

The complaint

Mr T complains about the support he has received from Volkswagen Financial Services (UK) Limited (“VWFS”) in relation to a finance agreement he has with it.

What happened

In June 2019 Mr T entered into a hire purchase agreement with VWFS for a used car. Mr T complains that during the course of the agreement he fell behind with his repayments. Mr T tells us he only missed these repayments due to experiencing financial difficulties due to the Covid-19 pandemic. Mr T indicates that he had begun to make extra repayments to catch up on arrears. However, according to Mr T, without any warning, VWFS defaulted his account. He tells us VWFS made no attempt to take any other course of action other than the default. Moreover, now the debt has been passed to a third party who is trying to get him to repay the debt in full all in one go. Mr T tells us that this third party has visited his home seeking payment. Mr T complained to VWFS.

VWFS responded to say it had terminated Mr T’s account as according to it, it was entitled to do. Its stance is that at the time it terminated the account, Mr T made only a part payment in June 2020 and missed payments for July, August, September, October and December 2020 and February 2021. It acknowledged Mr T made ad hoc payments in January 2021 and February 2021. VWFS used the payment made in January 2021 to cover the arrears for May 2020 and part of June 2020. Further the February 2021 payment was applied to his account to pay for the arrears run up in November 2020. VWFS indicated it had issued Mr T with a default notice in February 2021 and that Mr T had not taken the steps he could have done to avoid the default and so the account was terminated. On this basis it did not agree it had done anything wrong and declined to uphold Mr T’s account.

Dissatisfied Mr T complained to our service.

Once Mr T’s complaint was with us VWFS provided further information. Its records showed that Mr T had a history of missed payments both in 2019 and early 2020. In particular he had missed payments for February 2020 and March 2020, together with the missed payments it had mentioned in its response to Mr T’s complaint.

Moreover, VWFS let us know it had issued several notices of sums in arrears (“NOSIA”) to Mr T over the life of the agreement. This included one such notice which was issued in early April 2020 in respect of two months of arrears. VWFS indicated that Mr T had asked for a payment deferral in March 2020. VWFS offered Mr T some forbearance options instead. Moreover, in May 2020 Mr T was offered both the option of 60 days breathing space and a payment deferral. Although ultimately VWFS did not go ahead with the payment deferral on the basis that it did not think that it was in Mr T’s best interests.

In addition, VWFS told us about the repeated attempts it had made to discuss the situation with Mr T which Mr T did not respond to. VWFS indicates that it was only after its attempts to come to an agreement with Mr T had failed and after it had told him what steps it was planning to take that it terminated the agreement.

One of our investigators considered Mr T’s complaint. He did not recommend upholding Mr T’s complaint.

VWFS accepted this recommendation. Mr T did not. In brief, he suggested he had never received any communications from VWFS to let him know he was in arrears or to offer him any sort of plan for getting back on track. Neither had it contacted him, he suggested before it defaulted his account. Moreover, he indicated that he only fell behind with his payments due to the Covid-19 pandemic. Mr T also let us know that he no longer had the car.

We sent Mr T copies of the correspondence that VWFS had told us it had sent to Mr T about the arrears and how to avoid a default and what would happen if he did not take action. Mr T responded to let us know his complaint was not about whether he had arrears he already told us he had these. Rather his complaint was about how VWFS treated him when he was experiencing financial difficulties due to the Covid-19 pandemic. Specifically, he said.

“The dispute is about the fact the whole world was shut down no one could work to make money to pay for things yet company’s like [VWFS] are still sitting with there hand out. I tried to get in contact with [VWFS] to try come to some kind of arrangement but that went nowhere as there excuse to me was that the price of my vehicle was to high for them to help me out and it’s snowballed from there with no communication from them despite me trying to resolve the issue.”

We had reached an impasse, so I was asked to take a fresh look at Mr T’s complaint.

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.

First, I’m very aware that I’ve summarised this complaint in far less detail than the parties and I’ve done so using my own words. I’m not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr T suggests that he fell into arrears due to temporary financial difficulties caused by the Covid-19 pandemic. Then out of the blue despite his best efforts to sort things out VWFS defaulted his account. He considers that in the circumstances VWFS did not treat him appropriately. In particular, it did not take account of the why he was in arrears and did not tell him what it intended to do, even though he was communicating with it.

