

The complaint

Miss P is complaining about charges she was asked to pay after she voluntarily terminated a hire purchase agreement with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (“VWFS”).

What happened

Miss P entered into a hire purchase agreement in April 2017 with VWFS to obtain a new car. The agreement was for 4 years.

She has had some service issues with the supplying dealership, but as these are not pertinent to this complaint against the finance company, I won't be commenting on them here.

In May 2020, Miss P requested a payment holiday from VWFS as she was experiencing financial difficulties due to the Covid-19 pandemic. This was agreed for 3 months (June/July/August), and was then extended in September 2020 for a further 3 months (September/October/November).

In November 2020, Miss P contacted VWFS to request a further payment holiday as she was out of work and seeking a new role. VWFS explained that she had already benefitted from a 6 month payment holiday, as covered by the Financial Conduct Authority (FCA) guidelines and explained the option to return the car. Miss P said she didn't want to give the car back but couldn't pay and was advised that if she couldn't make the payments, and she let the agreement fall into arrears, she would then be contacted to arrange a payment plan.

On 1 February 2021, Miss P called VWFS and they agreed to provide her with breathing space, which meant no contact from them or chasers for the arrears for 60 days. They advised this would expire on 2 April 2021.

In April 2021 VWFS contacted Miss P by email to discuss things further and she called them on 13 April 2021. She asked about giving the car back and voluntarily terminating the agreement and was told that the 50% threshold to do this had been met but she would still have £1023.15 in arrears to pay. She asked if she could pay half the arrears now and agree a payment plan for the other half and was transferred to discuss whether this was an option with the Collections department.

A few days later Miss P called again to reinstate her direct debit and agreed a payment plan to pay off the arrears. This was impacted later in April when she changed the payment date for the direct debits from earlier in May to later in May, and there were further discussions around the options to end the agreement.

On 21 June 2021 Miss P phoned VWFS to talk about voluntary termination again, and they confirmed that at that point, she could do that but would need to pay the arrears still which at that time were £768. She was sent paperwork for the voluntary termination and returned this to request it was carried out on 28 June 2021.

This was processed and collection of the car was arranged. On 5 July 2021, an inspection of the car was carried out by BCA Ltd (the agent appointed to collect the car and inspect it on behalf of VWFS). This highlighted some damage which was outside of fair wear and tear, and VWFS invoiced Miss P for the charges for this which totalled £582.

In August 2021, Miss P emailed VWFS disputing both the arrears charges outstanding and these charges for damages. After reviewing the evidence VWFS removed two of the damage charges for scuffed alloy wheels, leaving a bill of £438 for damages. However, they didn't agree that the arrears charges owing were unfair, so they rejected this part of the complaint.

Unhappy with this response, Miss P brought her complaint to our service. The investigator here who looked at the case said that VWFS didn't need to do anymore. They felt that the arrears charges were fair, and that VWFS had treated Miss P fairly. They also felt that the damages charges were evidenced and were fair to charge.

Miss P didn't agree with this and asked for an Ombudsman to review the case to make a decision. She felt that VWFS should have to prove they did the repairs, or sold the car at a loss, to justify charging for the damage. She also told us she was in financial difficulties and wouldn't be able to pay the money she owed to 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.

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. Miss P 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.

I'll deal with the issues of arrears first. VWFS first agreed to a period of 6 months of deferred payments (payment holidays) for Miss P, from June to November inclusive. The FCA published guidance in April 2020, as to how *“regulated firms that issue regulated motor finance agreements” should provide “exceptional and immediate support to customers facing payment difficulties due to circumstances arising out of the coronavirus. It is intended to provide help to those who might be having temporary difficulty in making their finance or leasing payments due to a loss of or reduction in their income.”*

Based on the evidence I've seen; I'm satisfied that this guidance applied to the agreement Miss P had with VWFS. The guidance said that *“a firm should grant the customer a payment deferral for 3 months unless the firm determines (acting reasonably) that it is obviously not in the customer's interests to do so.”* The guidance also makes it clear that *“customers should be able to request a payment deferral at any point after the guidance comes into force.”* The guidance came into force in April 2020.

The FCA issued updated guidance in July 2020. This guidance said that, *“Where, after an initial payment deferral, and at any time before their first payment is due, a customer indicates they remain in temporary payment difficulties and cannot resume full payments immediately, a firm should offer a full or partial payment deferral to reduce payments for a*

period of 3 months to a level the customer indicates they can afford. If the customer is in temporary payment difficulties but is unable to afford any payments, the firm should offer them a full payment deferral where this is in the customer's interests."

On this basis, I am satisfied that VWFS dealt with Miss P fairly when she originally contacted them to say she was suffering payment difficulties during the pandemic. They gave her 2 periods of 3 month payment holidays, to give her chance to get back on her feet financially.

