complaint

Mr G complains that Volkswagen Financial Services (UK) Limited (VWFS) wrongfully repossessed a car he acquired under a hire purchase (HP) agreement. He wants VWFS to refund all of his HP payments - and pay compensation for providing a car of unsatisfactory quality and damaging his credit record.

background

The background to this complaint, and my initial conclusions, are set out in my provisional decision dated 14 April 2015 – a copy of which is attached, and forms part of this final decision.

In my provisional decision I explained why I considered Mr G's complaint should not be upheld. I invited both parties to let me have their comments and any further information before I reconsidered and issued my final decision.

VWFS accepts my provisional decision but Mr G doesn't. In summary he says:-

1. VWFS wrongfully repossessed the car because it knew that the manufacturer had agreed to buy it from him, and he didn't terminate the HP agreement or consent to VWFS taking the car to auction;
2. VWFS should refund his monthly payments for the time the car was out of use because it supplied a faulty car – which is proved by the manufacturer's recall;
3. He wasn't supplied with a courtesy car from September 2012 until November 2013;
4. I didn't give sufficient weight to the fact that his credit record was damaged for a substantial period of time and VWFS didn't act promptly to remedy that;
5. VWFS has been obstructive and failed to provide some documents that it should have in its possession, so the complaint should be upheld; and
6. His complaint is about VWFS so I shouldn't take into account information or the replacement car provided by the manufacturer.

my findings

I have re-considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to broadly the same conclusions overall as I set out in my provisional decision for much the same reasons.

I can see that Mr G is very disappointed by my provisional decision. He has gone to a great deal of trouble, and submitted a substantial amount of correspondence, to explain why he disagrees with my provisional conclusions. So I hope Mr G will understand that it's impossible for me to reproduce every submission here. I appreciate that's frustrating for him. I realise he would like me to answer every question and respond to every point he has raised. But my role is to look at what I consider is material to the outcome of his complaint. And if I haven't addressed everything he has said that doesn't mean I haven't taken it into account.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

wrongful repossession

I am still of the view that it would not be fair for me to find that VWFS wrongfully repossessed the car. Mr G has asked me to consider a phone call between VWFS and the manufacturer in December 2013. He says it proves that VWFS knew the manufacturer had agreed to buy the car - so when VWFS took the car to auction a few months later it did so without his consent.

But Mr G had written to VWFS in November 2013 to say that the HP agreement "no longer existed". He stopped making payments under it and notified the DVLA that he was no longer the registered keeper of the car. I note, by this time, he had also accepted a replacement vehicle from the manufacturer. And he appears to have consented to the manufacturer taking possession of the car, as it became the registered keeper in December 2013. In the same letter Mr G told VWFS that it should deal with the manufacturer about "the details".

VWFS was the legal owner of the car until the finance was paid off. Mr G and the manufacturer don't appear to have reached an agreement about the outstanding finance because the manufacturer's letter to Mr G of 12 January 2015 says it agreed to "offer" to buy the car - but there was a "difference of opinion" (between the manufacturer and Mr G) on the subject of the outstanding finance. And the manufacturer's position was "that the finance would not be discharged".

So, in all the circumstances here, I don't think it was unreasonable for VWFS to liaise with the manufacturer and remove the car from its premises. And I remain of the view that I can't reasonably find that VWFS should have obtained a court order to recover the car - or that it should refund all of Mr G's finance payments.

loss of use

Mr G didn't have the use of the car between September 2012 and November 2013 so he would like me to require VWFS to refund the monthly payments he made during that time. He says the car was off the road because it was damaged when he took it into the dealer following the manufacturer's recall. And the recall letter confirms that the car had faulty injectors from new - so VWFS supplied a car with an inherent defect and it's liable for the loss of use.

The manufacturer has provided a template of the auto-generated recall letter it sent - which says there's a "potential issue" and the car should be checked. I can see Mr G is frustrated that a copy of the actual letter sent to him can't be provided. But I am not persuaded I need to see that in order to fairly determine this complaint.

