DRN-2909131

The complaint

Mr R is unhappy with the service provided by Vehicle Credit Limited ('VCL'), when they supplied him with a car under a hire purchase agreement.

What happened

On 8 July 2017, Mr R was supplied with a used car through a hire purchase agreement with VCL. The agreement was for £6,900 over 208 weeks; with 207 weekly repayments of £62.11 and a final payment of £87.23.

In September 2020 Mr R part-exchanged the car, but the garage who did the part-exchange paid the £2,949.08 part-exchange funds to Mr R, in error. VCL asked Mr R to pay these funds to them direct, but he didn't And, because Mr R had cancelled his direct debit, and stopped making payments, VCL issued a default notice on 3 November 2020. When the account wasn't brought up to date, a default was issued. It wasn't until 31 March 2021 that Mr R paid VCL the part-exchange funds. And VCL marked Mr R's default as being satisfied.

Mr R was unhappy with the overall service he'd received, and he complained that VCL:

- had acted irresponsibly when approving the finance;
- had told him at the point of sale that he could return the car after two years and refinance a newer car with them, at a lower interest rate;
- didn't make the full cost of the credit clear to him;
- defaulted his account, without recording any missed payments, when his account should've been on hold; and
- haven't provided copies of call recordings in a usable format when he'd requested these using through a Data Subject Access Request (DSAR).

VCL didn't uphold Mr R's complaints, so he brought them to us for investigation.

Our investigator said that we have to meet a set of rules before we can consider a complaint, and one of these is that (unless there are exceptional circumstances) complaints must be brought to us within six-months of the financial business's final response letter.

Mr R complained to VCL about irresponsible lending, and they emailed their final response to him on 24 December 2019. But Mr R didn't bring this complaint to us until 18 October 2020. The investigator said that, when VCL discussed their response with Mr R, he said he intended to raise this with us. But he didn't do it in the six-months allowable. So the investigator thought it wasn't something we were able to look into.

The investigator also said that, after Mr R had taken the original finance, VCL were taken over by another company ('RS') who don't offer vehicle finance. Because this wasn't something either VCL or the supplying dealership could reasonably have foreseen at the time, the investigator didn't think VCL had done anything wrong by not offering Mr R refinancing two years after he'd been supplied with the car. She also thought that the full cost of the credit was made clear in the paperwork Mr R signed on 8 July 2017.

The investigator said Mr R's account was in arrears and VCL had sent him default and termination notices. She said the error in the garage paying Mr R the part-exchange funds was outside VCL's control, but she thought they acted reasonably by defaulting the account when Mr R didn't pass the payment onto them. She also said that VCL weren't required to put Mr R's debt on hold just because we were considering his complaint. And they were entitled to take any reasonable action to pursue this debt, including registering a default.

Finally, the investigator said that complaints about a DSAR were dealt with by the Information Commissioner's Office ('ICO'). So this wasn't something we could consider.

Mr R didn't agree with the investigator. He felt we should be able to consider his complaint about irresponsible lending, which he said he only made to VCL on 28 September 2020; and that the default shouldn't have been registered. He also said he never received any notice that the part-exchange funds should've been paid to VCL.

Because Mr R didn't agree this matter has 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 R 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.

With regards to VCL approving the finance, the types of complaint we can look into are set out in our rules which can be found in the Financial Conduct Authority's handbook under DISP. These include time limits on how long a person can wait before bringing a complaint to us. So, unless a business consents, or there are exceptional circumstances, a person usually has to bring their complaint to us within six months of the final complaint response.

In their final complaint response email of 24 December 2019, VCL explained why they thought they'd acted reasonably in approving the finance. They also explained that, if Mr R was unhappy with their response, he had six months from the date of their email to bring his complaint to the us. And, if he didn't refer his complaint to us in time, then they wouldn't consent to us considering the complaint out of time.

Mr R raised his complaint with us on 18 October 2020. And, as VCL haven't consented to us considering Mr R's complaint out of time; I need to consider if there were any exceptional circumstances that stopped Mr R from bringing his complaint to us before the end of the six-month period – by 24 June 2020.

I've seen the final complaint response was sent to an email address which Mr R confirmed to us was his email address. And I've not seen anything to show me this email was rejected or otherwise not delivered. What's more, I haven't seen anything to show me that Mr R ever chased VCL for a response to this complaint. Given this, I'm satisfied that it was more likely than not that Mr R received VCL's complaint response email. And that he would reasonably have known how long he had to raise his complaint with us.

I'm aware that Mr R raised this complaint with VCL again, on 8 October 2020, and that they issued a further response letter on 15 October 2020. VCL also emailed Mr R on 2 November 2020, explaining this was the same complaint that he'd raised in December 2019.

I don't think the complaint response VCL sent Mr R in October 2020 means that the December 2019 complaint response, and the timescales for referring it to us, should be discarded. It wouldn't be fair to allow consumers to raise the same complaint with a financial business multiple times, and for this to extend the period in which they have to bring it to us. Because of this, I'm satisfied that Mr R only had the timescales associated with his original complaint. And he brought this matter to us outside of those timescales.

