

The complaint

Mrs S complains about a hire purchase agreement by Volkswagen Financial Services (UK) Limited trading as Porsche Financial Services (“VWFS”).

What happened

In September 2022 Mrs S acquired a used car using a hire purchase agreement from VWFS. The term of the agreement was forty-eight months. In July 2023, Mrs S wanted to end her agreement early. VWFS gave her a settlement figure of £28,203.95.

Mrs S was concerned about this and complained to VWFS. She said in summary, that the settlement amount was too high, it was out of proportion to the APR and it wasn't what she had expected. She said the dealership also hadn't made things clear to her when she entered into the agreement, and she'd been rushed to complete paperwork. In addition VWFS needed to refund a monthly payment to Mrs S, and she complained it took it eleven days for it to do so, which left her short of funds.

On 16 August 2023 VWFS sent its final decision to Mrs S. It apologised for the delay in refunding the monthly repayment. It offered her £100 as a gesture of goodwill. In relation to the settlement amount, it said that it charged her an extra fifty-eight days of interest. It also said that the loan was arranged so that closer to the start of the agreement a higher proportion of the monthly repayments went towards the interest, and as the agreement progressed, a higher proportion of the monthly payments was allocated towards the original amount borrowed.

Mrs S still had concerns so she complained to us. Our investigator issued an opinion. She said that, in summary, for the eleven-day delay, she thought the offer of £100 was reasonable. She said that the fifty-eight days' interest calculated by VWFS was allowed by legislation. In addition she said that the calculation for generating settlement figures was a complex formula that was built into systems. She suggested Mrs S raise it with VWFS if she needed clarification or a more detailed response.

Mrs S responded and told us that –in relation to the issue of the delay in receiving her refund – she was content with the offer of £100. She told us that she was still unhappy about the other issues which were separate to this. So the complaint has been passed to me to decide.

I issued a provisional decision on this complaint on 14 June 2024. In this I said:

I've looked at this complaint on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence. Having done so, I think that the offer of £100 is fair and reasonable in all the circumstances. I'll explain why.

Mrs S complains about a hire purchase agreement. Entering into consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mrs S's complaint against VWFS.

When considering what's fair and reasonable, I take into account relevant law, regulation and guidance. Section 56 of the Consumer Credit Act 1974 is relevant to this complaint. This explains under certain circumstances that a finance provider is liable for what is said or done by a credit broker before an agreement is entered into. Here, this means I'm satisfied I can consider what Mrs S says she was told by the dealer, in its capacity as credit broker, about the finance as part of her complaint about VWFS.

Mrs S has complained to us that her loan was amortised and the repayment towards the interest was front loaded. She told us it wasn't what she understood when she took out the loan. She told us that she wouldn't have taken out the loan if it had been made clear to her at the time because she intended to pay off the finance early. So I've looked carefully at what her loan needs were and what information she was given at the time of the sale.

The agreement was set up to run for four years, so first of all, I've looked at what the agreement says about early repayment.

" 7 Early Repayment

7.1 You have a right at any time to make early repayment. To do so, you should give us notice, and pay us some or all of the sums payable by you before you are obliged to do so under the terms of this Agreement. The payment should be made before the end of the period of 28 days, beginning with the day following the day that we receive your notice, or on or before any later date specified in your notice.

7.2 Any such repayment will be applied first to discharge the sums which have already fallen due under this Agreement. The balance will then be applied to discharge your indebtedness under this agreement by the amount paid and any applicable statutory rebate."

Section 7.2 doesn't provide finer details about the calculations of interest and early repayment, but it does make the following clear; that repayments are applied firstly to sums already falling due and only afterward to indebtedness. It also mentions a statutory rebate. There's no indication that it's possible to pay off the finance early without any costs or penalty. There are practical limits to the amount of information that can be included in a credit agreement or explanatory paperwork. In this case the agreement contained some relevant clear information.

Looking at this, I think it's most likely that if Mrs S intended to end the agreement early, she would have asked some questions about these early repayment sections of the agreement. For example, she would have asked about the reference to payments being apportioned first to sums falling due, rather than her indebtedness. Or asked about any applicable statutory rebate. I think it's most likely she would have wanted more information or details about these matters and so she would have asked for some. The information currently available doesn't persuade me that she did this.

