

## **The complaint**

Mr P has complained that the servicing arrangements for his new car were misrepresented by Vertu Motors (VMC) Limited ("Vertu") and that this induced him into taking out a contract hire agreement for that particular car.

## **What happened**

Mr P acquired a new Audi in September 2019, using a consumer hire agreement over a 36-month term. The advance rental was £2,174.16, followed by 35 payments of £296.40. The agreement didn't cover servicing or other maintenance costs, and the annual mileage limit was set at 10,000.

Mr P said he was told that the car would require servicing every 18,000 miles or two years, whichever comes sooner. However the car required servicing at 9,300 miles and 15 months and again at 14,000 miles and 23 months. He said he chose that specific car and the terms of finance on the basis of the car having an extended servicing regime, which in fact it did not have. Those negotiations and discussions were conducted with Vertu.

Mr P complained to Vertu, raising the Misrepresentation Act 1967. Vertu disagreed on this point, but made a goodwill offer of a refund of the additional service costs Mr P had had to pay, as against what he had expected to pay. Vertu had already refunded £250 in this respect, but offered to refund a further £225.

Mr P was unhappy about this, and brought his complaint to this service. He thinks that Vertu should refund the advance rental payment of £2,174.16.

Our investigator looked into Mr P's complaint, but concluded that Vertu's offer of recompense was fair and reasonable, and therefore the complaint should not be upheld. Mr P disagreed, and asked that his complaint be referred to an ombudsman.

I should also say at this point that this service has separately considered a complaint about this matter against the finance company, and another ombudsman decided that it should not be upheld. This complaint relates only to Vertu's involvement in the transaction.

I issued a provisional decision in June 2023, in which I explained that I agreed with our investigator that the complaint should not be upheld, albeit for slightly different reasons. Vertu responded to say that it agreed with my conclusions. Mr P said he did not agree with my provisional decision, and raised a number of points which I have set out below.

## **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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time.

Having carefully considered all of the evidence, I've decided not to uphold Mr P's complaint. I'll explain why.

In my provisional decision, I set out my reasoning as follows:

*"Mr P sent in a very comprehensive set of documentation relating to this complaint, including correspondence with Vertu and the manufacturer and finance company. I have not referenced every document, but I have read and considered them all. Vertu also provided relevant documents.*

*The consumer hire agreement included the following clause "You agree to.....make sure that the Vehicle is serviced and maintained strictly in line with the manufacturer's recommendations and that scheduled servicing and necessary maintenance is carried out only by authorised Audi dealers."*

*The "Key Information Responsibilities" document from the finance company also said "Servicing....Ensure the vehicle is serviced in accordance with the manufacturer's recommended intervals by an Audi Centre. You are responsible for any damage not deemed to be fair wear and tear."*

*As I noted above, the agreement didn't cover servicing or other maintenance costs, although I can see from the documentation provided that Mr P could have chosen to pay an additional monthly payment to include them.*

*It seems there were two types of service schedule available – Mr P sent in screenshots of the manufacturer's website which showed these as fixed (every 9,300 miles or one year, whichever comes sooner) and flexible (up to 18,600 miles or two years, whichever comes sooner). I can see that Mr P has been in correspondence with the manufacturer about the presentation of the servicing information, but as I am only considering Vertu's involvement I will make no further comment about that.*

*However, it also appears that no discussion about which was most appropriate took place, and it is not in dispute that Mr P wasn't given full information about the service schedule, and understood that the flexible service schedule applied. So he was expecting to have to have the car serviced once during the life of the hire agreement, but as I noted above, it required servicing on two occasions.*

*Mr P said that the finance agreement was misrepresented by Vertu, and Vertu should have afforded him the opportunity to make a fully informed decision, in full and transparent receipt of accurate facts, that best suited his individual circumstances, when he was thinking of entering into that financial contract.*