There is no dispute that the manufacturer recalled the car or Mr G took it to a dealer where the injectors were replaced. But even if the injectors were faulty at the point of supply, I would have to be satisfied that inherent defect caused the loss of use – or I can't reasonably hold VWFS responsible.

Mr G has provided some extracts from the report of an independent expert he instructed jointly with the dealer in 2013. From the pages I have seen I note the expert says

- Mr G received a recall letter from the manufacturer "advising that his vehicle needed to be taken to a dealership for checks to be carried out to the injectors….and possible replacement"
- The injectors were replaced and when Mr G went to collect the car he was told the turbocharger had failed on a road test after the new injectors were fitted
- The purpose of [the expert's] inspection was to examine the car "with particular reference as to why the turbo charger failed prematurely"
- "it may never be known why the first turbo charger failed during the road test as it was not dismantled and examined so it's not possible to say what fault occurred".

It is regrettable that a complete copy of the expert's report isn't available. Mr G says his copy has been archived and can only be obtained after some delay and at some cost. But he has asked the same expert to consider my comment in the provisional decision that the damage appears unrelated to the recall. Mr G doesn't appear to have sent the expert a copy of the provisional decision, which I think is a pity as it might have been useful for him to have had some more context.

I have considered the expert's reply (in an email dated 12 June 2015). He says *"it was while the vehicle was being road tested that the turbocharger failed, and whether that was directly related to the manner in which the vehicle was being driven is unknown. Whereas the failure of the turbo charger is not directly related to the replacement of the injectors it was a direct result of the car being road tested"*

In a separate email to our adjudicator, Mr G says the car then underwent repairs at another dealer's premises. And he paid for the fitting of a new turbocharger, but it failed the same day. Mr G had those repair costs refunded by the dealer but subsequent engine issues resulted in the instruction of the joint expert, the involvement of the manufacturer and a negotiated settlement in August 2013. I have not been provided with details of that settlement.

In the same email Mr G says he considers the original faulty injectors caused damage to the engine, that he couldn't detect over 5 years and 146,000 miles, which resulted in the turbocharger failing after the new injectors were fitted. I understand why Mr G might have reached that conclusion. But I'm not persuaded, on balance, that the evidence I have seen supports it. And I can't exclude the independent expert's view that the cause of the turbocharger failure is unknown.

Mr G told our adjudicator (in an email on 11 June 2015) that the car "was not roadworthy due to the retailer damaging the engine". I can't say for certain if that's correct. But I'm not persuaded that I can safely conclude that the turbocharger failure was caused by faulty injectors, or any other inherent defect, present at the point of supply.

The expert says the damage was a direct result of the road test. And I appreciate the car would not have been on the road test if it hadn't been recalled. But I don't think that means I can reasonably conclude that faulty injectors caused the damage which resulted in Mr G being unable to use the car. So I can't reasonably find VWFS should be held responsible for his loss of use or fairly require it to refund Mr G's payments for the relevant time.

In my provisional findings I noted that the dealer said Mr G was provided with a courtesy car while his car was off the road between September 2012 and November 2013. Mr G denies this and the dealer hasn't been able to provide any documentary evidence to support what it said. I understand it's important to Mr G that I acknowledge he didn't have a courtesy car.

But I have found VWFS isn't responsible for the fact Mr G couldn't use his car for 14 months. So while I accept it seems unlikely that Mr G was provided with a courtesy car, I don't need to make a finding on the issue here.

incorrect recording of adverse information on Mr G's credit file

Mr G asks me to reconsider this and take into account, in particular, the length of time the incorrect adverse information appeared on his credit history, - from September 2010 and November 2013. I have no doubt Mr G was upset and concerned to find that VWFS reported incorrectly to credit reference agencies during that period. And I can see that he feels I have allowed VWFS to "get away with" those mistakes.

