

The complaint

Mr B is unhappy that Volkswagen Financial Services (UK) Limited (VWFS) terminated his finance agreement at a time when he was experiencing financial difficulty due to ill health.

What happened

In July 2017, Mr B entered into a 48 month personal contract purchase (PCP) to acquire a new car at a cash price of £46,733. Mr B was required to pay £520 per month with a final optional payment of £17,482.

Mr B said he started to experience ill health in late 2018 meaning he was struggling to work and had difficulty meeting the monthly payments. The account fell into arrears and in May 2019, a default notice was issued for the amount of £1,560. Mr B contacted VWFS to let them know about his personal situation and how it was affecting his financial circumstances. Mr B explained if he doesn't work, he received no income. VWFS outlined the potential options to end the agreement early and sent documentation about voluntary termination.

In June 2019, Mr B told VWFS that his situation hadn't changed. They agreed to place the account on hold for 30 days and offered to explain the options again to end the agreement rather than the arrears increasing. However Mr B said he intended to bring the account up to date once he had returned to work.

In July 2019, a payment plan was set up in which Mr B was required to pay £520 for a period of four months to clear the arrears in addition to meeting the monthly contractual payments. As this wasn't followed, in July and September 2019, VWFS sent notifications that the account was in arrears by £2,080 and £1,560 respectively.

In October 2019, a default notice was issued stating £1,560 was owed. Mr B disputed this. VWFS advised that although he had cleared the initial arrears, he hadn't made the monthly payments so the account hadn't been brought up to date. Later that month, Mr B had to undergo medical surgery and it was agreed he would contact VWFS in January 2020.

As agreed, in January 2020 Mr B spoke to VWFS to explain that he was still recovering from his surgery. He explained he expected to return to work in the next couple of weeks on a phased return basis. He said he intended to start clearing the arrears at the end of January 2020 but as he was uncertain how many hours he would be working, he was unable to say what his income would be. VWFS said they would need to get an understanding of his income and expenditure in order to set up a suitable repayment plan. As requested, following the call, Mr B provided his medical records to VWFS.

In February 2020, another default notice was issued as the account was in arrears of £3,120 and it said it needed to be brought up to date by 2 March 2020. As this didn't happen, in March 2020, VWFS terminated the agreement.

Mr B complained as he was unhappy with the action taken by VWFS. He felt his personal circumstances hadn't been taken into account. VWFS said they'd given consideration to his situation and they had placed the account on hold to allow support. They said as Mr B failed

to contact them on multiple occasions after January 2020, they weren't able to delay the collection further. They said default notices were issued in May 2019, October 2019 and February 2020 so Mr B was aware of the potential consequences if the account wasn't brought up to date.

Unhappy with their response, Mr B referred the complaint to our service. The investigator recommended the complaint wasn't upheld. They felt VWFS had shown forbearance and they had treated Mr B fairly from the time they knew about his ill health.

Mr B disagreed. He said:

- He kept VWFS up-to-date about his health including contacting them in January 2020 following his surgery;
- He didn't have a disposable income of £3,000 per month as reported by VWFS as he wasn't working at the time due to his ill health;
- At times, he had to borrow money in order to reduce the arrears;
- He started making payments as soon as he returned to work in January 2020 and in some months he paid twice;
- He made 16 payments towards the agreement however he had been told only 8 had been received;
- He was in and out of hospital due to his ill health and due to the Covid-19 pandemic, he was very busy with work as a key worker therefore he wasn't always able to respond to VWFS' communication.

The investigator raised the issue regarding the 16 payments made by Mr B to VWFS as a separate complaint. In response, they said a total of 13 payments of £520 had been made but this was after the agreement was terminated in March 2020.

Having reviewed the file, I put my initial thoughts to VWFS and I said I intended to uphold the complaint as I didn't think it was fair for them to terminate Mr B's agreement when they did. I said this because following the call in January 2020, it doesn't appear there was ever any discussion about his income nor about setting up a suitable payment plan to clear the arrears. Overall, I didn't believe VWFS had provided sufficient time from Mr B returning to work in January 2020 to set up a payment plan and clear the arrears before the agreement was terminated in March 2020.

In response, VWFS said the outstanding balance was £20,705 and had the agreement not terminated it would've come to a natural end in August 2021. However as the account was placed on hold while our service investigated the matter, the car remained in Mr B's possession.

VWFS felt they had acted fairly throughout the history of the account given Mr B's financial circumstances and it was fair to terminate the agreement. However they agreed had communication between them and Mr B continued, this situation could've been avoided. On that basis, they said they were prepared to explore other options and they said they were willing to do the following:

- Withdraw the termination and update Mr B's credit file accordingly (this will show as a termination on their internal systems only but it won't be visible to external parties and they will manually add a note to the system to outline what has happened);
- If Mr B returned the car, he would be required to pay £3,222 plus any charges for damages and excess mileage. They would set up a suitable repayment plan for this money to be paid back; or

- If Mr B decided to keep the car, he would be required to pay £17,482 in full;
- They would report adverse information for any missed or late payments.

In essence, VWFS said they were willing to treat the agreement as if it had never been terminated. This was put to Mr B for his consideration and he agreed to return the car.

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 decided to uphold Mr B's complaint, I'll explain why.

