

The complaint

Mr C complains that Volkswagen Financial Services (UK) Limited trading as Seat Financial Services (“VWFS”) have treated him unfairly in terminating his Hire Purchase Agreement after some arrears built up during the Covid-19 pandemic lockdown period in 2020.

What happened

Firstly, for clarity, we have communicated often on this case with Mrs C, after Mr C asked us to discuss the case with her. As she is representing him, I will always refer to Mr C below as having given us information or answers. I appreciate this can sometimes be confusing, but the evidence given to us by Mrs C has been done so on behalf of Mr C, so I will refer only to Mr C for simplicity.

Mr C entered into a hire purchase agreement with VWFS in August 2019 for a car. In late March 2020, he contacted VWFS to ask for support as the Covid-19 lockdown meant he couldn't work so would struggle to make payments. In early April 2020, “breathing space” was applied to the account to allow a 60 day period where he wouldn't be chased for payments whilst he considered his options going forward.

The next contact came in July 2020. Mr C emailed asking to be called to set up payments again, and after failing to get hold of Mr C to discuss this, VWFS emailed back to explain they had left a voicemail and gave a number to call back on. There appears to then be no contact until into 2021, however Mr C did manage to proactively reset up the same monthly payments himself. Mr C was sent a notice of arrears in October 2020 confirming the amount of arrears outstanding and requesting he call VWFS to discuss.

In February and March 2021, VWFS sent text messages, letters, and an email in an attempt to get hold of Mr C. They issued a default notice by post on 8 February 2021 asking Mr C to pay off the arrears by 27 February 2021, or they would have to terminate the agreement. This was followed up by a text on 12 February 2021, and an email and voicemail on 11 March 2021 asking for urgent contact before 17 March 2021. A further notice of sums in arrears letter was sent by post on 17 March 2021, before VWFS terminated the agreement on 22 March 2021 and passed the debt for collection to another company.

Mr C contacted them on 25 March 2021 by phone to discuss the situation as he felt he had an agreed payment deferral/holiday in place for the missed payments. VWFS explained this wasn't the case and that because Mr C hadn't contacted them about the arrears after they had tried to contact him several times, the account had now been terminated. They explained that going forward, he would need to speak to the debt collection firm who had bought the debt.

Mr C complained and VWFS provide their response in April 2021. They didn't uphold the complaint, explaining that they felt they had done what they needed to do and provided the required notification of their intention to terminate the agreement unless payment was received.

Unhappy with this, Mr C brought his complaint to our service. He also arranged to clear the

balance with the debt collection company in the summer of 2021.

An investigator here investigated the complaint and gave their view that whilst the circumstances were unfortunate, they couldn't uphold the complaint. VWFS hadn't done anything wrong, and whilst they could see where confusion had occurred, VWFS had met all the requirements we would expect to see in circumstances like these, so they wouldn't be asking VWFS to do anymore.

Mr C contacted the investigator to discuss the view. He felt the investigator had sided with the business and felt that the default notice issued didn't need to be acted upon as it included arrears for the period of breathing space, which wouldn't have needed to be paid. He also felt that he could ignore the October 2020 notice of arrears as they had been told during breathing space that they could ignore standard letters about arrears.

Mr C felt that he had misunderstood the breathing space element of the arrears. The investigator here explained why they didn't feel this changed their view and agreed to ask VWFS to provide a call recording that Mr C felt would support their case.

Following on from this in further conversations in the following days, Mr C said that he felt that the default notice was sent to an address they had just sold so they didn't receive it, and because the other communication didn't express the specific urgency or reasons for needing to speak to Mr C, they didn't think it was fair for VWFS to then go ahead and terminate the agreement.

As an agreement couldn't be reached, Mr C asked for an Ombudsman to review the case and issue 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'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. Mr C was supplied with a vehicle under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Firstly, I'd like to express my sympathy to Mr C for the events here, and how things have played out. I completely appreciate that everything he has done was done in good faith, and I think the outcome of the termination of the agreement was unfortunate.

But, for the purposes of this complaint, what I have to do is to establish whether VWFS treated him fairly in their dealings with him, and whether they followed due process and relevant legislation in terminating the agreement. Whilst I have sympathy with what's happened, I have to treat both parties fairly in assessing the evidence to decide this.