Mr R also said that he didn't bring the complaint about irresponsible lending to us straight away, because he escalated it to RS. But VCL made it clear that he needed to complain to us, and when he needed to do this by. And by making the complaint to RS, I'm satisfied that Mr R would also have been able to bring this complaint to us.

Because of this, I don't think there are exceptional reasons for considering this complaint out of time. And, while I know this will be disappointing to Mr R, I'm in agreement that the irresponsible lending complaint is something we don't have the power to look at.

Mr R signed both the pre-contract credit agreement and the hire purchase agreement on 8 July 2017 (although on the hire purchase agreement he dated his signature 8 July 2016). And in signing these documents he signed to say he'd read the agreements and agreed to be bound by their terms. VCL also signed the agreement and sent Mr R a copy of the jointly signed paperwork on 11 July 2017.

The paperwork Mr R read and signed clearly set out the terms of the finance, including the payments he was expected to make, the overall amount he'd be paying, and the interest rate he was being charged. Because of this, I'm satisfied that Mr R was made aware of the full cost of the credit at the outset, and that he signed to accept these costs before he took possession of the car. So I don't think VCL have done anything wrong.

In late 2017, VCL were purchased by RS. And, as a result, they could no longer offer vehicle finance. I don't doubt that, at the point of sale, Mr R was told by the supplying dealership that he could refinance at a lower interest rate after two years. And at the time he was given this information it was correct. But the purchase by RS wasn't something that was known, or could reasonably have been foreseen, by either the supplying dealership or VCL, at the point of sale. So I don't think VCL did anything wrong at the point of sale. And, while I appreciate that this was annoying for Mr R, I'm satisfied that a change in business ownership meant that VCL didn't need to, and wasn't able to, offer Mr R any refinancing after he'd had the agreement for two years.

When Mr R part-exchanged his car in September 2020, the garage paid him the part-exchange funds in error. The garage contacted VCL to let them know what had happened, and VCL contacted Mr R and asked him to pass the funds onto them.

I've listened to a phone call that took place on 21 September 2020, where VCL chased Mr R for the part-exchange funds. In this call they explained that, while this amount was outstanding, it would affect his credit file. VCL called Mr R again on 7 October 2020, to remind him that the part-exchange funds still hadn't been paid. In this call VCL explained that non-payment could impact his credit file and that he was at risk of a default being issued. In reply Mr R told VCL that they couldn't default him because he wasn't three months in arrears at that point.

Mr R was supplied with the car under a hire purchase agreement. Which meant he hired the car and wouldn't own it until all of the payments were made. So, when Mr R part-exchanged the car, because it wasn't his car, the remaining balance fell due immediately. And this was the equivalent of just over 47 weekly payments – about 11 months. So, I'm satisfied Mr R was more than three months in arrears as a result of him not paying the part-exchange funds to VCL. So it was fair and reasonable for VCL to follow their process and register a default.

I've seen a copy of the default notice that was sent to Mr R on 3 November 2020. This explained that he had arrears, which needed to be paid by 20 November 2020. This also explained that, if the arrears weren't paid by this date, what action VCL were able to take. I appreciate Mr R says he didn't receive a copy of this, but I've haven't seen anything to show me that it wasn't sent. And I'm also satisfied that, at this point, Mr R was aware that he'd been paid the part-exchange funds in error, and that VCL had been chasing him to pass these funds onto them.

So, when Mr R didn't pay the part-exchange funds to VCL, they terminated the agreement on 20 November 2020. And they registered a default the same day.

We wrote to VCL on 28 October 2020, letting them know that Mr R had raised a complaint with us. Mr R believes this means that VCL couldn't take any further action on his account, and that any collections process was on hold while our investigation took place. But this isn't necessarily the case. And when he originally made his complaint, Mr R didn't make us aware that there were any arrears, or that he was holding onto the part-exchange funds.

The complaint Mr R originally made to us was only about the agreement being mis-sold (because it couldn't be returned, and refinance arranged after two years), and because the finance wasn't fully explained to him at the outset. These complaints have nothing to do with the arears/payment situation Mr R found himself in and, as a result, I wouldn't expect VCL to put his account on hold. And I haven't seen anything to show me that VCL said they would. So they were free to pursue him for the part-exchange funds, including issuing a default.

Mr R didn't make us aware of the arrears/payment situation until 17 December 2020, which was after the default had been issued. So this was too late for us to ask VCL to put any default processes on hold. But VCL agreed at this point to put any further processes on hold, including taking court action against Mr R for non-payment of the part-exchange funds.

Given the above, I'm satisfied that VCL acted reasonably when they registered a default on Mr R's credit file. And I don't think they need to remove this.

Finally, Mr R has complained that VCL failed to provide him with everything they were required to under his DSAR, and that call recordings were provided in a format he couldn't access. The investigator explained that this was a matter for the ICO, not us. I've also listened to a call from 21 January 2021, when VCL told Mr R that, while his complaints should go to the Financial Ombudsman Service, his issues about the DSAR should be referred to the ICO.

So I'm satisfied that Mr R has been made aware where this complaint needs to be raised. And, as this isn't something we can look at, I won't be asking VCL to take any further action about Mr R's DSAR.

My final decision

For the reasons explained, I don't uphold Mr R's complaint about Vehicle Credit Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or

reject my decision before 13 September 2021.

Andrew Burford
Ombudsman