

The complaint

Mr S complains that Volkswagen Financial Services (UK) Limited trading as Seat Financial Services (VWFS) terminated his hire purchase agreement unfairly.

What happened

Mr S entered a hire purchase agreement for a new car in November 2019. The agreement was financed by VWFS and required Mr S to make an advance payment of £287.99, followed by 34 monthly payments of £287.99, along with a final optional payment to purchase the vehicle.

In April 2020 Mr S asked VWFS for a payment holiday, as his income has been affected as a result of the coronavirus pandemic (Covid-19). VWFS placed Mr S's account in a suspended status, which meant no payments would be collected, whilst they waited for advice from the regulator in respect of Covid-19.

In June 2020 VWFS offered Mr S a payment holiday. Mr S rejected the terms of the payment holiday because he'd have to increase his monthly payments once the holiday ended in order to pay back the deferred payments. Mr S said he couldn't afford to do this. So, a payment holiday was not agreed.

Mr S asked VWFS if he could make reduced payments of £80 a month. VWFS told Mr S they'd be unable to accept this. They said Mr S could accept the terms of the payment holiday or contact their collections team to discuss an arrangement to pay or breathing space. They also told Mr S that he had the option to sell the vehicle and settle the finance, part exchange the vehicle, or voluntarily terminate the agreement. VWFS gave Mr S their bank details so that he could make unscheduled payments towards the agreement if they were affordable, whilst a long-term solution was found.

In July 2020 VWFS told Mr S that his agreement suspension would come to an end on 16 July 2020 and payments would be due in line with the payment schedule in the agreement, they asked Mr S to contact them to arrange to make the payments missed during the suspension period.

In August 2020 Mr S told VWFS he remained in part time employment as a result of Covid-19 and proposed a reduced payment of £100 a month. VWFS told Mr S they wouldn't accept reduced payments, and his full payments were due. They said they could set up an arrangement to pay the arrears, which were due for May, June, and July 2020. VWFS told Mr S he could apply again for a payment holiday but would need to ensure he only had one month of arrears outstanding to do so.

In February 2021 Mr S let VWFS know that he was still experiencing financial difficulty as a result of Covid-19, and he applied for a payment holiday. VWFS declined Mr S's application for a payment holiday as his agreement was in arrears. Mr S asked to make reduced monthly rentals for three to four months. VWFS told Mr S they couldn't accept reduced payments as his full monthly rentals were due, they told him that the agreement was at risk of default and possible termination if he was unable to meet his future rentals and set up an

arrangement to repay the arrears on the agreement. VWFS gave Mr S options to end his agreement and told him they could arrange a repayment plan but would need further information from him to check it would be affordable.

In March 2021 Mr S proposed 12 monthly repayments of £388, but before an arrangement could be made Mr S let VWFS know that he was now unemployed and would need to cancel his direct debit. VWFS told Mr S that he could apply for a payment holiday, agree an affordable repayment plan, apply 60 days breathing space to his account, or he had the option to sell, part exchange or voluntarily terminate his agreement.

In April 2021 Mr S told VWFS that he needed the vehicle to get to work. He said he intended to make some payments each month and would provide an update when he was able to resume his regular payments. VWFS applied 60 days breathing space to Mr S's agreement to give him time to assess his finances and the options available to end the agreement early.

In July 2021 VWFS applied additional breathing space to Mr S's account to last until September 2021. They asked Mr S to contact them before 6 September 2021 to avoid further action being taken.

On 10 September 2021 VWFS sent Mr S a default notice. This set out that the agreement was in arrears of £2,943.87 which would need to be paid by 29 September 2021 and if payment wasn't made then further action would be taken including termination of the agreement and recovery of the vehicle.

In late September 2021 Mr S let VWFS know that he was in temporary employment and asked for an income and expenditure form so that an arrangement to pay could be made.

On 8 October 2021 VWFS contacted Mr S but he was unable to speak on the phone. Mr S says VWFS said they'll call him back later in the day. VWFS say Mr S was due to call them when he was available, and they told him he needed to contact them before 14 October 2021.

On 15 October 2021 VWFS terminated the agreement. They processed the termination and wrote to Mr S on 18 October 2021 to let him know that they'd be taking action to repossess the vehicle.

Mr S complained to VWFS about the termination of his agreement. VWFS sent Mr S their final response to his complaint in October 2021. They said they sent a default notice which expired on 29 September 2021, and they tried to speak with Mr S in early October, and sent him an income and expenditure form, but this wasn't returned. They said the termination was carried out correctly and didn't uphold Mr S's complaint.

Unhappy with this, Mr S brought his complaint to this service for investigation. He said VWFS hadn't made reasonable adjustments for his health, they didn't follow regulator guidance when he was in financial difficulty as a result of Covid-19, and he did return the income and expenditure form to VWFS, but it was slightly late as he was waiting for some information from a third party. Mr S wanted the agreement reinstated and normal monthly payments to be resumed, with the arrears handled by a debt management plan he'd set up.

