

The complaint

Mrs A is unhappy Volkswagen Financial Services (UK) Limited trading as Skoda Financial Services ('VWFS'), declined her request for a payment deferral and then terminated her agreement when she experienced financial difficulties due to Covid-19.

What happened

In January 2020 Mrs A entered a 48 month hire purchase agreement with VWFS for a new car. The agreement was for £14,505.36, with an advance payment of £883.70, Mrs A was required to make monthly contractual payments of £224.33. There was also a final optional payment of £5,715 if she wanted to keep the car.

In March 2020 Mrs A emailed VWFS to let it know she was unable to meet her contractual payments because her income was impacted by the Covid-19 pandemic. She missed the contractual payments due in March, April and May 2020. Mrs A said she tried to call VWFS but found it difficult to get through. In May 2020 Mrs A contacted VWFS to discuss the arrears on her account and she requested a payment deferral, VWFS declined her request. Mrs A began making her contractual payments again in June 2020 and she maintained those payments until April 2021, when VWFS terminated the agreement for non-payment of the £672.99 arrears for March, April, and May 2020 rentals.

Mrs A complained to VWFS, she said she didn't receive any letters prior to the termination, she didn't think VWFS had treated her fairly. VWFS didn't uphold the complaint. It said it had attempted to contact Mrs A by phone, by email, sent the required arrears letters and the default notice. As it had no response from Mrs A, it terminated the agreement and placed a default on her credit file.

Unhappy with VWFS' response, Mrs A referred her complaint to our service. In January 2022 VWFS confirmed the car had been collected and sold at auction. The outstanding balance on the account is £2,032.69. Our investigator didn't think VWFS had treated Mrs A fairly. He said it should've granted a payment deferral to cover the three missing instalments, in line with the Financial Conduct Authority's (FCA's) guidance and had this been done, he didn't think her agreement would have been terminated. He recommended that VWFS refund Mrs A's deposit (less the £672.99 arrears), clear the outstanding balance with nothing further to pay, remove any adverse information recorded on Mrs A's credit file and pay her £350 compensation to reflect the stress and inconvenience caused.

VWFS disagreed, it detailed the processes it had implemented in response to the FCA guidance. VWFS said Mrs A failed to get in touch with it about repaying the arrears, in the circumstances it said it was correct in terminating her agreement. The complaint 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 think this complaint should be upheld. I'll explain why.

Mrs A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement, so I'm satisfied I can consider Mrs A's complaint against VWFS. I need to consider whether VWFS acted fairly when it declined Mrs A's request for a payment deferral. If it didn't, I need to think about what should have happened and what if anything it needs to do to put things right.

Mrs A sent an online form to VWFS on 25 March 2020 to advise she was facing financial difficulties due to the Covid-19 pandemic. At this time the FCA had not yet released any specific Covid-19 guidance, but the relevant guidance at the time was FCA handbook—Consumer Credit Sourcebook (CONC) which says *"A firm must treat customers in default or in arrears difficulties with forbearance and due consideration"*. I appreciate that due to Covid-19 businesses were dealing with an unprecedented situation at this point. But I can't see that VWFS initially took any action other than sending Mrs A an automatic reply to her email and an income and expenditure form. The email included details of potential support available, but I can't see that VWFS considered any specific support for Mrs A or gave any information on how she could access support.

Mrs A told us she repeatedly tried to call VWFS as she was concerned about the arrears building up on her account but was unable to get through to anyone until 13 May 2020. The system notes show that during this call Mrs A informed VWFS she had to close her business in line with the government's lockdown restrictions. She said it was likely that she could clear the arrears once she was able to reopen her business and she requested a payment deferral. On 18 May 2020 VWFS advised Mrs A that her request for a payment deferral had been declined. The reason given in the system notes is *"unsuitable for payment deferral due to arrears position"*.

At the time of Mrs A's payment deferral request in May 2020, the FCA had already released its 'Motor finance agreements and coronavirus: temporary guidance for firms', which came into effect on 27 April 2020 which explained;

"Where a customer is already experiencing or reasonably expects to experience temporary payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a payment deferral, a firm should grant the customer a payment deferral for three months unless the firm determines (acting reasonably) that it is obviously not in the customer's interests to do so".

Having considered the FCA's temporary guidance, I don't think VWFS responded fairly to Mrs A's deferral request nor did it consider the reason for her arrears. Mrs A's account was up to date prior to the pandemic and she informed VWFS as early as March 2020 that she was experiencing financial difficulties due to the Covid-19 pandemic. I think the purpose and spirit of the FCA's guidance was to help consumers just like Mrs A, who required temporary relief due to the pandemic.

I want to assure VWFS that I have read its response to our investigator's view. However, the points raised relate to VWFS' general approach to payment deferrals and its general response to the FCA guidance. It hasn't addressed anything specific about Mrs A's situation. And it hasn't mentioned anything to persuade me that it was not in Mrs A's interests to grant a payment deferral. And whilst I appreciate that VWFS were dealing with an unprecedented situation and increased demand on its service, I think the decision to decline Mrs A's deferral request was a mistake. I'm satisfied Mrs A should've been given a three-month deferral to cover the March, April and May 2020 instalments in line with the FCA guidance.

Mrs A has told us about the difficulties she experienced getting in touch with VWFS to discuss the missed payments. Understandably the business was experiencing an increased

demand on its services due to the impact of the pandemic, and this would have been outside their control. I can see that she contacted it on 2 June 2020 when she advised that she was expecting to return to work, and she reinstated her direct debits. Mrs A completed another online financial difficulties form on 18 June 2020.

Mrs A said she was waiting for someone from VWFS to contact her about the arrears and I can see why. In VWFS automatic response dated 6 July 2020 it said “ *if you have fallen into arrears or are concerned that you may fall into financial difficulties as a result of COVID-19 please do not be alarmed, we are taking exceptional steps to support customers impacted by COVID-19. You may still receive our standard letters informing you of these arrears however we are here to work with you to find a suitable solution and keep you in your vehicle*”.

Mrs A reinstated her payments in June 2020 and continued to maintain them until April 2021, when VWFS terminated her agreement. VWFS said it attempted to speak to Mrs A, sent her an email and had sent several arrears and a default letter to Mrs A, but she didn't get in touch with it regarding her arrears. Mrs A says she didn't receive any letters and the email sent went into her junk mail. I appreciate VWFS isn't responsible for this as it had correctly addressed the letters and email, but I think it would have been reasonable for VWFS to attempt to call Mrs A more than once, before it terminated her agreement.

And whilst I accept Mrs A could have got in touch with VWFS about the arrears, given she was aware the payment deferral had been declined. I'm satisfied that VWFS made a mistake when it didn't grant the three-month deferral. And I think that if the deferral was granted, the three missing instalments would not have been treated as arrears. I've not seen anything to indicate Mrs A would not be able to maintain a payment arrangement to clear the arrears, so I think it's unlikely the agreement would have been terminated and the car subsequently sold at auction, if the deferral had been granted.

Putting things right

Mrs A wanted to keep the car, continue to maintain her monthly instalments, and come to an arrangement to repay the arrears. As VWFS terminated the agreement and the car was sold, it's no longer possible for the agreement to be reinstated.

I think it's likely that Mrs A would have still been in possession of the car, had she been granted the payment deferral, but now she has to get a replacement car. In the circumstances, I think it's fair for Mrs A to pay for the time she had the car, so VWFS should refund Mrs A's deposit, after deducting the £672.99 arrears and it should write off the remaining £2,032.69 outstanding balance. VWFS should also remove any adverse information recorded on Mrs A's credit file, in respect of the agreement.

Finally, I think it would have been very distressing for Mrs A to not have been granted the payment deferral, during what was a difficult and uncertain time. She has also told us about the difficulties she had with getting a replacement car, due to adverse information VWFS has recorded on her credit file. In the circumstances, I think VWFS should also pay Mrs A £350 compensation to reflect the distress, and inconvenience caused.

My final decision

For the reasons given above, I uphold this complaint and direct Volkswagen Financial Services (UK) Limited trading as Skoda Financial Services to;

- write off the outstanding balance from Mrs A's account;
- refund Mrs A £210.71 from her deposit (£883.70 deposit less £672.99 arrears for the three missed payments), * applying 8% simple yearly interest to the refund,

- calculated from the date Mrs A made the deposit to the date of the refund;
- remove any adverse information relating to the agreement from Mrs A's credit file, including the termination marker, and
- pay Mrs A £350 to reflect the stress and inconvenience caused.

*If VWFS believes HM Revenue & Customs requires it to take off tax from this interest payment. VWFS must give Mrs A a certificate showing how much tax they've taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 25 July 2022.

Karen Dennis-Barry
Ombudsman