Mr B's finance agreement is a regulated consumer credit agreement which means our service is able to look into complaints about it.

Having spoken to Mr B about his personal circumstances, I would like to express again that I'm sorry to hear about his ill health, I appreciate this would've been a difficult time and given what he has said, it's clear this significantly impacted his daily life and financial circumstances. Moreover, once he returned to work, as a key worker, his personal circumstances were further impacted by the Covid-19 pandemic.

In instances where consumers are facing such financial difficulty, the relevant guidance which I would expect VWFS to follow is found in the Financial Conduct Authority's handbook – Consumer Credit Sourcebook (CONC). It says "*A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.*"

There is no defined list of what a financial business must do as it will depend on the individual circumstances and a number of other factors such as whether the financial difficulty is expected to be a short term or long term issue. Having considered VWFS' actions, I do believe there were occasions where forbearance and due consideration was shown.

I say this because rather than letting the arrears accumulate and the debt worsen, VWFS outlined the options to end the agreement early including voluntary termination, in June 2019, they agreed to give 30 days 'breathing space' where no collection activity took place and they also set up a four month repayment plan. Although notice of sum of arrears (NOSIA) and default letters were sent, they didn't take any further action initially. Additionally, following Mr B's surgery in October 2019, they didn't contact him to allow him the time and space to recover. In the circumstances, I think these were reasonable steps taken by VWFS in light of Mr B's financial difficulty.

However it's from January 2020, when Mr B returned to work, where I believe matters could've been dealt with more fairly. As agreed, Mr B contacted VWFS in January 2020 and he explained he was due to return to work on a phased return basis. As his exact hours were unknown at that point in time, he said he wasn't able to say what his income would be. Although VWFS said they would need to know this in order to set up a suitable repayment plan, I can't see this ever happened. Despite Mr B contacting them on 24 February 2020 to check if payments had been received, there was no discussion about this. This was a missed opportunity to discuss the arrears and to set up a suitable repayment plan. Had this happened I believe it's most likely the termination could've been avoided.

Although I accept VWFS had tried to contact Mr B by email, there is no indication this was in relation to setting up a repayment plan. They said the default letter was reissued and they sent him two SMS messages about the account so Mr B would've been aware that they were looking to end the agreement. Mr B said he never received this and while I believe most likely these were sent as they were correctly addressed, I must take into consideration Mr B's testimony. He said despite still being ill and requiring to go back and forth to medical appointments, he returned to work as a medical professional and this was at the height of the Covid-19 pandemic so he didn't see the correspondence.

The agreement was terminated within three months of Mr B returning to work. However I think the fairest way of continuing to support Mr B would've been to set up a repayment plan based on his affordability in January 2020. This would've given Mr B the time, structure and opportunity to bring the account back up to date. It's unfortunate this didn't happen and the lines of communication didn't continue as this situation could've been avoided.

Given Mr B had made three payments between January and March 2020 (which is when the agreement was terminated) and another 13 thereafter leads me to believe he was willing, capable and had the necessary funds to clear these arrears and bring the account back up to date had he'd been given the time and opportunity to do so. After returning to work for approximately two months on a phased return basis, I don't think it was reasonable for VWFS to expect Mr B to clear the arrears before March 2020. I find in the overall circumstances, VWFS was too quick to terminate the agreement and forbearance and due consideration wasn't shown of his individual circumstances in January 2020 when he returned back to work. Therefore I don't believe VWFS acted fairly by terminating the agreement in March 2020.

I'm glad to see VWFS have been open and willing to explore other options in this case and in terms of what they've offered as a resolution by withdrawing the termination, I believe this to be a fair and reasonable resolution. This is because it restores Mr B as near as possible to the position he would've been in immediately prior to the agreement being terminated. So I'm glad to hear Mr B has agreed to VWFS' proposed resolution and he will give the car back and pay the outstanding balance accordingly.

To put things right, VWFS should treat the agreement as if no termination had taken place and remove adverse information from him credit file about the termination. However, I must stress VWFS has an obligation to report accurate information to the credit reference agencies therefore they're entitled to report adverse information such as instances of late or missed payments throughout the duration of the agreement.

VWFS should accept the return of the car whereby Mr B will be required to pay the balance of £3,222 plus any charges for damages and excess mileage. In lines with the terms of the agreement, I find VWFS are entitled to charge such fees. As agreed, VWFS should set up a suitable repayment plan based on what Mr B can afford in order to pay this outstanding balance.

Lastly, I've thought about the impact this situation has had on Mr B and the worry it has caused by being told the agreement had been terminated during what was already a difficult time. In light of this, I believe VWFS should also pay £150 compensation for the trouble and upset caused.

My final decision

For the reasons set out above, I've decided to uphold Mr B's complaint.

To put things right, Volkswagen Financial Services (UK) Limited must:

- Treat the agreement as if no termination had taken place;
- To allow the car to be handed back and for Mr B to pay the outstanding balance of £3,222.66 plus any charges for damages to the car or excess mileage as per the terms of the agreement;
- To set up a suitable repayment plan for the above balance to be paid based on Mr B's affordability. Any charges for damages and excess mileage should be included in this repayment plan;
- Remove the adverse information about the termination from Mr B's credit file;
- Pay £150 compensation for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 November 2021.

Simona Charles
Ombudsman