Our investigator looked into things for Mr S and gave her view that VWFS had provided assistance to Mr S when he was impacted by Covid-19 and, although Mr S wished to keep the vehicle, VWFS had a responsibility to ensure a payment arrangement didn't place him in further financial difficulty. She said VWFS had given Mr S time to contact them after the default notice was issued, and so she thought their decision to terminate the agreement was fair.

Mr S didn't agree. He said the agreement was terminated unfairly, he'd submitted his income and expenditure form and he'd made regular payments throughout the time he was out of work.

As an agreement can't be reached, the case has been passed to me for a 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.

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 what I consider was good industry practice at the time.

Mr S 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.

Both parties have provided a good deal of evidence, so I've had to summarise things in this decision. The rules of our service allow me to do this, but I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However, I'm going to concentrate here on what I consider is key to reaching a fair and reasonable outcome overall.

Mr S first asked VWFS for assistance with financial difficulty due to Covid-19 in early April 2020. There was no guidance from the regulator in respect of Covid-19 at the time, but VWFS placed Mr S's account in a suspended status – meaning no payments were due, whilst it waited for this advice. I find this was reasonable in the circumstances, as VWFS expected this advice in the near future, and it meant that Mr S's account wouldn't be affected whilst VWFS waited for this.

The Financial Conduct Authority (FCA) released specific guidance relating to motor finance agreements and Covid-19 in late April 2020. That guidance said, *'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.'*

VWFS did offer Mr S a payment holiday, but he chose not to accept it as it would've meant his future payments would increase. I find VWFS acted reasonably here, in offering Mr S a payment deferral in line with the guidance and explaining the affect this would have on the remainder of Mr S's agreement.

As Mr S didn't accept the payment holiday, there were existing forbearance rules and guidance in place that businesses are expected to follow. These are set out by the FCA in the Consumer Credit sourcebook (CONC), which can be found online. CONC 7.3.4 states, *"A firm must treat customers in default or in arrears difficulties with forbearance and due consideration."*

Mr S offered to make reduced monthly payments, but VWFS told him his monthly rentals would continue to be due, so if he made less than the agreed payment his account would continue to be in arrears.

VWFS offered a number of payment arrangements to Mr S to repay his arrears, periods of breathing space where they wouldn't contact Mr S about his arrears, the option to make ad-

hoc affordable payments whilst a long-term solution was found, and they provided Mr S with his options to exit the agreement early, including selling or part exchanging the vehicle or voluntarily terminating the agreement.

Whilst I appreciate that Mr S wanted to keep his vehicle, part of VWFS's responsibilities included ensuring that any payment arrangements didn't place Mr S in further financial difficulty. They also included ensuring that arrears didn't escalate to an unmanageable level. In the circumstances, I find that VWFS acted with due consideration and forbearance in the options they provided to Mr S throughout the course of the agreement.

Mr S didn't come to an agreement with VWFS to pay his arrears, and VWFS issued a default notice to Mr S in September 2021. That notice set out that Mr S was £2,943.87 in arrears on the agreement, and that a further payment was due on 1 October 2021. The notice said Mr S needed to clear the arrears by 29 September 2021, and if he didn't, VWFS might take further action such as terminating the agreement and recovering the vehicle.

The Consumer Credit Act 1974 (CCA) sets out in section 87(1) that a default notice is necessary before the creditor is entitled to terminate the agreement or recover the goods.

Section 88 of the CCA sets out that the default notice must:

- *Specify the nature of the alleged breach*
- *If the breach is capable of remedy what action is required to remedy it and the date before which that action is to be taken*
- *If the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be repaid.*

I'm satisfied that the default notice was in line with the CCA requirements.

The agreement sets out in 'section 10 termination' that VWFS will be entitled to terminate the agreement on expiry of the required notice if Mr S is in breach of the agreement.

Mr S was in arrears on the agreement, so he was in breach of the payment requirements. I'm satisfied that VWFS sent Mr S a valid default notice, and that the agreement allowed VWFS to terminate it when this notice expired in September 2021.

Mr S has said that he has a condition which means that he might need more time to process information, and VWFS didn't take this into account. I'm satisfied that VWFS attempted to contact Mr S prior to terminating the agreement, and that he was given an opportunity to discuss his account, and to provide an income and expenditure form prior to the termination.

I can see that Mr S provided his income and expenditure form on 18 October 2021. But I'm satisfied that this was after the expiration of the default notice, and after VWFS had taken action to terminate the agreement. So, I'm satisfied that in the circumstances, their decision to terminate the agreement was fair.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 December 2022.

Zoe Merriman

Ombudsman