

## **The complaint**

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

## **What happened**

Mr Y acquired a car under a 48 month hire purchase agreement with VWFS in December 2020. Under the agreement, Mr Y was required to make 48 payments of £421.66, followed by a final payment of £13,095 if he wanted to keep the car.

In October 2021, VWFS didn't receive the monthly payment due from Mr Y under the agreement. Mr Y called VWFS and let it know he had an unexpected bill but explained his financial circumstances would return to normal within a month. VWFS also carried out an income and expenditure with Mr Y to calculate his disposable income. It told Mr Y he could repay October 2021's outstanding monthly payment in November 2021 or he could split the outstanding amount owed over two additional monthly payments.

Following this, VWFS tried to contact Mr Y unsuccessfully. In addition, it didn't receive the monthly payment owed under the agreement from Mr Y in November 2021. Mr Y contacted VWFS in late November 2021 and explained he was having work carried out to his house and so he wouldn't be able to pay the December 2021 payment either. VWFS agreed to apply breathing space until late January 2022. In December 2021, Mr Y told VWFS that he hadn't received the monthly salary he expected from his employer. In late January 2022, after the breathing space had expired, VWFS issued a default notice. It didn't hear from Mr Y and so it terminated the agreement in February 2022.

In March 2022, Mr Y contacted VWFS to enquire about setting up an arrangement to pay to clear the arrears. VWFS confirmed the agreement had been terminated. So Mr Y complained. He said he had told VWFS about his ongoing financial circumstances and he was under the impression it was allowing him time to bring his agreement back up to date.

VWFS issued its response to Mr Y's complaint, but said it had terminated Mr Y's agreement correctly due to the outstanding arrears owed under the agreement.

Unhappy with this response, Mr Y referred his complaint to this service. He said he had financial difficulties and so he missed five payments owed under the agreement. He said VWFS didn't provide him with any notice that it would be repossessing the car. And he said he only received the letters from VWFS about the contract being terminated in March 2022.

Our investigator looked into the complaint, but didn't think VWFS had acted unfairly when it terminated the agreement. He said VWFS had attempted to discuss the account with Mr Y and provided him with sufficient notice that the account was in arrears and that the agreement may be terminated. VWFS agreed. But Mr Y disagreed.

As Mr Y remains unhappy, 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.

Mr Y 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.

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.

What I need to decide in this case is whether VWFS fairly terminated Mr Y's agreement. If it didn't, I'll need to think about what's fair to put things right.

The terms and conditions of Mr Y's agreement say, *"10.1 We will be entitled to terminate this Agreement, on expiry of the requisite statutory written notice, if you are in breach of any of the terms of this Agreement..."*.

This means that VWFS were entitled to terminate Mr Y's agreement if he missed payments and upon expiry of a default notice. Mr Y missed five payments in succession under his agreement. And so VWFS was entitled to default his agreement and repossess the car.

Having said this, Mr Y told VWFS about the reasons why he couldn't make his repayments each month between October and December 2021, and so VWFS was obliged to treat Mr Y with forbearance and due consideration. So I've considered whether I think it did this.

In October 2021, VWFS carried out an income and expenditure with Mr Y to ensure he could afford to split the October 2021 payment over two upcoming future payments. Mr Y had enough disposable income to afford this and he told VWFS his circumstances would return to normal the next month. So I think it was reasonable for VWFS to be satisfied that Mr Y would be able to afford to reschedule the payment in this way. So I think VWFS acted with forbearance and due consideration when it allowed Mr Y to do this.

Following this, Mr Y said he couldn't make the November or December 2021 payment due to him having work carried out on his house. So VWFS applied a three month breathing space until January 2022. I think it was reasonable for it to do this as Mr Y had proactively told it about the different reasons why he couldn't make the payments owed under the agreement and he had said his financial situation would improve by January 2022. As the circumstances Mr Y had described to VWFS appeared to be short term, I think it acted with forbearance and due consideration when it allowed Mr Y to have three months breathing space.

However, following the three month breathing space being agreed, in December 2021, Mr Y told VWFS he hadn't been paid the salary he expected. But VWFS told Mr Y his breathing space was in place until 24 January 2022 and told him about the consequences of non-payment at that point. Mr Y didn't make January 2022's payment and neither did he contact VWFS to explain why. And because Mr Y had missed three payments, VWFS issued a default notice on 25 January 2022.

In its *"Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"*, the Information Commissioner's Office ("ICO") says a business can register a default after a customer is behind with their payments for three months. And that it expects businesses to register a default by the time a customer is six months behind with their payments. I consider this to be representative of good industry practice. And as a minimum would expect a lender to act in accordance with these principles when deciding whether to default a consumer's account.

Having thought about the dates here and the account activity, I think it was appropriate for VWFS to tell Mr Y about its intention to report a default to credit reference agencies when it did. This is because Mr Y's account had three months of arrears. And as Mr Y didn't make February 2022's payment or clear the arrears mentioned in the default notice by the date VWFS had mentioned, it was entitled to register that the account had defaulted as per the ICO guidance. It did this on 25 February 2022.

I've listened to the calls made to VWFS by Mr Y in November 2021 and December 2021. In both calls, VWFS clearly told Mr Y that he needed to speak to them to discuss arranging a payment plan when the breathing space ended. In both calls, it told Mr Y that it would issue a default notice and his agreement could be terminated and the car could be repossessed if Mr Y didn't call it to reach an arrangement to pay. During both calls, Mr Y said he understood this.

I appreciate that Mr Y had told VWFS about the reasons why he didn't make the payments. However, the ICO guidance also states that if there is a temporary arrangement and payments aren't maintained as per the temporary arrangement, a lender can still file a default as soon as a payment is missed – which is what happened.

Mr Y didn't make any payments following the breathing space expiring and neither did he contact VWFS to discuss how to repay the arrears, before it defaulted the agreement and terminated it in line with its terms and conditions. This is despite VWFS sending Mr Y letters and text messages to tell him his agreement was in arrears. Mr Y says he didn't receive the text messages and neither did he receive the letters from VWFS until March 2022. However, the letters are addressed clearly and I'm persuaded that they were sent on the dates they say they were.

In addition to this, Mr Y confirmed during the calls in November and December 2021 that he was aware of the action VWFS would likely take, if he didn't arrange a repayment plan with it after the breathing space ended on 24 January 2022. As Mr Y didn't attempt to do this until March 2022, I don't think VWFS acted unfairly when it terminated the agreement.

### **My final decision**

I do not uphold Mr Y's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 30 August 2022.

Sonia Ahmed  
**Ombudsman**