

complaint

Mr R complains on behalf of Mr C that Volkswagen Financial Services (UK) Limited (Volkswagen) unlawfully took his car along with his personal number plate. And led him to believe the sale of his car would pay off any outstanding amount from his Hire Purchase Agreement. He would like the outstanding debt written off.

background

Mr C says he didn't realise he was in arrears with his payments on his Hire Purchase Agreement. Although he has also said he may not have opened letters from Volkswagen that he didn't think were important. And that he doesn't open emails.

He says he only knew there was a problem when Volkswagen called to repossess his car in September 2016. He says Volkswagen didn't tell him that it needed to get a court order to repossess his car even though he had paid more than one third of the total cost for the car. He says if he had known that he wouldn't have agreed to the car being taken.

He also says that Volkswagen led him to believe that sale of the car would pay off any outstanding balance on his loan. So he was very surprised to get a letter in July 2017 saying he owed an outstanding balance of £6,188.50.

Mr C doesn't think a notice of default was issued. And thinks that Volkswagen has acted unreasonably as he says Mr R offered to settle his outstanding balance but Volkswagen refused.

Volkswagen said the recovery of Mr C's car wasn't unlawful as Mr C voluntarily surrendered his car. As he didn't change the registration Volkswagen was entitled to take the car as it was. It also pointed out that in the agreement Mr C signed Volkswagen was entitled to sell the car and offset the sale value against any outstanding amounts on the loan. There was no guarantee there would be a nil balance as a result.

Our investigator didn't uphold the complaint. He explained why he couldn't look at default issue And said he felt that Mr C voluntarily surrendered his car. And there was no evidence that Volkswagen had led Mr C to believe that the car sale would cover all outstanding costs of his agreement. So he didn't think Volkswagen needed to do anything

Mr C didn't accept this. He said Volkswagen hadn't advised him of his legal right that a court order was needed to repossess his vehicle. It was unrealistic to expect him to remember the details of the Hire Purchase agreement he signed two years earlier. He wasn't told the debt had been sold on. But was told that surrendering the car was in his best interests and would avoid further expense.

Our investigator considered these points but didn't change his view. He reiterated that Volkswagen was under no obligation to tell Mr C a court order was needed to repossess the car. Mr C voluntarily surrendered the car and would've been aware of the terms under his Hire Purchase Agreement.

Mr C didn't accept this and asked for an Ombudsman's view. He says he wasn't told by signing the voluntary surrender form he was surrendering his legal rights. He also said it was agreed the personal number plates would be returned but weren't. And that he paid for the cost of some repairs to the car (bumps and scratches) and would like to know if this was taken into account when looking at the outstanding amount due.

Mr R has said he thinks a reasonable solution would be for Volkswagen to write off the outstanding debt. And to give Mr C the money to buy a small second hand car.

my findings

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

Mr C feels strongly about this so I realise he's going to be disappointed as I've reached the same conclusions as our investigator.

Firstly Mr C says that Volkswagen had no legal right to take his car. He says he'd made one third of the necessary payments so Volkswagen needed to obtain a court order to repossess his car.

That particular legal requirement is clearly stated in the Hire Purchase Agreement Mr C signed. I think there was sufficient information for Mr C to know that he could insist that Volkswagen get a court order if he didn't want to voluntarily surrender his car. I don't agree with Mr R's view that it was unreasonable to expect Mr C to know the details of the agreement he signed two years earlier. I think Mr C could've looked back at his rights under this agreement when he realised he was having problems with making the payments.

I can't be sure what Mr C was told when his car was collected. But the form he signed which I've seen a copy of makes it clear that Mr C is agreeing to a voluntary surrender of his car. And the form also makes it clear that there might be some outstanding liability owing after the car was sold. I haven't seen any evidence that Mr C was pressured into signing this agreement or that he was told it was in his best interests to do so. So on that basis I can't say that Volkswagen has done anything wrong in agreeing a voluntary surrender with Mr C and in not pursuing a Court Order to force repossession.

From what I've seen it seems to me that if Volkswagen had pursued a Court Order it's more than likely it would've been successful. So Mr C would have had additional legal and court costs in addition to the amount outstanding under his Hire Purchase Agreement. So I don't think that Mr C has been financially disadvantaged by voluntarily surrendering his car. And I'm not persuaded that had Volkswagen discussed obtaining a Court Order that Mr C would have chosen to insist it went down that route.

Secondly Mr R tells us that Mr C was assured that the sale of the car would probably cover all of the outstanding costs. I considered asking if this phone call were available to listen to but decided not to do so. Whatever Mr C was told on that call I don't believe anyone could have assured him he wouldn't have anything to pay until the car had been sold and there was a definite sale price. So even if Mr C did get some assurances I think it might have wanted to check there was no outstanding amount particularly as Mr C signed a voluntary surrender agreement stating that there might be an outstanding amount.

On this basis I don't think there are any grounds for me to write off the outstanding debt. Or for Volkswagen to pay for a small second hand car for Mr C.

Mr R has made a number of other points. He feels Volkswagen were unreasonable in not accepting his offer to pay off the outstanding debt. As I understand it Mr R made his offer in a phone call in September 2016. But the agreement had been already been surrendered in

August 2016. Volkswagen made the point the offer was too late. From what I've seen I would agree but ultimately it's for Volkswagen to decide to accept an offer to settle or not.

I also haven't seen any evidence there was any agreement over the personal number plate. So I can't fairly conclude that there was and that Volkswagen didn't stick to this.

Mr R feels Mr C should have been told his debt had been sold on. I haven't seen anything to show there was any obligation for Volkswagen to tell Mr C this. And I am not sure it would've made any difference if it had.

Finally Mr R queries if the final amount owing takes into account work Mr C had done on the car. I'm not sure that this is relevant. What is relevant is the amount the car was sold for and the amount still outstanding. If the work Mr C had done on the car increased the amount the car was sold for then Mr C would've benefitted as this would've reduced the amount he owed. If it didn't increase the value of the car that's unfortunate. But I don't think that makes Volkswagen liable for any costs Mr C incurred on repairs.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 March 2018.

Bridget Makins
ombudsman