Mrs S has told us she can't be expected to understand complex legislation, and I agree. But I would think it's logical and most likely that she would have asked some basic questions, which would have led to information she could understand. So this makes me think it's most probable that it wasn't her intention to settle the finance early at the time of the sale.

Next, I've looked at some of the other paperwork and emails that are available. Mrs S was given a one-page checklist that highlighted certain areas of information relating to the financial agreement. There were boxes next to each point and space for the consumer's signature. This document stated:

"You were provided with specific information to help you assess whether the finance agreement is suitable for your needs and financial situation. Before signing the finance agreement we would ask that you read the points below and then tick the boxes to confirm

the information has been provided to you verbally. If you are happy to proceed please sign at the foot of the page.”

Now Mrs S has informed us that when she received this checklist the boxes were already ticked and she signed it. But even with the boxes ticked, she still made the decision to sign. On balance, I don't think it's likely Mrs S would have signed unless she'd had enough information. This makes me think that it's more likely she wasn't intending to settle early at this time.

Next I've considered that Mrs S told us that she was rushed by the dealership. But we've been provided with a copy of an email from them, where it expressly states that there's no rush. It says as follows:

“Friday is probably better for everyone? No rushing about then. Gives me more time to try to assign your private number etc.”

In my view this clearly doesn't indicate an attitude of pressuring Mrs S. If anything it indicates the opposite. It was clearly open to her to ask questions. In addition, from the information currently available, it looks like Mrs S didn't attend the dealership herself at the time of the sale. She's told us her husband brought documents home for her. But the above email makes clear a) there was no rush and b) she could have emailed the dealership with questions if she wanted to. So overall, I'm satisfied that it's unlikely Mrs S was unduly rushed or dissuaded from asking questions. And I'm also satisfied that at this time it likely wasn't a priority for Mrs S to settle the loan early.

Next, Mrs S complained that the additional fifty-eight days' interest wasn't part of the agreement. But it is a permitted part of the calculation; the fifty-eight days is set out in UK law [the Consumer Credit (Early Settlement) Regulations 2004]. I can understand Mrs S's frustration. She told us that in the past she has had finance agreements which weren't calculated in this way. But I don't think it was reasonable for her to assume this particular agreement would work that way, if that was an assumption she made. The fifty-eight days' interest provision can be – and is – applied by many lenders. Moreover, section 7 of the agreement said that any relevant statutory rebate would be applied, and the rebate in Mrs S's loan was calculated using the statutory rebate in the Consumer Credit (Early Settlement) Regulations 2004. So information about the rebate was in the agreement, and as I've mentioned above, Mrs S could have asked about this.

Mrs S told us that she thinks the dealership would have known she wanted to settle the finance early, because she was doing the same with her previous vehicle. But there's no sign of this conversation in the emails provided. In addition, I wouldn't necessarily expect the dealership to be able to know Mrs S' intentions for the future, from her trading in another car before the end of that agreement.

Next, as I understand it Mrs S is also complaining about the amount of interest she's been charged. But I've not seen anything in the available information to make me think that this has been calculated incorrectly or wrongly. Moreover I haven't seen anything to suggest that Mrs S's rebate hasn't been properly calculated using the Consumer Credit (Early Settlement) Regulations 2004. The formula which is used for this calculation – for Mrs S's information, should she want to check it – is available online at www.legislation.gov.uk, it is regulation 4 of the Consumer Credit (Early Settlement) Regulations 2004.

Finally, Mrs S said that the delay in receiving her refund left her short of funds. VWFS accepted there had been an avoidable delay in Mrs S getting her refund. It offered its apology and £100 for this. In terms of putting things right, I'm satisfied this apology and the amount is within the range of what's fair to reflect what happened. In addition Mrs S told us that she's content with this. From the information available it seems likely that it hasn't been paid yet. So for the sake of clarity, I've set out below that VWFS should pay the £100 to her.

Overall, having considered the information in this complaint, I don't think it would be fair or reasonable to direct VWFS to do anything more.