But it's not the role of this service to punish a financial business. I'm satisfied VWFS has acknowledged and rectified its errors. And, in the absence of any evidence that Mr G suffered a financial loss as a result of the incorrect reporting, I remain of the view that there aren't enough grounds here for me to order VWFS to make a compensation payment or do anything further.

obstruction by VWFS and the role of the manufacturer

Mr G also asks me to consider the conduct of VWFS throughout his complaint. He says it has been evasive, uncooperative and obstructive by failing repeatedly to provide documents and information that he considers relevant. He wants me to uphold the complaint because of that.

I appreciate it's been frustrating at times for Mr G that VWFS hasn't produced evidence he wants to see. But that's not unusual in complaints of this sort – especially where third parties are involved and where events occurred some time ago. I am satisfied that I have been able to make a fair and reasonable determination on the evidence available, so I can't reasonably uphold Mr G's complaint on those grounds.

This complaint is against VWFS. And Mr G says I am wrong to take information provided by the manufacturer, and the replacement car it supplied, into account – unless I investigate the manufacturer as well. But, it's not within my remit to look at the actions of the manufacturer to consider whether it has done anything wrong or should take steps to put matters right.

But I am obliged to consider the available evidence - and that may include information from third parties, such as the dealer and manufacturer here. And, whilst I must consider any relevant law, regulations, standards and good industry practice at the relevant time, I am not necessarily bound by them – nor am I bound by the rules of evidence in the same way as a court.

I make my decision based on what's fair and reasonable in all of the circumstances. Having re-considered all of the information and evidence here I see no reason to alter my provisional findings. And I am not persuaded that I can fairly uphold this complaint.

I realise Mr G will be disappointed by my decision. But he doesn't have to accept it. He remains free to pursue the matter by any other means available to him, and a court may take a different view.

my final decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 2 October 2015.

Claire Jackson
ombudsman

copy – provisional decision

complaint

Mr G complains that Volkswagen Financial Services (UK) Limited ("VWFS") wrongfully repossessed a car he acquired under a hire purchase (HP) agreement. And he wants VWFS to refund all of the money he paid under the agreement - and pay compensation for providing a car that wasn't of satisfactory quality and damaging his credit record.

background

In September 2007 Mr G entered into a HP agreement with VWFS for a new car. That agreement was for 36 months with a "balloon" payment due at the end of almost £9,000. In September 2010 Mr G and VWFS agreed that Mr G could refinance the balloon payment under a modified HP agreement. Mr G's rights and obligations are essentially the same under both so, for the purpose of this decision, I shall only refer to "the HP agreement".

In 2012 the manufacturer recalled the car and Mr G took it to a dealer. But the car was damaged while it was there. And Mr G, the dealer and the manufacturer disagreed on how best to proceed. In September 2013 the manufacturer said it would buy the car back and provide Mr G with a replacement. Mr G says the manufacturer also agreed to pay off the HP agreement and compensate him for any loss in the value of the car - because the dealer had damaged it. The car was sold at auction and Mr G got a replacement. But the manufacturer didn't pay off the finance, and VWFS asked Mr G for the shortfall.

Mr G says VWFS knew about his negotiations with the manufacturer. And he didn't end the HP agreement voluntarily, so VWFS shouldn't have taken the car and sold it at auction. Mr G considers this means he's entitled to have all of the money he paid under the HP agreement back. And he says VWFS was wrong to record adverse information against his credit file. So it should compensate him for that - and for the time he was without the car.

VWFS says it wasn't told about the negotiations between Mr G and the manufacturer. And the first it heard about the "buy back" was when Mr G sent a letter on 30 November 2013. It says Mr G ended the HP agreement so it wasn't wrong to arrange for the car to be sold at auction. And Mr G isn't entitled to a refund of any payments in the circumstances. VWFS accepts errors were made in the information it recorded on Mr G's credit file. But it has corrected these and says Mr G didn't suffer any financial loss as a result so it shouldn't have to compensate him.

