman