

## The complaint

Miss W complains that Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (VWFS) didn't treat her fairly when she experienced financial difficulties after losing her job due to the coronavirus (Covid-19) pandemic.

## What happened

In January 2019 Miss W was supplied with a new car under a hire purchase agreement with VWFS. The agreement was for £28,678, with an initial payment of £1,084, followed by 48 monthly repayments of £349, and a final payment of £9,785.00.

Miss W said she lost her job due to Covid-19 in March 2020, and informed VWFS of her change in circumstances. She said that because of her type of work, and her own health, she was unlikely to find work for some time. She said she couldn't afford to pay the monthly payments and if she did find work, it was likely to be on reduced hours. She said she told VWFS that she wouldn't be able to make the monthly payment due on 1 April 2020 and wanted to give the car back, with nothing further to pay, and with no impact on her credit file.

She said she spoke to VWFS and found them to be unhelpful. She said they told her she couldn't hand the car back. She said she was given two options: pay £8,000 and hand the car back, or sell the car for £19,000 and pay off the agreement. She said these options were unreasonable, and unrealistic. She said she'd never missed a payment and losing work because of the pandemic was the only reason she wanted to hand the car back.

She said she couldn't get in touch with VWFS, so she spoke to the dealer who supplied the car, and they gave her a form for people in financial difficulties. Miss W said she'd been told clearly by the dealer she could hand the car back.

This form was for customers with '*financial difficulties relating to COVID-19*'. In the form Miss W explained she wanted to hand the car back. VWFS responded to this form on 18 April 2020 – they said they didn't consider a payment holiday was suitable for Miss W because of the impact on the interest, the contract term, and value of the car. They did offer her 60 days breathing space at this time. This would mean her monthly payments would still be due on the 1st of each month, but they would not chase her during this time if any payments were not made in full.

Miss W wasn't happy with how VWFS treated her. She said she'd shared her medical history on the basis that she would be able to hand the car back, but VWFS hadn't agreed to this. She's also unhappy that VWFS said she didn't apply for a payment deferral but she thinks she did.

VWFS said Miss W contacted them on 26 March 2020. They said they were not offering payment deferrals at this point, so explained the normal end of contract options to her.

VWFS sent their final response to her complaint in September 2020. They said they hadn't received a payment deferral request from her. They said they'd offered breathing space in April 2020 for 60 days. This would have meant she didn't need to make payment for 60

days, and then the agreement would need to be reinstated.

They said they were unable to assess her eligibility for a payment deferral as they hadn't received a request. This meant no changes had been made to her agreement.

VWFS said they understood Miss W couldn't make payments at that time and they offered her six months before they would contact her to arrange a payment plan. They said they also explained that she needed to consider exiting her agreement if she couldn't make repayments. They said they set out the exit options for her.

In November 2020 VWFS asked Miss W to submit evidence of her health conditions, and an income and expenditure form. They also set out her exit options. At that time they were:

- Voluntary Termination - £5,405 plus £2,799 arrears, or
- Sell the car and pay balance of £20,420.

They also said they were willing to consider a lower balance if Miss W had to sell the car for lower than £20,400, and invited her to submit a quote from a dealer.

In December 2020 VWFS contacted Miss W again, asking her which option she wanted to take. She sent her Income and Expenditure form, and repeated her wish to return the car with no further payments to be made. She also told them that she couldn't afford payments on a cheaper model so this wasn't an option for her.

VWFS told our investigator Miss W never applied for a payment deferral following the guidance issued by the Financial Conduct Authority (FCA) on 27/04/20. They said they'd placed a COVID-19 marker onto Miss W's agreement as soon as she told them she was impacted by COVID-19. They said the marker was applied even when a customer has not applied for a payment deferral.

They confirmed they'd removed the adverse markers from Miss W's credit file in February 2021.

Our investigator felt that VWFS' handling of her payment deferral request caused confusion for Miss W, and that they hadn't given her a clear explanation of what she needed to do. She also felt that they should've amended Miss W's credit file sooner than they did. She suggested VWFS pay Miss W £200 compensation.

But she felt that it was reasonable for VWFS not to accept the return of the car with nothing further to pay. She thought they'd fairly set out the options available to Miss W.

Miss W didn't agree with the investigator, and asked if VWFS would accept the return of the car, given the way they'd handled the matter. VWFS agreed with the investigator, but said they wouldn't agree to Miss W returning the car with nothing further to pay.

Miss W then offered to hand the car back and pay the outstanding arrears, but VWFS didn't accept this offer. They said they were willing to agree an affordable repayment plan with Miss W.

Miss W was also unhappy that VWFS asked her to provide medical information. She thought she'd been asked to provide this information so that fees and shortfall could be waived. She now feels it was an invasion of her privacy. Our investigator felt VWFS had reasonably asked for this information and sought her consent to record it. She felt they'd used it appropriately and not shared it with any other party.

Miss W wants an ombudsman to consider the matter again, including what she describes as VWFS's invasion of her privacy, their gross misconduct and unprofessionalism. She also said the option of paying the arrears is no longer available to her, and seeks an affordable payment plan from VWFS

### **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.

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 what I consider was good industry practice at the time. Miss W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. Having done so, I have 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.

Before I address the specifics of Miss W's complaint, I'll summarise the FCA's guidance on the financial impact of COVID-19 on customers and their ability to make payments on regulated motor finance agreements. The FCA expected all firms to provide support for customers experiencing temporary financial difficulties as a result of COVID-19 related issues. On 24 April 2020, the FCA issued guidance saying that firms could grant a payment holiday (referred to as a payment deferral) for up to 3-months. And on 17 July 2020 the FCA issued further guidance saying, if a customer was unable to resume full payments after an initial payment deferral, a further payment deferral period of up to 3-months should be offered.