Our adjudicator recommended the complaint should be upheld in part. He's not satisfied that VWFS needed a court order to take possession of the car - so he says Mr G isn't entitled to have *all* of his payments refunded. But he considers Mr G should have payments he made between September 2012 and October 2013 back - because he couldn't use the car during that time. And he recommends VWFS pay Mr G £150 to compensate him for the trouble and upset he experienced when it wrongly reported adverse data on his credit file.

VWFS and Mr G both disagree.

VWFS says Mr G didn't involve it during the negotiations with the dealer and the manufacturer about recall and repairs. And the dealer provided a courtesy car when the car was off the road. So VWFS shouldn't have to make a refund or pay any compensation.

Mr G says the recall proves VWFS supplied him with a car that wasn't of satisfactory quality. And he didn't consent to the termination of the HP agreement. So VWFS needed a court order to take the car back - and he should have all his instalment payments refunded because it didn't get one. He considers VWFS should pay him considerably more compensation for what happened.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I can see that it must have been very frustrating for Mr G when the car he used was damaged while it was with the dealer. This resulted in a lengthy dispute between Mr G, the manufacturer and the dealer. And I realise Mr G feels very strongly that he has not been treated fairly. He has made very detailed submissions. And I want to reassure him that I have considered all he has said. But I am not required to respond to every point or every question asked. My role is to look at what I consider is material to the outcome of his complaint.

And this complaint arises out of the HP agreement Mr G had with VWFS. So I should explain, for the sake of clarity, that I do not have the power (under the rules of this service) to look at the actions of the manufacturer or the dealer. Our rules require that I should consider (but not necessarily be bound by) any relevant law, regulations, standards and good industry practice at the relevant time. And I make my decision based on what's fair and reasonable in all of the circumstances.

It's not in dispute that the manufacturer agreed to replace the car in 2013. And Mr G arranged for the removal of his cherished registration number and sent the manufacturer the car keys, V5 and associated documents. On 30 November 2013 he wrote to VWFS to "advise" that

- the manufacturer had taken legal ownership of the car;
- as from 30/11/13 the HP agreement "*is no longer in existence";*
- the car was with the manufacturer and would be put through an auction; and
- VWFS should "*deal direct"* with the manufacturer on *"the above details".*

VWFS contacted the manufacturer but it wouldn't pay off the HP. So VWFS asked Mr G to agree to another modified HP agreement on the replacement car he had received. He refused saying the manufacturer was responsible for any outstanding HP payments. VWFS took the view Mr G wanted to end the HP agreement. It collected the car from the manufacturer, sold it at auction and wrote off a shortfall of over £1,000.

Mr G asks me to find now that VWFS's actions amount to unlawful repossession of the car. This is because section 90(1) of the Consumer Credit Act 1974 ("CCA") provides that a hirer such as VWFS must obtain a court order to repossess goods if a customer has already repaid more than one third of the total price.

But a court order is only required if goods are going to be taken back against a customer's wishes. Mr G's letter of 30 November tells VWFS to *"deal direct*" with the manufacturer as it is *"dealing with the whole of the matter*". Mr G also told DVLA that he was no longer the registered keeper of the car. And in early 2014 Mr G wrote to VWFS acknowledging that it was going to sell the car at auction asking for proof of the sale price to be sent on to him. So, I'm not persuaded there was any reason for VWFS to believe that collecting the car from the manufacturer would be considered re-possession or that a court order might be required in the circumstances.

And for me to consider that the car was "protected" under section 90, as Mr G suggests, I have to be satisfied that he was in breach of the HP agreement at the time – and hadn't terminated it already. Under section 99 CCA Mr G was entitled to end the HP agreement at any time. I'm satisfied he should have been aware of that - because there's a notice on the front of his HP agreement telling him he can do so. Mr G had also discussed terminating the agreement with VWFS the previous February - and I note he appears to have had the advice of solicitors throughout.

