

## **The complaint**

Mr M complains that he asked to voluntarily terminate his car finance agreement with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services ("VWFS"). They didn't action this and have since been chasing him to pay the final "balloon" payment on the hire purchase agreement.

## **What happened**

What follows is a brief outline of the circumstances of the complaint. There have been claims and counter claims by both parties, and further details provided. Below is my summary of the situation, but I want to assure both parties that I've read all of the communications and information they have sent in. I'm summarising things below and commenting on the key points to this dispute, as per the remit of our service.

In January 2016 Mr M acquired a car through a 4 year hire purchase agreement with VWFS. The agreement was due to end in February 2020. In January 2020, Mr M informed VWFS that he wished to exercise his right to voluntarily terminate the agreement. There is dispute around exactly when during January this request was made, which I will discuss in my findings.

VWFS didn't confirm receipt of this or issue any instructions about this, but they did make attempts to recover the vehicle. They passed Mr M's contact details to their collection agents and both the agents and VWFS made numerous attempts over the following months and years to contact him via various communication methods (phone calls, text messages, letters) to arrange collection of the car. They were unable to arrange this with Mr M and were unable to recover the car.

Instead, they told Mr M that he should pay the balloon payment as he had not returned the car. When Mr M complained, VWFS responded in June 2022 not upholding his complaint. They declined collecting the car and advised Mr M to pay the balloon payment by selling the car if necessary.

They did say they would cover any insurance or road tax costs incurred by Mr M for the Covid impacted period of March/April/May 2020 when their collection agents were unable to collect the car, provided he provided them with proof of these costs being paid, but they declined to pay any storage costs Mr M wanted to charge them.

Unhappy with this, Mr M brought his complaint to our service in August 2022. An investigator here upheld the complaint in part, saying that VWFS should have processed the voluntary termination Mr M had requested, so they should take the car back now as Mr M had correctly asked to voluntarily terminate the agreement. But they felt that VWFS had made reasonable attempts to contact Mr M to arrange to collect the car, so did not agree that Mr M should be refunded any insurance or road tax costs since January 2020, or that VWFS should have to pay him any storage costs which he was claiming from them.

VWFS accepted this view and asked that if he accepted it, Mr M make the car available for collection immediately. However, Mr M didn't agree with the view. He said that this view

ignored a problem he had with a missed payment in 2020 which VWFS had requested even though he felt he had already voluntarily terminated, and he had reluctantly paid.

He also queried some of the dates given in the investigator view wanting to correct them, he said he had never requested road tax to be refunded, only insurance and storage costs. He made other points regarding the fact that he asked for written communications from VWFS but often did not receive this which he feels is unfair. He said that he wrote and asked VWFS to give him 7 days' notice of collection, but they didn't respond to this. Finally, he made further points about how he felt the costs were unfair on him when he had another car he was paying for.

The case has therefore been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a vehicle under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

There are two main issues involved here, and these are where I will focus. The communication between the parties has broken down, and both parties take some blame for this. But fundamentally, the issues involved are:

1. whether Mr M had asked to voluntarily terminate the agreement and whether VWFS carried this out correctly.
2. the fact the car has not been returned to VWFS still, why this is the case, and what costs should be borne by each party for this.

With regards to the voluntary termination, I agree with our investigator that VWFS are at fault here. Mr M has said that he tried to terminate the agreement by phone on Saturday 11 January, but the phone lines were closed, and he then spoke to someone at VWFS on Monday 13 January 2020 to ask to terminate the agreement. There should have been a payment due by direct debit on 13 January 2020 but it appears this wasn't made.

He has complained that VWFS later chased him for a missed payment, and he felt pressured to pay it as it was reporting as missed on his credit file. The first written notification of his desire for voluntary termination was provided on 28 January 2020.

I've thought about this, and I don't agree with Mr M that having to pay this missing payment of £738 was unfair. The notes on VWFS contact system confirm they had spoken to him on 13 January 2020 about processing the "hand back" of the vehicle. This would seem to suggest a belief by the call handler that Mr M was just arranging to hand the car back at the end of the agreement, which would be more common in these circumstances, rather than processing a voluntary termination (VT) and ending the agreement just before it was due to end anyway. This is wrong however, and we have seen the evidence that Mr M did in fact

want to end the agreement early via a VT.