The FCA didn't issue any further guidance allowing for a third payment deferral period for customers whose income was affected by Covid-19. Instead they made it clear they expected firms to apply the existing rules and treat these customers with forbearance and consideration. So, I don't think VWFS did anything wrong by not giving Miss P a further payment deferral when she asked for it in November 2020.

Instead, VWFS discussed the option for her to return the car. She said she didn't want to return the car but couldn't make payments currently, and they explained that if she missed payments and let the agreement fall into arrears, they would have to contact her to try to arrange a payment plan. I am satisfied they have treated Miss P fairly here.

This is what happened over the following 2-3 months, and I can see they sent her a text message in January 2021 about the arrears. They spoke to Miss P in February 2021 and Miss P asked for breathing space, so they agreed not to contact her for 60 days about the arrears or a payment plan. Again, I am satisfied they have treated her fairly here.

When they made contact again in April 2021, Miss P asked about voluntary termination and giving the car back, and VWFS explained they could do this, but confirmed she had a little over £1,000 of arrears that would still remain payable. She asked if she could pay part of this, and agree a payment plan for the rest, and was transferred to their collections team to discuss this option.

This is fair, and VWFS have given Miss P the opportunity to explore her options and work something out that suits her best. They've also made her aware that arrears will need paying still if she chooses to voluntarily terminate the agreement.

A few days later she contacted them to reinstate her direct debit and agree a payment plan for the arrears, which was put in place. There were some payments made towards the arrears, and some changes in payment dates, before Miss P requested details again for voluntary termination in June 2021. I am satisfied all of this was fair to Miss P. I've seen the voluntary termination paperwork and its clear she will still have to pay the arrears.

I've also considered overall whether it is fair to require the arrears to be paid when a voluntary termination is taking place in these circumstances. The arrears have built up because Miss P wanted to keep the car still in November 2020 but couldn't make payments. She could have voluntarily terminated the agreement in November 2020 with no arrears, and this option was discussed with her.

If the arrears weren't still payable in June 2021, Miss P would have been able to continue using the car for several months, without paying the correct amount for it, before she gave it back. This wouldn't be fair to the business, so I am satisfied that they've done nothing wrong here in requiring the arrears to be paid when the agreement was ended. They have made it clear at all points that the arrears would still need paying, and I think that's fair, and Miss P was treated fairly.

Moving on to the damage charges, Miss P is concerned that it isn't fair for VWFS to charge for damage when they haven't shown that they carried out the repairs or sold the car for a

reduced price. The finance agreement sets out how any damage outside of fair wear and tear guidelines will be dealt with. VWFS aren't required to evidence the repairs being carried out. I don't know the details specifically here, but it's quite common for the cars in these situations to be auctioned off without being repaired.

As such, I'm satisfied that VWFS are treating Miss P fairly in charging her for any damage outside of fair wear and tear, based on the details provided to her when she entered the agreement with them. I've then looked at the charges raised by VWFS and assessed whether the damage is what would be considered outside of fair wear and tear.

Two of the charges were removed by VWFS when Miss P raised her complaint with them, so I won't be commenting on those. That leaves four charges. The first two are for damage to the rear bumper, and to the rear right hand quarter panel. The second two charges are for damage to two of the tyres.

I've consulted the British Vehicle Rental and Leasing Association (BVRLA) fair wear and tear guide, to help me decide whether it's fair for VWFS to charge for these 4 items. This is an industry standard set of guidelines to give some clarity as to what might class as fair wear and tear, as opposed to damage falling outside of being normal wear and tear. These are the same guidelines VWFS use to assess for any damage/end of contract charges.

In looking at the rear bumper and rear right hand quarter panel, the photos provided show scratches to these. The BVRLA guidelines say smaller scratches are OK, provided they don't penetrate to the bare metal, and there is a maximum of 4 scratches on a panel, which are all 25mm or less in length. The photos show that both scratches are large, much larger than 25mm, and both penetrate through to the metal. They are well outside the guidelines for fair wear and tear, and I agree with VWFS, they are not fair wear and tear. So I am satisfied that it's fair for VWFS to charge for these.

The charges quoted are £78 for the rear bumper, and £132 for the rear right hand quarter panel, and I am satisfied that these charges are fair.

The other 2 charges are for damaged tyres. The BVRLA guidelines say that for tyres to be accepted as having fair wear and tear, there must be no damage to the sidewalls or tread. In examining the photographs, it's clear that both of the front tyres have damaged sidewalls. There are close up photos of gouges in each sidewall, and I am satisfied that makes them outside of fair wear and tear. The charges billed are £114 per tyre, and I am satisfied these charges are fair.

Miss P has also said that she is in financial difficulties and can't pay the money owing to VWFS. I was sorry to hear this, but this doesn't affect my assessment of whether VWFS have treated her fairly up to this point. I am satisfied VWFS have treated her fairly and I won't be asking them to do any more here. I also expect VWFS to continue to treat Miss P fairly when they deal with the money she still owes.

My final decision

I am not upholding this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 25 July 2022.

Paul Cronin
Ombudsman