

The complaint

Mr P complains about being invoiced by Volkswagen Financial Services (UK) Limited (“VWFS”) £331.17 (reduced from £662.34) following his decision to purchase a car that had previously been on hire to him.

Any reference to VWFS includes any agents acting on its behalf.

What happened

In September 2019 Mr P entered into an agreement with VWFS for the hire of a car.

In September 2023 VWFS allowed Mr P to purchase the car for £11,250.00.

In October 2023 VWFS invoiced Mr P £662.34 broken down as follows:

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| • miles on the odometer at the time of purchase by Mr P | 51,258 |
| • allowable mileage under the agreement | 40,219 |
| • excess mileage | 11,039 |
| • mileage charge (inclusive of VAT) | 6 pence |
| • 11,039 miles x 6 pence | £662.34 |

In November 2023, and after Mr P had complained, VWFS raised a credit note (in respect of its excess mileage charge) leaving a balance outstanding and payable by Mr P of £331.17.

In November 2023 Mr P paid VWFS £331.17 clearing the excess mileage charge VWFS says was payable by him.

In November 2023 Mr P complained to our service about having to pay VWFS £331.17 for excess mileage.

Mr P’s complaint was considered by one of our investigators who came to the view that VWFS had done nothing wrong.

Mr P didn’t agree with the investigator’s view, so his complaint has been passed to me for review and decision.

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.

I've read the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point or particular piece of evidence, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome. And our rules allow me to do this, this reflects our informal, free service as an alternative to the courts.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I would also add that I'm satisfied that Mr P has had sufficient time to provide everything he would like to be taken into account and to point out that each case is considered on its own facts and merits. In other words, I'm not bound by what our service might have concluded on what a consumer might consider to be a similar complaint or what a business might have done itself in respect of other customers with similar complaints.

Mr P submits that he was advised by VWFS that if he was to purchase the car there would be nothing further to pay including, but not restricted to, an excess mileage charge.

But the problem for Mr P is that notwithstanding it's very difficult for me to be able to say, with any certainty, what he might have been advised (if anything) by VWFS before he agreed to purchase the car (particularly in the absence of call recordings) he didn't 'contract' purely on such advice. He also entered into a 'written contract' to purchase the car which states, quite clearly in my view, that he remained liable for and accepted liability for any "*outstanding rentals and/or early termination or **excess mileage charges as outlined within [the] agreement...***" [my emphasis]. So I'm not persuaded that Mr P was misadvised as he submits.

But even if I was of the view that Mr P was misadvised as he submits I'm still not persuaded that it would be fair or reasonable for me to conclude that VWFS should refund the excess mileage charge Mr P has paid.

Where someone has acted in reliance on (incorrect) advice given, the appropriate remedy isn't to put them in the position they would be in if the (incorrect) advice had been true, but in the position they would be in if the (incorrect) advice hadn't been given in the first place.

Had Mr P been aware that on agreeing to purchase the car he would still be liable to pay VWFS an excess mileage charge he would have, in my view, done one of two things. Gone ahead and purchased the car and paid VWFS the excess mileage charge or returned the car to VWFS, paid it the excess mileage charge (and any damage charge) and purchased a 'new' car elsewhere in the market for a similar or slightly smaller sum than £11,250.00.

I accept I can't say for certain what option Mr P would have taken but considering everything he has said and submitted I'm satisfied that he would have still gone ahead and purchased the car rather than return it. I say this for a number of reasons including, but not restricted to, the fact that the purchase price agreed of £11,250 had been discounted to reflect the excess mileage, the excess mileage charge represents just a 6% additional cost, purchasing the car meant Mr P was saved the inconvenience of having to search the market for an alternative and the car Mr P purchased was well known to him.

In other words even had Mr P not been misadvised as he submits I'm simply not persuaded he would have done anything differently.

I appreciate Mr P will be disappointed by my decision. But in summary I'm satisfied that VWFS need do nothing further in the particular circumstances of this case.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 30 July 2024.

Peter Cook
Ombudsman