

complaint

Mr B complained he was misled into signing a hire purchase agreement for a new car, provided by Volkswagen Financial Services (UK) Limited trading as Volkswagen Finance.

background

Mr B wanted a new car. A salesman at the car dealership (I'll call it D) told him about a four year finance deal that allowed unlimited mileage. This was very important to Mr B as he did around 15,000 miles a year.

He was interested and talked to family and friends about the deal. He became worried he'd misunderstood it. And he went back and talked to the salesman twice more, once with his father. Reassured he signed the deal, using his existing car as a deposit.

But doubts persisted. He went back to the salesman by email several times to make completely sure there weren't excess mileage charges. There weren't and he was told he could use the equity in the car as a deposit when he came to trade it for a new one. This was his stated intention as he felt very loyal to the VW brand.

Sometime later, a different salesman worked out that Mr B's outstanding finance was more than the car was valued at because of its high mileage. This meant Mr B had no deposit.

Mr B didn't understand. How could he owe more than the car was worth if he wasn't being charged for the mileage? He complained to VF who agreed the original salesman could have been clearer but didn't think the arrangement had been misrepresented. They agreed that no excess mileage (above the 5,000 per annum on the contract) would be charged.

This didn't change Mr B's position though. He still had negative equity in the car because of its mileage. And that didn't seem fair to Mr B so he complained to this service.

An investigator looked into the case, she felt VF needed to do more to put things right. She thought the salesman had been fully aware that Mr B was a high mileage user. And that his answers to Mr B's questions were misleading to the point Mr B could reasonably believe the mileage wouldn't be taken into account when he came to trade in his car.

VF says at no point has it accepted the car was mis-sold to him, the correct procedures have been followed and it is clear of any wrong doing.

But, it has recognised and accepted that the communications could have been clearer although it maintains the contract is clear. It says Mr B had plenty of opportunity to read and understand it. Further, he's signed a 'pre-contractual explanations checklist' that states the contract had been fully explained to him. And there were several days between signing the contract and its activation during which he could raise any questions or concerns.

VF also points out the email exchanges happened after the contract was activated; at which point the contracted agreement could not be changed. And it says Mr B was happy with, and accepted, the resolution it offered to his complaint – which was to waive excess mileage charges allowing him to voluntarily terminate the contract once half of the debt was repaid. Mr B will still be liable for any refurbishment due to wear and tear.

VF stresses that Mr D still has an option to complete a voluntary termination once 50% of the debt is repaid. If he did this it would be waiving almost £2,200 of excess mileage charges. It also says "This is due to increase everyday due to the mileage increasing ... and affecting the resale value when we look to sell the vehicle at auction."

Because of this, VF thinks the investigator's view that it should do more is excessive and not a fair resolution. So it has asked that an ombudsman considers these factors before issuing a 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.

The law says where misrepresentation leads someone to enter the agreement then the supplier of the finance, which owns the goods, can be asked to put things right.

In this case there are two elements to Mr B's complaint of misrepresentation; excess mileage and the likelihood of equity to use as a deposit on a future new car.

Mr B says he set out his wants and needs to the salesman at D. In short: "a reliable car and a deal which... [enabled him] to do lots of miles". The salesman set out a deal that allowed Mr B to do unlimited mileage and trade the car back at the end of 4 years; using the residual value as his deposit.

Mr B's father was sceptical. So they both went to D and asked more questions, especially about unlimited miles. The salesman reassured them. Mr B says he was told he could do as many miles as he wanted without any extra cost to himself. Further he could trade it back and upgrade the car in future.

The printed contract stated an annual limit of 5,000 miles. Mr B queried this. And he says the salesman said it was OK. Once the deal was finished, Mr B had indicated he was likely to get another car from VW so excess miles weren't chargeable. Further, the salesman said he'd add a clause to the contract. I can't see this change on the signed agreement.

Mr B picked up the car around a week later. He was excited about it and the finance deal so he told friends and colleagues about. When other people couldn't believe the deal Mr B became nervous. He called the salesman who reassured him and confirmed again by email.

The salesman explained the car is valued when you trade it in and the finance is cleared from what it's taken in at. The car's equity provides a deposit for your next car.

Mr B's boss was still worried Mr B hadn't properly understood the finance arrangement. Mr B sent the salesman an email asking questions. Again he was reassured by the response.

Around 18 months later, Mr B was talking to a different salesman. He said the car was worth less than Mr B owed on his HP agreement; the high mileage means high depreciation.

By his own admission, Mr B stuck his head in the sand at this point. He couldn't believe he'd be paying for 4 years and would still owe money instead of having equity for a deposit. But he didn't complain at this point. Another year passed before he contacted VF.

VF upheld his complaint. It said the salesman had answered Mr B's questions correctly but could have been clearer about any potential charges Mr B might face. It agreed that no excess mileage charges would be made if he voluntarily terminated the agreement. But he would have to pay any refurbishment charges.

On the balance of probability I think Mr B made D aware that he was a high mileage user during his initial discussion with the salesman. He was driving 15,000 miles a year for work and I consider it improbable that Mr B would withhold this information. Much less sign an agreement, limited to one third of what he needed, that included excess mileage charges.

Mr B said he wanted to trade the car in at some stage in the future. This is confirmed in the email exchanges, as Mr B presses for clarification about what his options will be. He is told the equity from this car will form the deposit when he trades it in for a new one.