In the normal course of events, when a party signs a contract, the general starting point is that both parties intend to be bound by the terms of the contract. That being so I think it fair and reasonable that both Mr T and VWFS should be able to rely on the terms of the contract.

It does not seem to be in dispute that Mr T breached the contract by falling behind with his repayments. Further it does not seem to be in dispute that the contract permits VWFS to terminate the contract if there has been a breach. Neither does Mr T appear to dispute that when the NOSIA was issued in April 2020 he had two months of arrears and by the time the last NOISA was issued he had at least 8 months of arrears. I think I can take it as read that Mr T did not respond to the notices because he suggests he never received any

communications about the arrears and VWFS's intention to default the agreement if he did not take the action required in the NOSIAs.

Where a customer is experiencing financial difficulties a firm such as VWFS is expected to show due forbearance. The actions that a firm might consider would include for example the firm considering suspending, reducing, waiving, or cancelling any further interest or charges, deferring payment of arrears, or accepting token payments for a reasonable period of time. However, this would be a two-way street in that the firm would need to work with the consumer. In this instance VWFS's records show it tried repeatedly to contact Mr T to work things out. I have no reason to doubt the accuracy of VWFS's records in this respect. I don't find it likely in the circumstances that VWFS failed to contact Mr T about his arrears, it had a duty to do this and it could face regulatory action if it ignored this duty. Further, it was in VWFS's commercial interests to contact Mr T. Moreover, I find it unlikely that correctly addressed emails and letters were never delivered to Mr T. For all of the reasons, on the face of it, VWFS did not act inappropriately in taking action to recover the arrears and then defaulting the account when Mr T did not take action to avoid the default.

That said, the Financial Conduct Authority (the "FCA") which regulates financial firms such as VWFS introduced guidance, which sets out what firms such as VWFS had to do where consumers faced temporary financial difficulty in relation to motor finance agreements due to the pandemic. In fact, the FCA issued several sets of guidance. But I will give the several sets of guidance the collective name of "the guidance".

The guidance did not apply where a consumer had financial difficulties not related to the pandemic. The guidance was not in force when Mr T first began to run up arrears. The lockdown rules related to the pandemic were not in place. Therefore, it is difficult to see how Mr T's initial payment difficulties could be down to the pandemic.

Moreover, even if I accepted the guidance did apply to Mr T, which I don't, this would still not assist him. This is because whilst the guidance anticipated that consumers who were experiencing financial difficulties due to the pandemic would be offered a payment deferral of up to six months, there was a proviso. The proviso was a payment deferral could only be given if it was in the consumer's best interests. It is hard to see how it would have been in Mr T's best interests to offer him a payment deferral when he was already in arrears and given that his normal monthly repayments were relatively large (around £600 per month).

In the circumstances, for the reasons I have gone through above, I don't find that VWFS acted unreasonably in response to Mr T's financial difficulties.

Given that, on balance, an early termination of the agreement was Mr T's only realistic option, I would have expected VWFS to have gone through the early termination options with Mr T. VWFS suggests it did, Mr T says it did not. I think this is a moot point here. I say this because I would have expected VWFS to look to find the early termination option which was the most beneficial for Mr T. The choices were voluntary surrender, voluntary termination, or unilateral termination by VWFS for breach of contract by Mr T. Usually unilateral termination is the worst option financially for a consumer. That said in this instance given how long the agreement had to run and the amount of repayments that Mr T had made, it is not clear to me that voluntary surrender or voluntary termination would have been the better options for Mr T. Further still, both of these options would have involved Mr T handing back the car and it seems that was not something Mr T wished to do at that point. Further, I am satisfied, as I mention above that VWFS took sufficient steps to give Mr T fair notice of its intentions. For all of these reasons I've no proper basis for saying VWFS acted incorrectly in ending the agreement by defaulting it. Moreover, I am satisfied VWFS was entitled to try and recover the debt or to sell the debt on to third parties.

It follows from all of the above that I can't fairly or reasonably agree that VWFS has acted incorrectly and I therefore cannot ask it to take any further action.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 August 2022.

Joyce Gordon
Ombudsman