The purpose of the guidance was to provide temporary support for those facing a loss or reduction in income as a result of coronavirus.

This guidance made clear that payment holidays or deferrals would not be suitable in all circumstances. It was also clear that this was only a temporary solution. It required firms to consider the longer term effects on the customer's situation – and mentions this might include taking into account if the deferral would increase the customer's overall debt burden. The FCA also stated that other solutions may be more suitable for customers, and that firms should offer other forms of forbearance where payment deferral was obviously not in the customer's interest.

It was clear that the guidance required firms to consider appropriate forbearance for customers who could not afford payments after the deferral period. And where a payment deferral was obviously not in the customer's interest, firms should offer other ways to help. This included, for example, reduced payments or a rescheduled term.

As well as the specific guidance related to Covid-19 issues, VWFS are required to follow the guidance in the FCA Handbook (available online). The part of the guidance relevant to this matter can be found in "CONC 7, Arrears, default and recovery (including repossession)". This says that firms should consider consumers in default or in arrears difficulties with forbearance and due consideration. This could be in the form of waiving interest, deferring arrears payments, accepting token payments etc.

The first issue I'll consider is the confusion around whether or not Miss W requested a payment deferral. There's no dispute that she completed and sent VWFS a form titled 'financial difficulties relating to COVID-19'. She did this on 26 March 2020 via email. Miss W told us she was advised to fill in this form by the dealership as she could not get through to

VWFS.

When they received the form, VWFS told Miss W why they didn't think a payment holiday was suitable. So I'm satisfied that she was told there wasn't a payment deferral in place.

The FCA guidance on car finance agreements affected by circumstances related to the coronavirus pandemic wasn't issued until 24 April 2020. So when Miss W submitted the form, I'd have expected VWFS to follow the existing guidance in CONC 7. They offered Miss W 60 days breathing space so that she could seek advice and consider her options. They also said they wouldn't pursue her for missed payments during this period. I think that response was reasonable and fair, and in line with the guidance.

Miss W said she was unhappy that she continued to receive arrears letters from VWFS. They issued Notices of Sums In Arrears, and Default notices under section 87(1) of the Consumer Credit Act 1974 after she'd filled in the payment deferral form. These are formal notices that VWFS were required to issue, and provide customers like Miss W with up to date information about the arrears accruing on their agreement. VWFS could've sent Miss W some additional information to explain why they'd issued these notices. This is in line with the FCA guidance issued in July 2020. But it wasn't unreasonable for them to issue the notices to Miss W.

I don't think Miss W wanted or sought a payment deferral. She's been consistent in asking that VWFS take the car back, and cancel the agreement with nothing further to pay. VWFS have been clear to her that this is not an option under the agreement.

So the next issue I need to consider is whether or not VWFS's response to Miss W was fair and reasonable. The agreement she entered into sets out the options for consumers who wish to terminate an agreement early. This includes her right to return the car without paying any more. This is a right given under sections 99 and 100 of the Consumer Credit Act. Both the Act and the agreement make clear that this right only applies once you've paid half the amount due under the agreement. Miss W hasn't paid that amount.

Had Miss W paid half, she would have been able to return the car. So it's reasonable, and in line with the agreement, and the law, that VWFS have not accepted this option. And I won't be asking them to do that.

They've reasonably set out the options available to Miss W, and it's for her to decide which option best suits her circumstances.

I'm also satisfied that VWFS have treated Miss W reasonably, and with appropriate forbearance as required in the FCA Handbook. She told VWFS in October 2020 how this was affecting her mental health. She's unhappy that she was asked to provide medical evidence to understand her health condition. I think it was reasonable for them to do this so that they could consider what additional support to offer Miss W.

I can see that they've offered six months breathing space to allow Miss W to consider her options. Again, this is in line with what's required in the FCA Handbook, and what I consider to be reasonable. And they've said they're willing to consider a lower settlement if Miss W wasn't able to sell the car for the value required to clear the balance.

I agree with our investigator that VWFS took too long to amend her credit file. They told us they didn't do this until February 2021. I accept they were also affected by the pandemic, but Miss W told them in March 2020 about her situation. This has caused additional upset to Miss W – this could've been avoided if VWFS had taken steps earlier to amend the credit file, in line with the FCA guidance.

I have every sympathy with Miss W's situation, but while I consider I should uphold her complaint I do not believe she is entitled to hand the car back with nothing further to pay.

They explained the options available to her, on more than one occasion, and offered breathing space so that Miss W had time to seek financial advice. That was a reasonable approach for them to take, and is in line with the expectation that they treat consumers in financial difficulty sympathetically.

I do however, remind VWFS that Miss W is a vulnerable customer, who is in financial difficulties, and that when agreeing a suitable repayment plan they should treat her positively and sympathetically.

I find that VWFS's communication about payment deferrals and the form she submitted could've been clearer. And they could've amended her credit file a lot sooner than they did. And on those grounds only, I'm upholding Miss W's complaint.

### **Putting things right**

VWFS should pay Miss W £200 for the trouble and upset caused.

### **My final decision**

For the reasons given above, I uphold Miss W's complaint about Volkswagen Financial Services (UK) Limited trading as Audi Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 13 August 2021.

Gordon Ramsay  
**Ombudsman**