VF says Mr B signed to say the contract had been explained to him. I agree that he signed the pre-contract checklist; but is it fair to rely on that? I don't think so because his understanding would be limited to what he was told.

Similarly, I believe Mr B went back to ask questions and address his concerns before the signed contract was activated. This is because his subsequent emails are consistent with that narrative. And VF hasn't said he didn't raise those concerns. So again, I think it is only fair for VF to rely on this point if Mr B was given honest and complete answers.

So, the question is: *Was Mr B induced to enter the HP contract by the salesman who Mr B says was fully aware of his circumstances?*

VF says the procedure was followed and the salesman's answers to Mr B's questions were right. I'd agree the salesman's answers weren't wrong. But this is different to being complete and transparent. Mr B is relying on the salesman for clear information to make his decision.

If Mr B is at fault I feel it is because he asked the wrong question. His real concern is about his finances and what the impact of being a high mileage user will be on them and his future plans. Rather than what the excess mileage charges will be.

I find the language used by the salesman, in the post contract emails, to be less than complete or transparent. For this reason I am inclined to believe Mr B's version of the events and I think he was misled into entering the contract because he was encouraged to believe he can drive as many miles as he needs without paying for them. And that he would have equity to use as a deposit when he traded it in.

Even after repeated challenges about this, the salesman falls short of clearly explaining if you drive a lot of miles you will be charged for them; either through higher monthly repayments, excess charges, depreciation or wear and tear. This may mean you owe money, even if you give the car back, or that you have little or no deposit when you trade in.

Instead, the salesman chose to repeatedly allay Mr B's fears about being charged for excess miles without clearly acknowledging the possible impacts that the same excess miles could have on the trade in value of the car.

The point about excess mile charges isn't significant. VF has conceded this already, without admitting wrong doing.

In terms of the equity, the deal structure was based on 5,000 miles a year. I think it likely this was deliberately understated to make the monthly repayments very attractive. And it means that it is more likely than not that there will be little or no equity in the car. I think it is reasonable to believe the salesman would have known this from the outset and that Mr B was entitled to expect honest and clear answers in this regard.

In truth, Mr B will be paying for high mileage because the car will be worth less. In turn, this means his deposit will be lower and he'd be financing more when he traded in. Because of this, and for the reasons stated above, I think Mr B was misled into signing the contract.

I asked Mr B what he would have done if he hadn't acquired this car with Hire Purchase?

He restated he'd only done it because it seemed affordable and said he'd probably have carried on using his original car; initially at least. When pushed, he was clear that he had been looking around for an affordable car and had visited several dealerships. He wasn't in a rush to buy a car but the combination of the monthly cost, absence of excess charges and residual equity (to use as a deposit in future) was a persuasive offering from VF. He couldn't be absolutely sure what he'd have done; but he did know that he wouldn't have signed this agreement if he'd realised all of the consequences.

On balance I don't agree. Having explored the options in some detail with Mr B I think it is more likely than not he would still have entered this arrangement if he had realised there might not be equity to use for a deposit.

I believe HP was the most affordable way for Mr B to get a newer, more powerful, car to meet his work commitments across the country. But it's unlikely that a different dealer would have offered a substantially more attractive financial package (because of the mileage Mr B did) nor would it have guaranteed Mr B would have equity in the future because there are so many variables that can impact on a car's value, not only its age, mileage and condition but also the market conditions at the time it was being traded in.

In summary though, I believe Mr B was misled so it is appropriate for VF to put things right.

This was the view reached by the investigator but VF disagreed about how this should be achieved. I considered their argument carefully and agreed that the proposed solution would have put Mr B in a better position (if the agreement had been cancelled, with his deposit being refunded to him) than he would have been in otherwise.

On this basis I discussed a possible middle ground with each party and an agreement was reached that I think is fair and reasonable for the circumstances. Their mutual agreement informs my final decision.

For completeness, the key points are recorded here.

- VF is not required to refund Mr B's deposit monies nor will it pay interest at 8% on these monies. (VF couldn't foresee how much equity there would be in the future and Mr B has confirmed his acceptance of this situation.)

- VF had previously confirmed that excess mileage wouldn't be charged if Mr B decided to voluntarily terminate the agreement. Mr B was concerned that he would have to do this as soon as he had repaid 50% of the finance. I didn't think that was what VF intended but asked for explicit clarification to reassure Mr B. VF confirmed to me that no excess miles would be charged to Mr B regardless of when he decided to exercise his right to voluntarily terminate the contract.
- Mr B was concerned that he would get a large bill for wear and tear because the mileage of the car is so much more than it would have been if he had limited his mileage to 5,000 miles per year. VF confirmed their standard approach is to assess wear and tear on the actual mileage and Mr B agrees this is fair.
- VF agreed to pay Mr B £250 in respect of the distress and inconvenience that was caused by the lack of clarity provided by the salesman. Mr B considers this fair.

my final decision

For the reasons stated above I am upholding Mr B's complaint.

I require Volkswagen Financial Services (UK) Limited trading as Volkswagen Finance to do the following:

- Waive all excess mileage charges if Mr B decides to return the car and voluntarily terminate the contract at any time before the end of the contract.
- Limit any charges for wear and tear to a level that is commensurate with the actual age and mileage of the car.
- Pay Mr B an amount of £250 for the distress and inconvenience he has experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 July 2018.

Richard Houlbrook
ombudsman