*He further said that, in order to acquire the Audi at a similar (but still higher) monthly payment than an equivalent similar car, he had to increase the initial payment from three times the monthly lease payment to the equivalent of six times the monthly lease payment, and take the car over a three-year term as opposed to a two-year term, and he would not have made those decisions had he not believed the Audi to have had a service interval of "every 18,000 miles or two years, whichever comes sooner". Instead, he said, he would likely have chosen a less premium make of car, with a lower initial lease payment and lower monthly payments, a payment profile based on three months' initial payment as opposed to six months, and gone for a two-year term of agreement as opposed to a three-year term, thus reducing the total value of the contract by around a third.*

*In terms of misrepresentation, I need to consider whether a false statement of fact has been made, and whether this false statement induced Mr P to enter into the agreement.*

*Having considered all of the evidence very carefully, I am not satisfied that Vertu misrepresented the finance contract. I say this because the contract only stipulated that the car be serviced in line with the manufacturer's recommendations – it did not set out the servicing schedule (and indeed the servicing requirements might conceivably change over the life of an agreement if the driver were to change their pattern of use). So I can see no evidence of a false statement of fact in relation to the finance agreement.*

*Even if I were to consider that the agreement was misrepresented in relation to the service schedule, I am not persuaded that that, in itself, induced Mr P to enter into it. I note that, in Mr P's original complaint to Vertu, he said the main factor in deciding on the Audi was the absence of driver-aid technology, which he didn't ideally want, but which came as standard on the other make and models of car that he had been considering (and one of the alternatives had also been subject to production delays). Additionally, the saving on service costs that he was expecting to make was quite small, relative to the overall cost of the contract, and wouldn't have offset the difference in costs between this contract and the alternative that he said he would otherwise have chosen. So I don't think the servicing costs were the deciding factor. So on balance I consider it most likely that Mr P would have gone ahead with the Audi even if he had been fully informed about the servicing schedule.*

*I appreciate that Mr P feels very strongly about this, but in summary, I currently consider that Vertu's offer of £475 in refund of the additional service costs is fair and reasonable in the circumstances, as it puts Mr P in the position he expected to be in when he acquired the car. So I don't propose to ask Vertu to do anything more."*

As I noted above, Mr P raised a number of points in response to my provisional decision. I have summarised his comments below, but as with the other evidence provided by Mr P and Vertu, I have read and considered all of the points he made.

Firstly, Mr P said that, under the Misrepresentation Act 1967, redress would usually put the consumer back in the position they were in before any misrepresentation occurred. As such, he sought to have the agreement nullified with the return of £13,209.76 plus statutory interest, but in response to Vertu's additional goodwill offer, he had offered to settle the matter for £2,174.16 before referring the complaint to this service. As Vertu rejected that proposal, he wanted the agreement to be nullified.

Secondly, Mr P felt that I had not fully reflected his grounds for complaint in my provisional decision, and that his complaint was one of misrepresentation and was three-fold:

- During pre-contract enquiries, he was advised that the car would require servicing every 18,000 miles or two years, whichever came first. However, the actual service interval was around half of that, and that claim amounted to a false statement of fact. He believes this claim amounts to misrepresentation; both of the finance agreement and of the vehicle supplied by Vertu under that agreement.
- Separately, the car supplied was not as described by the manufacturer, which, at that time (although now substantially amended), also claimed a service interval of up to 18,000 miles or two-years, whichever came first.
- No discussion took place about which servicing regime would be the most appropriate for Mr P's needs. As such, an opportunity was missed to identify or correct the misinformation that he had previously been given.

Mr P believes the three aspects of his complaint, taken together, amount to significant 'negligent misrepresentation' under the Misrepresentation Act 1967. He said the false statements of fact given in relation to servicing and maintenance requirements influenced his decision to acquire the Audi, and were the main factor in his decision to acquire that car on three-year, as opposed to two-year, finance terms.