I've gone on to think about the £738 monthly payment VWFS told Mr M was in arrears. As this payment was due on the first possible day that Mr M had asked for a VT of the agreement, 13 January 2020, it's not reasonable for him not to have to pay this. All payments would be due until Mr M had confirmation that the agreement had been terminated and this could not have happened by the 13 January, as the first call he made and spoke to VWFS about VT was on this date.

He would still have had to complete paperwork and sign to confirm he wanted to voluntarily terminate the agreement. So, I'm satisfied that it was fair for VWFS to expect him to make that missed payment, which he did. Mr M has said he tried to call on Saturday 11<sup>th</sup> but the phone lines were closed; I'm still satisfied that even if he had been able to speak to someone on the Saturday, the VT could not have been carried out before that payment was due on 13 January 2020, so it still should have been paid.

With regards to ending the agreement more generally, it's clear that VWFS have misunderstood or ignored Mr M's requests for a VT of the agreement. This was likely to be because Mr M was almost at the end of his agreement anyway, and VWFS appear to have assumed he was just discussing returning the car at the end of his agreement, rather than a VT.

However, he sent the request for a VT by recorded delivery to them which they received on 29 January 2020, so they should have followed this up and processed a VT. This didn't happen.

When a car is voluntarily terminated, it needs to be returned to the finance provider. I can see numerous attempts by VWFS to contact Mr M to ask him to arrange the return of the car. Included in these are letters with phone numbers for him to call and arrange this. Mr M has said he wanted to deal with this in writing, and that he told VWFS they could collect it anytime provided they gave him seven days' notice.

I don't agree that this is reasonable by Mr M. VWFS have a process in place whereby they hand over the collection and checking of the car for damage and excess mileage to a third party company, and Mr M chose not to respond to the letters/texts or phone calls from either VWFS or the third party collection company, to arrange collection. It would be Mr M's responsibility to respond to communications from the relevant parties to arrange for the car to be returned.

It's not fair for Mr M to decide he will only communicate in writing to arrange collection. Provided that the business is being reasonable with their requests, I can't see why Mr M wouldn't have called the phone number to arrange collection. I am satisfied VWFS were being reasonable here and have seen no evidence as to why Mr M should feel the need to only deal with them in writing. Indeed, there are occasions where Mr M calls VWFS to discuss issues or ask questions regarding his agreement, including in the years after the agreement ended, so I see no reason why he could not have arranged the vehicle collection with them by calling them as requested.

By the end of March 2020, this meant the car had not been collected when the Covid pandemic began, and the country was "locked down". VWFS were unable to collect the car during this period, but Mr M had already had several weeks to make contact with them at that point to have arranged the collection. I can see no reasonable reason why he chose not to do this, especially as he has told us he didn't want the car as he had already started an agreement for a new car, and he felt the need to try to charge VWFS storage fees whilst it wasn't being collected.

It's unclear what went wrong and why after this period. VWFS have said that they had to appoint a different collection agent later in 2020 due to covid policies and procedures at the first agent. Initially I can see from the VWFS contact notes that VWFS attempted to make contact several times about the collection, but then this appears to have stopped later in 2020. Then in 2021 Mr M made contact about payments owing on an annual statement and it looks like the return of the car was discussed, and the call handler at VWFS attempted to hand him across to another team to discuss this but for reasons which aren't clear, this didn't appear to happen. At some point, it also seems VWFS had changed to noting the balloon payment outstanding rather than the collection being overdue.

But there's no further evidence of communications between the parties until Mr M raises a complaint to VWFS in May 2022. I don't think this is reasonable behaviour from either party. VWFS should have been chasing this up to resolve the issue of collection or payment much more quickly, whether they had believed this was a voluntary termination or not. And if Mr M wanted to return the car, I'd have expected to see evidence of him trying to contact them to do this.

