

complaint

Mr W complains that Volkswagen Financial Services (UK) Limited (trading as Audi Finance) supplied a faulty car and the cost of the car was mis-represented when he took out finance for a replacement.

background

In 2014 Mr W had problems with a car he acquired with a hire purchase agreement (HP) from Audi Finance. The dealer offered to buy the car back, settle the HP agreement and put Mr W into another car. Mr W accepted the offer and the second car was financed with HP from Audi Finance as well. The dealer told Mr W he had to pay nearly £800 more for the second car because it had a higher specification than the car it replaced. Mr W says he never asked for that. And Audi Finance should refund the payment - along with compensation and about £1,200 from his first finance agreement for providing a faulty car.

Audi Finance says there was nothing wrong with the first car. And Mr W reached an agreement with the dealer without Audi Finance - and the dealer kept him mobile throughout. So Mr W isn't entitled to an instalments refund. It considers he agreed to the dealer's terms for the replacement car, including the extra payment, so Audi Finance shouldn't be held liable for that.

Our adjudicator's not persuaded Mr W is entitled to a refund under the first finance agreement. But she's satisfied he was told the extra payment was due because the second car had a higher specification. And the dealer later said only about £100 was for an upgrade option Mr W requested – whereas the balance of £685.48 was for "usage" of the first car. So our adjudicator thinks it likely that £685.48 payment was misrepresented. And Mr W wouldn't have made it if he hadn't been told the money was for the second car. She recommends Audi Finance should refund it now.

Audi Finance disagrees. It says, in summary, Mr W accepted the resolution suggested by the dealer before he even complained to Audi Finance - so it's not responsible for that. And Mr W paid the £685.48 to the dealer so Audi Finance shouldn't have to give him a refund.

my findings

I've considered all the available evidence and arguments to decide what's 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 have reached the same conclusions as our adjudicator for much the same reasons.

Mr W accepts our adjudicator's recommendation. So all that remains for me to decide is whether Audi Finance should refund the £685.48. I appreciate Audi Finance considers it's not liable for that and I have considered carefully everything the business has said.

I'm satisfied Mr W has a clear and credible recollection that the dealer told him he needed to pay almost £800 more for the second car. In June this year Audi Finance told our adjudicator that payment was required because the second car had a higher specification than the first - so Mr W was put in a better position and asked to make a contribution.

Since then the dealer has confirmed only part of the payment was for the second car. And £685.48 was for Mr W's use of the first car. I'm not persuaded that's what he was told when he was asked for the payment. I'm satisfied the dealer said the additional money was for the second car - but only part of it actually was. So I find the payment of £685.48 was misrepresented. And I think it unlikely, on balance, that Mr W would have made the payment if it hadn't been.

Section 56 of the Consumer Credit Act 1974 effectively makes a provider of finance responsible for negotiations conducted by a credit broker. So I consider VSF may be held liable if the dealer that brokered Mr W's second HP agreement misrepresented it.

I'm satisfied Mr W agreed to make the payment during antecedent negotiations about the supply and finance of the second car. I have found he was told it was for the second car's improved specification (not the use of the first car) so it was misrepresented. And I agree with our adjudicator it's fair that Audi Finance should refund £685.48 to Mr W in the circumstances.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement I require Volkswagen Financial Services (UK) Limited (trading as Audi Finance) to pay Mr W £685.48.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 December 2015.

Claire Jackson
ombudsman