

The complaint

Ms C says that she was pressured into taking out a finance agreement with Volkswagen Financial Services (UK) Limited (VWFS) and that she should not therefore be bound by it.

What happened

In June 2020 Ms C entered into a three-year hire agreement for a new van. Under the agreement she was to make an advance rental payment of £2,400, followed by 32 monthly payments of £396.14, the first payable four months after the van had been registered.

Soon after she collected the van Ms C says she tried to end the hire agreement. She explained that she had been persuaded by her then partner to take it out, but that the van had been for his use. He had also persuaded her to sell her own car. She was, she said, in an abusive relationship and had not wanted to take out the hire agreement. VWFS ought to have been aware of this; she had explained that the van was not for her use and had tried to delay completion of the agreement.

Ms C referred the matter to this service and one of our investigators considered it. Having done so, she recommended that VWFS end the hire agreement at no further cost to Ms C, refund the payments already made, with interest, refund the advance payment and pay Ms C £300 in recognition of the distress and inconvenience caused.

VWFS agreed that it was right that the agreement should be brought to an end. It queried however why Ms C had waited until the agreement had been signed to mention her concerns. It had offered to end the agreement and accept a lower settlement figure than that set out in the agreement. It also said that some allowance should be made for the use of the vehicle.

Because VWFS and Ms C had been unable to agree the exact terms on which the dispute should be resolved, the case was passed to me to consider.

I accepted that Ms C's partner had exercised undue influence over her to force her to enter into the hire agreement. I also thought the circumstances in which she signed the agreement were such that VWFS was on notice of the likelihood of undue influence. It should have taken steps to ensure that Ms C was acting of her own volition but did not do so. I noted that Ms C had told VWFS very soon after she signed the agreement what had happened.

VWFS had, as I say, accepted that the agreement should be brought to an end. It said however that some allowance should be made for the use of the van. I agreed and suggested that this be based on the excess mileage rate in the hire agreement. My provisional decision was therefore that VWFS should:

- end the hire agreement at no cost to Ms C;
- arrange for collection of the van;
- refund the total monthly payments made by Ms C, as well as the advance payment of £2,400;

- pay interest on the refunds at 8% a year;
- pay Ms C £300 in recognition of the distress she had suffered and the inconvenience to which she had been put; and
- amend Ms C's credit file as appropriate.

To reflect the use of the van VWFS could, if it wished, deduct a figure based on the excess mileage rate in the hire agreement.

Ms C was broadly in agreement with the recommendations in my provisional decision. I understand that the van has now been collected and that Ms C's credit file has been amended. VWFS made some further observations in response to my provisional decision. It said:

- Based on the recommendation in my provisional decision, a figure of just over £500 would reflect the use of the van by reference to its mileage.
- The advance payment of £2,400 included £1,000 paid by the dealership.
- The van had some damage and needed cleaning, but it was prepared to reduce the fee it would have otherwise charged from around £315 to £100.
- Ms C had not made any payments for several months.

What I've decided – and why

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

Those circumstances here are rather unusual and accordingly my findings here are specific to the facts of this complaint.

As far as the advance payment is concerned, I note that Ms C is unsure exactly what she paid. Some of the deposit – which was not all paid at one time – was paid in cash. I think it likely however that the figures provided by the dealership and VWFS are correct and that the advance payment paid by Ms C was £1,400.

I have seen a copy of the inspection report prepared when the van was returned, and there is some damage. I agree that it would not be fair to hold Ms C liable for all damage and cleaning costs and that a reduction to £100 is fair in the circumstances.

The main issue that VWFS has raised however is that of refunds of monthly payments. VWFS says that there are arrears from April 2020. That cannot be right, however, since the agreement was not signed until June 2020. For the avoidance of doubt, however, I believe that VWFS should (i) refund to Ms C any monthly payments that have actually been made and (ii) agree to not to pursue her for any that have not been made. I believe any use of the van is best reflected in the way I indicated in my provisional decision.

My final decision

For these reasons my final decision is that, to resolve this complaint in full, Volkswagen Financial Services (UK) Limited should (to the extent it has not already done so):

- end the hire agreement at no further cost to Ms C;
- arrange for collection of the van at no cost to Ms C;
- refund the total monthly payments made by Ms C;

- refund the advance payment of £1,400 made by Ms C;
- pay interest on the on the monthly payments and advance payment at 8% a year simple from the date of payment to the date of the refund;
- pay Ms C £300 in recognition of the distress she has suffered and the inconvenience to which she has been put; and
- amend Ms C's credit file as appropriate.

To reflect the use of the van and some of the damage to it, Volkswagen Financial Services (UK) Limited may, if it wishes, deduct £600 from the sums above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 2 July 2021.

Mike Ingram
Ombudsman