Mr P also argued that my provisional decision didn't reflect the body of evidence to support his complaint that Vertu misrepresented both the finance contract and the car. He said that our investigator, in her view, had said that Mr P had "provided a wealth of evidence that demonstrates his position that the service requirements of the car weren't clear to him at the point of sale". While the written contract stipulates only that the car was required to be serviced in-line with the manufacturer's recommendations, Mr P said he was complaining that Vertu misrepresented those manufacturers recommendations during pre-contract conversations and negotiations and subsequently failed to qualify his servicing needs when supplying the car, would have afforded Vertu the opportunity to address or correct the misleading information given.

Mr P further asked that particular consideration be given to the following:

- Throughout, he had consistently explained how the information about the servicing requirements came from, and was repeated by, multiple sources at various times before and after he had entered into the agreement.
- In Mr P's earlier complaint about the finance provider, another ombudsman at this service said that she thought it was more likely than not that it was the supplying dealership that had both provided information, and dealt with his enquiries about, the car's performance, maintenance and service requirements, and also said that although she was satisfied that the finance provider didn't misrepresent anything to Mr P regarding the car, that didn't extinguish any rights he may have against the dealership as provided for by the Misrepresentation Act 1967. Mr P thought there was a difference of opinion in respect of the assessment of the evidence made by the other ombudsman.
- Mr P said he made twenty-eight 'mystery shopper' type calls to a range of Audi dealerships, which revealed failures in understanding and/or communicating the service regimes applied to Audi cars, consistent with his experience with Vertu. Mr P offered to provide recordings of these calls.
- Mr P said he had had referred his concerns to the Financial Conduct Authority, which said that whilst servicing regimes applied to vehicles is outside of its remit, it did have jurisdiction over financing agreements offered on PCP and PCH arrangements and noted that "We expect firms to communicate information in a way which is clear, fair and not misleading (PRIN 7) and adhere to CONC 4.2, Pre-contract disclosure and adequate explanations". He said the FCA reply recognised that clarity provided in respect of servicing options "could ultimately influence a consumers choice of credit". Mr P considers that failures by Vertu that he is complaining about would be covered by the above provisions.
- Mr P thought that this service may be concerned about the wider implications in relation to the manufacturer should his complaint be upheld. He noted that the manufacturer had made a number of changes with regard to the communication of servicing information through its dealership network following his complaint to it.
- He considers that the servicing arrangements as described by Vertu mean that the car was not as described by the manufacturer or Vertu.

Mr P also said that his circumstances and pattern of use did not change, and the suggestion it might have has not been raised previously by either Vertu or the finance provider in response to his complaints. And he made his decisions based on his circumstances at the time.

With regard to my comments in my provisional decision on the factors affecting his choice of car, Mr P seems to agree that based on the information that was available at the time, the main factor in his decision to opt for the Audi was the absence of driver-aid technology. But he said that the information available at the time about the Audi, notably about its servicing requirements and maintenance costs, proved to be substantially wrong and misrepresented, and his decision was a marginal one. For that reason he feels strongly about being misled in respect of the car's servicing and maintenance requirements, and not being given the opportunity to make a fully informed decision.

Mr P has reiterated that the misinformation about servicing and maintenance requirements not only influenced his choice of car, but more so induced him into structuring the financial terms (deposit and contract duration) of the agreement to acquire the Audi. And he said that as a result of COVID-19 and supply chain issues, throughout 2021 and 2022 the availability of new cars was severely affected, delivery lead-times surged, prices increased, and lease deals became more scarce. So he was in a much worse position having taken a three-year deal rather than his usual two-year deal. He also feels he took on additional financial risk in order to acquire the Audi, with the apparently extended service interval the main factor in arriving at the decision to take on that risk. Mr P sent in copies of previous agreements to confirm his usual choice of two-year contracts.

Although Mr P accepted that the cost savings on servicing and maintenance that he expected to make were modest, relative to the overall cost of the contract, he said that he assessed that the saving was proportionately larger when compared to the deposit outlay. So he increased his initial payment to achieve a comparable, but still higher, monthly lease payment for the Audi than was the case for the other cars under consideration.

