

The complaint

Mr S has complained about the support he received from Volkswagen Financial Services (UK) Limited (VWFS) when he was in financial hardship.

When I refer to what Mr S and VWFS have said it should also be taken to include things said on their behalf.

What happened

In October 2018, Mr S entered into a hire purchase agreement with VWFS to acquire a new car. The cash price of the car was around £23,579. The total amount payable was approximately £27,203. Mr S made an advance payment of around £1,000. There were 48 monthly payments each around £328, followed by a final payment of around £10,440. There was also a £10 option to purchase fee.

On 23 March 2020, the UK Government announced that UK would enter a lockdown due to the Covid-19 pandemic. Mr S, due to the pandemic, found himself stranded abroad so he couldn't work, and in May 2020 Mr S applied for a payment deferral. In June 2020, VWFS approved a payment deferral for Mr S and sent him documents to read and sign. VWFS said that Mr S didn't return this paperwork, so the payment deferral was not put in place.

In August and September of 2020, Mr S made contact with VWFS again to say that he is still abroad and unable to return. During these communications he said that he still has no income and is unable to make payments towards his finance agreement, so from November 2020 to May 2021 VWFS suspended the account. Overall, since April 2020 Mr S made no payments towards his finance agreement, meaning 13 payments were in arrears up to May 2021. For six of the 13 months VWFS decided to allow an informal payment deferral, and the other seven months' worth of payments totalling approximately £2,297 they decided to write-off. At this time, they unsuspended the account and in June 2021 tried to collect a direct debit payment which was rejected. And as the next few monthly payments were all rejected, in October 2021, VWFS terminated Mr S's finance agreement. At that time the arrears on the account were approximately £2,954.

Mr S was unhappy with this, so he raised a complaint with VWFS. Later in October 2021 VWFS responded to his complaint. In this correspondence they said that in August 2021, they sent him a default notice explaining that if he didn't pay his arrears, his finance agreement was at risk of being terminated. They said Mr S did call them on 17 September 2021, at which point they agreed to provide him with breathing space until the end of September 2021, but, as there was no contact from him by the end of September 2021, they terminated his agreement in October 2021.

Mr S was unhappy with VWFS's response, so he brought his complaint to this service. He wanted them to reinstate the finance agreement or, as he said later, he would also be ok with having the car repossessed, provided his credit file is unaffected.

Our investigator didn't think that VWFS have acted unfairly regarding his finance agreement. He said they have a duty to report accurate information to credit reference agencies. And he

was of the opinion that it was reasonable for VWFS to apply negative markers on Mr S's credit file; for periods where no payments were made towards the account (save for the months covered by the payment deferral).

Mr S disagreed with the investigator. So, the complaint has been passed to me to decide.

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 what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the events of the complaint. But I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Mr S acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements.

In summary, Mr S's main complaint point is that he was not treated fairly by VWFS when he found himself in financial hardship due to the Covid-19 pandemic. He feels that, as a minimum, if the finance agreement can't be reinstated, he would like his credit file not to be negatively impacted.

So, I've taken the above into consideration and I've considered whether VWFS have done enough to support Mr S, when he told them that he was experiencing financial hardship. When doing so, I've also thought about the relevant rules and guidance at the time. The rules and guidance mentioned below refer to 'customers' and 'consumers', and I will be using these words interchangeably, but in this decision the words are to have the same meaning.

On 24 April 2020 the Financial Conduct Authority (FCA) published additional guidance – "Motor finance agreements and coronavirus: temporary guidance for firms". This guidance introduced temporary measures for consumers whose finances had been impacted by Covid-19, and it builds on Principle 6: "A firm must pay due regard to the interests of its customers and treat them fairly". In relation to the payment deferrals, the guidance states the following: "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's obviously not in the customer's interests to do so." And it states that: "In determining whether a three month payment deferral is obviously not in customers' interests, firms should consider both customers' need for immediate temporary support and the longer-term effects of a payment deferral on the customer's situation, in particular the customer's ability to repay any accrued interest once the payment deferral ends, and over what period".

This guidance was further updated by the FCA in July 2020. This update was published a short period after Mr S contacted VWFS, but I think it is relevant to this case, as it builds on the previous guidance. The guidance states that: “There is no expectation under this guidance that the firm makes enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, or whether this is not in the customer’s interests. Firms can, however, choose to make the enquiries they consider necessary in order to satisfy themselves that the customer is eligible for support and to identify whether the customer would benefit from any additional support, provided that this does not delay the provision of timely support”.