When we originally investigated the case, a detailed timeline was shared with both parties. I don't propose to go through this in the same level of detail, as I think both parties are aware of this and there aren't too many areas on which there is disagreement. Instead, I want to focus on the reasons for the timeline and the problems that ensued, and on the breakdown

in communication here which led to the termination of the agreement.

There has clearly been a breakdown in communications here, which began due to the problems created by the Covid-19 pandemic. I appreciate Mr C's comments that earlier in 2020, when he was trying to speak to VWFS to arrange support with his payments, he couldn't get through to them on the phone. This mirrors the problems most businesses around the country were facing when staff were suddenly prevented from going into work and had to try to work from home. But I don't think this has had any significant impact here on the problems which followed on.

In March/April 2020 Mr C had an email conversation with VWFS and they arranged "breathing space" for him. When someone is having financial difficulties, the Financial Conduct Authority (FCA) requires that financial businesses deal with them with forbearance and due consideration.

In addition to this, the FCA issued specific guidance on 27 April 2020, about how to deal with customers who were affected by the coronavirus (Covid-19) pandemic. However, when Mr C first contacted VWFS about his issues, this was before the FCA had issued any Covid-19 guidance.

So, VWFS offered him 60-days breathing space and asked Mr C to speak to them once this was over (6 June 2020). This is a standard tool which businesses can use with customers who are asking for support due to payment difficulties and is a reasonable approach in the circumstances.

By June 2020, the FCA Covid-19 guidance was in place, so potentially VWFS and Mr C could then have discussed further support, including potentially a payment deferral which could have been backdated. But there doesn't appear to have been any significant communication between the parties again until the agreement was terminated nearly a year later.

Mr C has said he tried to speak to VWFS several times but couldn't get through on the phone. I can see he emailed them in July 2020 asking for someone to call him, and that VWFS tried to call and left a voicemail. They followed up with an email to confirm they'd tried to call and asked him to call them again. There's then no evidence of any contact between the parties after this until the agreement was terminated.

Mr C has told us that unable to get hold of them, he set up a monthly payment again himself for the standard monthly amount, which went ahead from August 2020 to March 2021. Up to this point, I have no concerns with how either party have acted. In a difficult time to remain in contact with customers, VWFS have done what they can, and Mr C has acted in good faith by setting up a monthly payment again himself.

During the following months, before they issued a default notice, VWFS did send a notice of arrears letter in October 2020. Mr C told us he didn't think he had to do anything with this, because when he had set up the breathing space, he'd been told standard regulatory letters would continue to be sent but could be ignored.

However, I'm not persuaded this was a reasonable course of action. There's no evidence phone contact with VWFS was as difficult during this period (and they've confirmed their phone lines were operational to normal levels during this period), and the breathing space information provided to him was clear that it was for the 60 day period that he could ignore regulatory letters, not for the rest of his agreement. This was many months after the 60 days of breathing space.

Both parties here have made assumptions about what was going on at different times. I'm going to discuss these assumptions, and how fair they were to make, and what impact they have had.

Apart from the October 2020 notice of arrears, VWFS haven't provided evidence of trying to contact Mr C further about the arrears until February 2021. This isn't ideal, but again, Covid was still having an impact on most businesses and consumers at this point. Alongside this, allowing the arrears to continue has not caused any issues for Mr C at this point. He's been making regular payments without any further arrears building up. Then in February 2021, having heard nothing more from Mr C following the October 2020 arrears notice about how he planned/wanted to deal with the arrears, VWFS have issued a default notice by post and in March 2021 a further arrears notice by post too. In this period they've also sent a text message to Mr C, sent an email, and attempted phone communication.

Mr C has said that they had just moved to a new house, and he doesn't respond to unsolicited calls on his phone. He also said that the messages he did see didn't impress any urgency on him that action was required or give any detail. I've seen the note of the email sent, and it does say they need to speak to him urgently, and by 17 March 2021.

VWFS have then assumed Mr C is refusing to engage with them about the arrears and proceeded to terminate the agreement on this basis. I've considered whether this assumption feels fair, and I'm satisfied it does. They've carried out the regulatory default notice and notices of arrears required of them. They've also used all communication methods available to try to get in touch with Mr C, but to no avail. So, whilst it's unfortunate that until this point, they hadn't been able to speak to Mr C, I am satisfied that they gave him plenty of opportunity to respond to them and discuss the arrears.