On 30 November 2013 Mr G wrote and told VWFS that the HP agreement "*is no longer in existence*". He stopped making payments toward it the following month. Mr G is mindful of maintaining a good

credit record. So I find it's unlikely that he would have stopped making payments due, if he had not considered the agreement was at an end.

Mr G has set out in some detail why I should find he didn't consent to a "*voluntary termination*" of the HP agreement. In particular, he draws my attention to a document from VWFS which he says sets out the "*terms and conditions*" required for "*voluntary termination*". Mr G considers he didn't meet them so he couldn't have ended the agreement.

But, the document Mr G refers to is headed *"voluntary termination – facts to remember when discussing VT with the customer"*. And I consider it's no more than a guide used to remind customers, who ask about termination, of obligations they have already under the HP agreement itself. These obligations, if not met, might in certain circumstances allow VWFS to claim compensation. But I can't reasonably find that they prevent a customer from being allowed to end a HP agreement – because section 99 CCA gives consumers the right to terminate simply by giving written notice. It doesn't require any specific words or impose any other requirements.

I am not persuaded that Mr G's letter of 30 November 2013 was ambiguous about ending the HP agreement. But even if I were to find it was, I can't fairly conclude it was unreasonable of VWFS to consider Mr G wanted to exercise his right to terminate under section 99. For VWFS to do otherwise (and seek a court order to take the car back at that time) it would have had to suggest that Mr G had repudiated the HP agreement. And repudiation would have placed him in a worse financial position. So I'm satisfied it wasn't unfair of VWFS to take the view Mr G wanted to end the agreement and recover and sell the car as it did.

Mr G says the car was worth about £4,800 when VWFS auctioned it. And he should be given some of that money because he had agreed with the manufacturer he would be compensated for value lost when the dealer damaged it. I am not persuaded I can reasonably hold VWFS liable for that.

And I can see that the manufacturer gave Mr G a replacement car worth £11,200. I appreciate Mr G contributed £2,000 to the price. But he now owns the replacement car free from finance. So, if I accept that the original vehicle was worth £4,800 when Mr G gave it back, he's still financially better off by over £4,000 because of what happened.

I have found that Mr G terminated the HP agreement. And VWFS wasn't wrong to take the car and sell it - so Mr G isn't entitled to have all of his payments returned under section 90 CCA as he suggests. But Mr G also asks me to consider that he was deprived of the use of the car from September 2012 until November 2013. And he would like me to order VWFS to refund the instalment payments he made during that time - because the manufacturer's recall proves the car wasn't of satisfactory quality when VWFS supplied it to him.

But for me to fairly find that VWFS should refund these payments I must be satisfied not just that the car was sold with a fault present, but also that Mr G wasn't able to use the car because of that. I'm not persuaded I can safely conclude that's the case.

Mr G had driven the car for five years without issue before the recall. He returned it to the dealer in September 2012 so the injectors could be checked. He says these were replaced the same month. But the car wasn't returned to him then, because it was damaged while it was at the dealers. That damage appears unrelated to the recall. And the dealer says Mr G was given a courtesy car throughout. So I'm not persuaded it's fair to hold VWFS responsible for the car being off the road or require it to refund instalment payments for loss of use.

It's not in dispute that VWFS wrongly recorded adverse information against Mr G's credit file. But it has rectified this. And I have seen no evidence that Mr G has suffered any financial loss as a result. I appreciate he may have experienced some inconvenience. But, I do not think there are enough grounds for me to order that VWFS make an additional payment for that. And, in the circumstances overall, I'm not persuaded it would be fair of me to require VWFS to do more.

For the reasons I have given I am not persuaded this complaint should be upheld. I appreciate Mr G's strength of feeling about what happened. And I realise this decision is likely to disappoint him, because it's not the outcome he wanted. But Mr G doesn't have to accept it. He is free to pursue the matter via alternative means and a court may take a different view.

my provisional decision

Subject to any further comments or information I might receive from Mr G or VWFS by 14 May 2015, my provisional decision is that I do not intend to uphold this complaint.