I’ve considered that all the above issued guidance by the FCA would be applicable to Mr S’s situation, as he was in financial hardship due to the Covid-19 pandemic. His account first fell into arrears in May 2020 as a direct debit payment went uncollected. And when Mr S contacted VWFS during that time and applied for a payment deferral VWFS suspended the account. Eventually they agreed to give Mr S a payment deferral, but they asked him to sign documents and return it to them. I think granting Mr S a payment deferral was the right decision considering the above guidance, but initially they didn’t implement the deferral as they were waiting for the signed documents. Later in August and September of 2020, Mr S made contact with VWFS again to say that he is still abroad and unable to return. During these communications he said that he still has no income and is unable to make payments towards his finance agreement, so from November 2020 to May 2021 VWFS suspended the account again. During all this time, since April 2020 Mr S made no payments towards his finance agreement, while the account was suspended, which meant that in May 2021 a total of 13 payments were in arrears.

VWFS have told our service that for six of those 13 months they decided to allow an informal payment deferral, and the other seven months’ worth of payments totalling approximately £2,297 they decided to write-off. I think the guidance, as I mentioned above, stipulates that there shouldn’t be any delay of timely support where individuals are in financial hardship due to the Covid-19 pandemic. Also, the guidance allows for payment deferrals to be granted for a total period of six months, so I think VWFS have now treated Mr S fairly and reasonably by allowing his account to be treated as if it was in a payment deferral for the first six months. This is exactly what I would’ve expected VWFS to have done considering the guidance mentioned above does apply to a situation like the one Mr S found himself in. And I think VWFS could have implemented the payment deferral for the first six months even without waiting for signed documents to be received back from Mr S. However, I’ve gone on to think what should’ve happened after the six months, because during the following months Mr S was still not making any payments.

The FCA – Consumer Credit Sourcebook (CONC), and in particular CONC 7, titled “Arrears, default and recovery (including repossession)”, say that firms should treat consumers in default or in arrears difficulties with forbearance and due consideration. Treating consumers with forbearance would include such things as considering suspending, reducing, waiving, or cancelling any further interest or charges, allowing deferment of payment of arrears, and accepting token payments for a reasonable period of time. I think this applies to Mr S as he was still in financial hardship. After the initial six months, Mr S was still not making any payments, so his account would’ve incurred further arrears, but we now know that VWFS wrote-off the next seven months’ worth of payments totalling approximately £2,297 – which I think is very generous. So, considering all the circumstances, I think VWFS have treated Mr S with forbearance and due consideration by taking this action.

I know that Mr S would’ve liked VWFS to reinstate the finance agreement or at least for his credit file not to be negatively impacted. But I don’t think that would be fair and reasonable considering the circumstances of this complaint. His account was unsuspending in June 2021, and VWFS tried to collect a direct debit payment which was rejected, and the next few

monthly payments were all rejected too. So, in August 2021 VWFS sent Mr S a default notice, at which time the arrears on the account were approximately £2,954. This notice explained that if he failed to pay the arrears before 16 September 2021, his agreement may be terminated, and when VWFS spoke to Mr S they agreed to extend the time further to the end of September 2021. But Mr S didn't contact them until October 2021. So overall, I think VWFS were reasonable towards him. A total of 13 payments, as mentioned above, were allowed to go unpaid, so I think they were patient with Mr S while they waited to see if his circumstances changed, and I don't think it would've been reasonable for VWFS to allow the arrears to increase indefinitely. That is why I think their decision to terminate the finance agreement was a fair and reasonable one.

I know that Mr S would've wanted the finance agreement reinstated but there were significant amounts of arrears, so I think it would not have been responsible for VWFS to allow Mr S to continue with the finance agreement and get into further arrears. VWFS followed the correct procedures when going through with the termination of the agreement. In addition, I think it is reasonable for VWFS to report any payments in arrears on Mr S's credit file for periods where no payments were made towards the account, except for the first six months covered by the payment deferral and for the following seven months for which VWFS written the payments off. So, it is reasonable that any missed payments, after and including the June 2021 payment, can be reported to the credit reference agencies. I say this because VWFS have a duty to report accurate and fair information to credit reference agencies.

Overall, I sympathise with Mr S for the difficulties that he is experiencing, but taking all the circumstances of the complaint into account, I don't think Mr S has been treated unfairly.

My final decision

For the reasons given above I do not 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 21 July 2022.

Mike Kozbial
Ombudsman