

complaint

Mr C and Miss M complain about problems they've experienced with a used car they bought with finance from Volkswagen Financial Services (UK) Limited.

background

Mr C and Miss M complained to VFS about the problems they were experiencing with their car. And, being unhappy with its response, they complained to this service.

Our investigator thought Mr C and Miss M's complaint should be upheld. She said she thought it was fair for Mr C and Miss M to reject the car. She also said VFS should return their deposit of £3,501, it should refund monthly payments totalling £919.06 and it should pay Mr C and Miss M £200 compensation for any inconvenience they'd been caused.

VFS disagreed with the investigator's conclusions. So, the matter's been referred to me to make a final decision.

I recently issued my provisional findings on this complaint. I said I was minded to conclude Mr C and Miss M had accepted terms put forward by the dealership and VFS in full and final settlement of their complaint, after they'd complained to this service but before our investigator made her recommendations. And, in these circumstances, I was minded to conclude it wouldn't be fair for me to ask VFS to return Mr C and Miss M's deposit or to pay them any additional compensation. So, for these reasons I was minded not to uphold their complaint.

This was different from the investigator's opinion, so I invited both parties to comment and provide any additional evidence for me to consider.

A copy of my provisional decision is attached and forms part of this final decision.

my findings

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

In response to my provisional decision Mr C and Miss M said although they'd accepted the offer to settle their claim in May 2017, they've continued to make payments under their finance agreement. And, since they haven't had the car during that time, they think VFS should return the payments they've made.

After I'd considered this information, I told the parties I was minded to conclude it wouldn't be fair for VFS to keep the payments Mr C and Miss M have made since the agreement to settle their complaint was reached in May 2017. And I invited them to make any further comments they wished me to take into account.

In response, VFS says it was Mr C and Miss M's decision to renege on the agreement they'd made with the dealership. It says they'd accepted the offer in full and final settlement, but they then went to this service. And it says the direct consequence of this is that the dealership wasn't in a position to settle.

So, VFS says it's absolutely fair and reasonable for it not to refund the payments to Mr C and Miss M under these circumstances.

From the information I've seen I'm satisfied an agreement was made between the parties and the dealership in full and final settlement of Mr C and Miss M's complaint in May 2017. And for this reason I don't think it would be fair to VFS for me to require it to pay the more generous terms of settlement of Mr C and Miss M's complaint that were later recommended by our investigator.

But it's also clear Mr C and Miss M haven't had the possession or use of the car since the agreement to settle their complaint was made. This means they haven't had any benefit from it during the several months which have since passed. But they've still been making monthly payments under their finance agreement.

In these circumstances, I think it's fair and reasonable for me to require VFS to refund to Mr C and Miss M the payments they've made under their finance agreement covering the period since the agreement to settle their complaint was made in May 2017.

So, I partly uphold their complaint on this basis.

my final decision

I partly uphold Mr C and Miss M's complaint against Volkswagen Financial Services (UK) Limited. It must refund to Mr C and Miss M the payments they've made under their finance agreement for the period since the agreement to settle their complaint was made May 2017.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss M to accept or reject my decision before 30 October 2017.

Robert Collinson
ombudsman

copy of my provisional decision

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Our investigator thought Mr C and Miss M's complaint should be upheld. She said she thought it was fair for Mr C and Miss M to reject the car. She also said VFS should return their deposit of £3,501, it should refund monthly payments totalling £919.06 and it should pay Mr C and Miss M £200 compensation for any inconvenience they'd been caused.

VFS disagreed with the investigator's conclusions. So, the matter's been referred to me to make a decision.

my provisional findings

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

I'm currently minded not to uphold Mr C and Miss M's complaint and I'll explain why.

Mr C and Miss M say they've been having problems with the brakes on their car locking up while driving. They say they took the car back to the garage three times, but the problem wasn't fixed. So they say they eventually refused to keep the car and the garage made a decision for them to hand it back and walk away with no money in place of the car.

So, Mr C and Miss M say they would like their deposit back and the money for the months the car was in the garage. And they say they would like some compensation for all the trouble they've had.

VFS says after the initial repairs were carried out, the faults Mr C and Miss M complain of have never been diagnosed or replicated by the supplying dealership. It says the dealership offered as a goodwill gesture to take the car back and settle the finance. And it says distress and inconvenience experienced by Mr C and Miss M has already been recognised by VFS to the value of £1,500, despite no fault being found.

VFS also says Mr C and Miss M accepted the offer from the dealership in an email and this was also confirmed in a conversation with the dealership's solicitor. So, it says, they can't now renege on the agreement made.

I've seen an email dated 27 May 2017 in which Miss M discusses arrangements for signing the car registration document and returning the second key. And I see she concludes the email by saying it's confirmation that she and Mr C accept the offer the dealership had put forward. I've also seen an email from the dealership's solicitor dated 6 June 2017. The email refers to a conversation the solicitor says she had with Miss M that afternoon. In the email the solicitor says following that conversation, Miss M was content to accept the money from VFS and the buy back from the dealership 'in full and final settlement'.

In light of the email correspondence I've referred to, I'm currently minded to conclude Mr C and Miss M had accepted the terms put forward by the dealership and VFS in full and final settlement of their complaint, after they'd complained to this service but before our investigator made her recommendations.

And, in these circumstances, I'm minded to conclude it wouldn't be fair for me to ask VFS to return Mr C and Miss M's deposit or to pay them any additional compensation.

So, for these reasons I'm minded not to uphold their complaint.

my provisional decision

For the reasons set out above, but subject to both parties' responses to this provisional decision, I'm currently minded not to uphold Mr C and Miss M's complaint against Volkswagen Financial Services (UK) Limited.

Robert Collinson
ombudsman