Having considered all of the points raised by Mr P, I firstly need to make clear that I am only looking at Vertu's actions in relation to the supply of the car. So although I note that Mr P has carried out a wide-ranging 'mystery shopping' exercise, those calls do not relate to Vertu so do not provide evidence about what Vertu did in this particular transaction. They seem to indicate that the manufacturer's information about servicing was not necessarily clearly understood, and I can see that the manufacturer has improved its information on this regard.

I should also say that the ombudsman's comments in her decision in Mr P's complaint about the finance provider were general comments about his possible rights – she was not considering Vertu's actions or making findings on them. Likewise the FCA's comments were quite general. I can reassure Mr P that I am not constrained by a possibility of wider concerns – each decision is based on its own merits and I am only considering what happened in this particular case. And I have reached my decision after consideration of the comprehensive submissions from Mr P and the information provided by Vertu.

The central point of this complaint is that Mr P feels that the incorrect information about the servicing arrangements amounted to misrepresentation of the finance agreement and the car, and that this influenced his decision to acquire the Audi, and was the main factor in his decision to acquire that car on three-year, as opposed to two-year, finance terms.

I said in my provisional decision that it is not in dispute that Mr P wasn't given full information about the service schedule, and he understood that the flexible service schedule applied. This remains the case and this is consistent with our investigator's comments in her view, which Mr P has mentioned. But I also said that I was not satisfied that Vertu misrepresented

the finance contract. This was because the contract only stipulated that the car be serviced in line with the manufacturer's recommendations – it did not set out the servicing schedule. (I also said that the servicing requirements might conceivably change over the life of a contract – Mr P commented on this so I should say here that this was simply a general observation).

I've considered what Mr P has said, and I do understand how strongly he feels about it, but I've seen no new information that changes my view – it remains that the servicing schedule was not contained in the terms and conditions of the agreement, and whilst it is not in dispute that the servicing information wasn't clear, I can see no evidence of a false statement of fact in relation to the finance agreement.

Mr P has also said in his response to my provisional decision that the shortcomings in the information about servicing mean that the car was not as described. This is not a matter that I can consider against Vertu, so I make no findings about it, although as a general point it's not clear how a servicing schedule affects the specification of the car. And Mr P has not noted any issues with the car itself.

I went on to say in my provisional decision that even if I *were* to consider that the agreement was misrepresented in relation to the service schedule, I am not persuaded that that, in itself, induced Mr P to enter into it. And I referred to Mr P's comments in his complaint to Vertu about the absence of driver aid technology, which was his preference, and production delays on other models. Mr P has made further submissions on this point, saying that his decision on which car and which finance arrangements to opt for were influenced by the information on the servicing arrangements. I also note Mr P's comments about the expected cost saving on servicing arrangements, relative to the deposit rather than the overall contract. However I remain of the view that the savings were relatively small. And as I have explained in my provisional decision and in my further comments above, I do not consider that the finance agreement was misrepresented, so this does not change my overall conclusion.

I note Mr P's comments about the effects of COVID-19 and supply chain issues on later contracts, which he said he would have avoided had the contract in question been over two years. However, as Mr P accepts, this could not have been foreseen in 2019 when he made his decision.

I've thought carefully about everything that Mr P has said. But in summary, whilst it's not in dispute that Vertu didn't give Mr P full information about the servicing arrangements, for the reasons set out above I don't consider that this amounted to misrepresentation of the finance agreement. Vertu has offered £475 in refund of the additional service costs, which puts Mr P in the position he expected to be in when he acquired the car. I consider this fair and reasonable in the circumstances, so I will not be asking Vertu to do anything more. So I do not uphold Mr P's complaint.

### **My final decision**

For the reasons given above I've decided not to uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 October 2023.

Jan Ferrari  
**Ombudsman**