My provisional decision

I intend to partially uphold this complaint and – if it hasn't been paid already - to direct that Volkswagen Financial Services (UK) Limited pay Mrs S £100.

I asked the parties for their comments in response to this provisional decision. VWFS didn't reply. Mrs S replied and provided us with further information.

In summary, Mrs S told us that she didn't attend the dealership was because it was a five-hour drive away from her home. She told us that she felt the dealership had been disingenuous. She told us that she had to chase the dealership, and when she did so, they informed her that the system was down and that the finance documents would not be available until 20 September 2022. She had intended to collect the car on 21 September, but this gave her insufficient time to consider the documents and change the insurance. As a result she requested that the dealership push the collection date back to 23 September. So, in relation to the email which she previously supplied to us; where the dealership said there would be "no rushing around" Mrs S said that in fact the dealership was not being helpful by giving her more time to check everything; that email only arose because *she* had asked the dealership to push back the collection date.

She also told us that she could:

"evidence ownership of new vehicles each year dating back to 2005, barring a slight blip during 21/22 with covid, which would back-up that this was very much a likely outcome for me to have carried out, and in fact did."

Mrs S told us that she has regularly settled numerous finance agreements early for about nine years. She gave us one example where in August 2023 she sold the car which is the subject of this complaint, then obtained a Lexus with a finance agreement, which she then sold in April 2024. And following that she obtained another new car.

Mrs S also sent us several more emails which shed further light on the communication she had with the dealership. In one email she asked the dealership the following:

"Can you please send me the full breakdown of figures before I send this back to you, just so I can check what we are paying across and the finance settlement figures."

I can see Mrs S thinks the email was a clear query, but I'm afraid I can't agree. I'm satisfied that it's not likely this would have been thought by the dealership to relate to early settlement. If anything I think it's highly likely the dealership would have taken this to be about the balloon payment and settlement at the end of the agreement. That would be the usual meaning of the phrase "finance settlement figures."

In addition, Mrs S told us about phone conversations she had with the dealership to arrange additional matters. In one such conversation with the general manager of the dealership she recalls speaking about trading in her previous vehicle. She also told us that during the conversation she told him she intended to keep the car only for about a year, in order to next obtain a 2023/73 plate car. (These cars were delayed due to the Covid-19 pandemic.) She recalls he commented on how unusual it was.

I must be satisfied on the balance of probabilities that when this conversation took place it was clear. Based on all the information that's been given to us, I don't think it's likely that it was. I must bear in mind that memories fade over time. But even the email – which Mrs S told us clearly states her desire for information about early settlement – reads as if it refers to the balloon payment.

In relation to what Mr S has told us about not having enough time to consider things, I understand what Mrs S has told us; it was at her request the collection date was moved back by the dealership. I agree it was far from ideal that the system was down and the finance documents delayed. But what happened next doesn't indicate a failing on the part of the dealership. Ultimately Mrs S asked for more time and the dealership went along with that request. This isn't suggestive of pressure. And I'm still of the view that the tone of the response sent by the dealership doesn't indicate an attitude of pressure either, or of rushing Mrs S to make a decision.

Next, I wrote to both parties in the above terms and asked for their responses. VWFS told us it had nothing further to add. Mrs S didn't respond.

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 considered the additional information and emails Mrs S sent us. I can see she has a preference for ending hire agreements early. I understand she's disappointed with this agreement. However I need to be satisfied on the balance of probabilities that she let the dealership know about her intentions. I've also reconsidered the early settlement information that was in the agreement. Overall in this complaint there's a lack of clear information about questions Mrs S asked. Looking at everything in the round I think it's most likely the dealership wouldn't have known what Mrs S was going to do, and I don't think it's likely that it knew that Mrs S needed more information about early settlement, over and above what was contained in the agreement.

On balance I still consider the outcome I explained in the provisional decision to be fair and reasonable for the reasons stated above.

Putting things right

Volkswagen Financial Services (UK) Limited needs to put things right in accordance with my direction below.

My final decision

For the reasons given above, I'm partially upholding this complaint. If it hasn't been paid already, Volkswagen Financial Services (UK) Limited should pay Mrs S £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 12 August 2024.

Katrina Hyde
Ombudsman