At the same time, Mr C has told both VWFS and our service that he assumed the missed payments would be payable at the end. He's also said he assumed a payment deferral (holiday) was in place. I've examined the communications and evidence provided to see whether this assumption feels fair, and I'm not persuaded that it does.

I completely appreciate that in the outside world/media, by the summer of 2020 onwards, a lot of talk was about payment holidays to help customers cope with financial pressure the pandemic had created. But there's no evidence of any communication between Mr C and VWFS that talks about him having a payment holiday/deferral or asking for one. So, whilst I can understand Mr C perhaps assuming he would be able to do this, he didn't ask for it, and nothing VWFS sent to him mentioned payment deferrals or holidays.

If I compare communications between the parties, Mr C has told us that when he has reached out by phone, he's struggled to get a response, but when he has emailed VWFS they have responded and engaged in discussing things with him. However, when VWFS have sent letters, left voicemails, sent text messages and sent emails, Mr C hasn't responded to any of them.

Further to this, Mr C has told us that he ignored the arrears notice sent in October 2020, because he felt he could still do this as part of the breathing space he'd had. But the arrears notice is clear that the money is owing, and he should call VWFS to discuss it. At this time, I don't think he would have had the same issues in contacting the business, but there's no evidence he reached out and tried. I'd also have expected to see email contact if he was having difficulty getting through on the phone, as he had done earlier in the year.

Then when the default notice was sent, Mr C initially told us that because he felt these payments had been deferred, he didn't think he needed to act on this. Again, I don't think this was a reasonable response to a notice which gave clear instructions as to what he

needed to do to avoid termination, and which had no mention of deferrals. If he felt this was the case, I'd expect him to have contacted VWFS to discuss this, and why they were sending the default notice.

Following this, there was also a suggestion from Mr C that the written default notice hadn't actually been received because Mr C had moved to a new house. Again, this would be unfortunate, but I can't hold VWFS responsible for this when they hadn't been informed of a house move.

Alongside the evidence provided of text messages, emails, and attempted phone calls, I'm satisfied that VWFS did all that could be expected to bring to the attention of Mr C that arrears existed which he needed to speak to them about or they were going to terminate the agreement.

I think this is the crux of the issue here. I have sympathy for Mr C and can understand to an extent some of his actions and assumptions. It's also unfortunate that the Covid-19 pandemic caused these issues at the beginning. But fundamentally, VWFS have done nothing wrong. There was some difficulty getting hold of VWFS in the early stages of lockdown, but these difficulties were overcome and there shouldn't really have been any confusion about things at that point. After that, there was no communication of substance for the situation to be clarified. But VWFS have made several attempts to discuss things with Mr C before proceeding to terminate the agreement.

This is an unfortunate situation where Mr C has made an incorrect assumption, and this assumption has led to him ignoring all communications from VWFS. If he'd spoken to them, and he wanted a payment holiday to cover the missed payments, I am sure that VWFS could have backdated a request for a payment deferral to put him into the situation he believed he was in. But it wouldn't be appropriate for VWFS to proactively offer a payment deferral to Mr C without discussing it with him first. They would need to have a conversation, listen to his concerns or issues and then the two parties could come up with the most suitable plan of action to deal with the arrears. VWFS have tried several times to discuss the arrears, but Mr C hasn't responded to them.

Unfortunately, Mr C made no contact until the termination had been completed. At this point, VWFS have said there's nothing more they can do, and I'm satisfied that action is reasonable. Mr C asked us to retrieve the recording of the phone call he had with them on 25 March 2021 as he felt it supported his case, but this came after VWFS had terminated the agreement. They'd given Mr C numerous opportunities to contact them, but once they have heard nothing and processed the termination, I wouldn't expect them to try to unwind this, so I have no concerns here.

I'm sorry this won't be the answer Mr C had hoped for, and I have great sympathy with him, but the evidence shows that VWFS did everything I would expect to see in an attempt to avoid the termination of the agreement, and to give Mr C the opportunity to put things right first. So, whilst I sympathise with Mr C, VWFS have treated him fairly, and the ensuing termination isn't because of any error or fault by them. As such, I won't be asking them to do anything further.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 January 2023.

Paul Cronin
Ombudsman