However, this doesn't make it fair for Mr M to charge storage fees to VWFS for the car remaining at his property. He had been sent all the relevant information to make contact to get the car collected but hasn't done so. If he felt the car was taking up space at his property, requiring him to charge for its storage, I'd have expected to see efforts from him to contact VWFS in 2020 and 2021 to ask them to collect it. By 2022, when he complained, VWFS had decided they didn't want the car back and were asking for the balloon payment to be made instead.

Unfortunately, I don't believe either party have acted fairly here. VWFS seem to have lost track of Mr M's account and circumstances, possibly due to the strains the pandemic caused on their business. Whilst I have empathy with this, it wasn't Mr M's fault that this happened.

But equally, Mr M could have called VWFS at any point from January 2020 to arrange the collection of the car but appears not to have done so. If insurance costs/storage costs/upkeep costs on the car were a concern to him, I would have expected to see evidence of him making more effort to contact VWFS to try to resolve the situation. I haven't seen this.

VWFS have said in their FRL that they don't want the car back and instead want Mr M to pay the balloon payment to keep the car. But this isn't fair, because Mr M chose to voluntarily terminate the agreement before the balloon payment was due, so should never have even had the option to make the balloon payment from that point. VWFS didn't action that VT correctly, so I am satisfied that the only fair outcome to this now is for them to take the car back and process the agreement as having been voluntarily terminated.

Alongside this, because VWFS have not made any concerted effort since March 2020 to recover the car, I am satisfied that the fact the car will now be considerably older and may not be roadworthy or have an MOT is not Mr M's fault. I'd expect VWFS to carefully consider any potential damage charges when they do get the car back, to take into consideration the additional time that the car has been sat without being collected. Having said this, Mr M has told us he hasn't used it since the agreement ended.

However, I don't agree with Mr M that he should be refunded any insurance costs or paid any storage costs. Whilst VWFS are at fault for not following up the collection of the car after the initial lockdown period of the pandemic, Mr M also had ample opportunity to arrange the collection with them in February and March 2020, and I've seen no evidence of him engaging with them when they sent letters or called him about this. I've not seen evidence of any occasions where Mr M has tried to arrange collection and not been able to do this.

Alongside this, I've seen no evidence of Mr M calling VWFS after that initial lockdown period of the pandemic or engaging with them in any way to get the car collected. I'd expect to have seen Mr M try to mitigate his "losses" with regards to any insurance or storage costs by making more effort to speak to VWFS and to return the car, but there's no evidence of this happening.

As such, I agree with the investigator outcome here. It would be fair for VWFS to process the VT Mr M requested in January 2020 and to collect the car. They will also need to correct any adverse data regarding this agreement on Mr M's credit file, including removing the debt for the balloon payment. In light of this, I think paying Mr M £100 for the distress and inconvenience the impact on his credit file may have caused him is also fair.

But I don't agree with Mr M that he should receive refunds for insurance or storage costs or any further payments. Whilst VWFS have not acted fairly when failing to correctly end his agreement, Mr M can also be said to have not acted fairly when he hasn't engaged with them to arrange collection of the car. As such, I am satisfied that any insurance payments he has made are through his own choice not to try to return the car, and it isn't fair to expect VWFS to make payments for the storage of the car at his property.

### **Putting things right**

To put things right, Volkswagen Financial Services (UK) Limited trading as Audi Financial Services need to do the following:

- Process the agreement as having been voluntarily terminated by Mr M on 29 January 2020.
- Collect the car at no cost to Mr M (recognising that it may not be roadworthy or have a valid MOT or road tax at this stage and should not be expected to have these).
- Correct any adverse data with credit reference agencies relating to this agreement.
- Pay Mr M £100 for the distress and inconvenience caused by any issues with Mr M's credit file/credit score.

### **My final decision**

My final decision is that I am upholding this complaint. I instruct Volkswagen Financial Services (UK) Limited trading as Audi Financial Services to put things right by carrying out the actions I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 October 2023.

Paul Cronin  
**Ombudsman**