

The complaint

Mr E complains about the termination of his finance agreement and the arrears correspondence he received in relation to a hire purchase agreement with Volkswagen Financial Services (UK) Limited trading as Porsche Financial Services (VWFS). Mr E is also unhappy with the difficulty he had with amending his payment dates.

What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

In April 2018 Mr E acquired a new car through a hire purchase agreement with VWFS. The purchase price of the car was £72,729. Mr E made an advanced payment of £12,000. So, the total amount financed on this agreement was £60,729 payable over 48 monthly payments of £754.24 followed by a final payment of £36,978.75

Mr E said that in March 2020, he requested a three-month payment deferral (PD) on his agreement due to a loss of his income as a result of the Covid-19 pandemic. Mr E said VWFS approved the PD but didn't process it correctly, so instead of receiving information about the PD, he was sent correspondence to say he was in arrears.

From November 2020 Mr E made further payments to his agreement and agreed an Arrangement To Pay (ATP) with VWFS to bring his agreement back up to date following the PD. The ATP ran alongside Mr E's normal monthly repayments on his finance agreement. Mr E was unable to make his repayments on time, and despite some amendments to both repayments, VWFS were unable to provide Mr E with a payment date that was suitable for him.

Mr E complained to VWFS in December 2020 about the issues around the PD and the ATP. VWFS issued a final response in January 2021. VWFS said the PD was processed manually which caused the delays and ensured Mr E that his credit file wouldn't be affected as a result. They arranged to pay Mr E £200 in compensation.

In February 2021, Mr E made a further complaint about the payment dates that had been set for his ATP, finance agreement and the arrears letters that had been sent to him. VWFS issued their final response to this complaint on 19 February 2021. VWFS said Mr E had utilised his full 30-day allocation to amend repayment dates on his agreement, however they confirmed that the repayment dates for the ATP had been amended.

In July 2021 VWFS terminated Mr E's agreement. VWFS said this was because of the outstanding arrears and that Mr E didn't maintain the terms of his ATP.

Mr E complained to VWFS about the termination of his agreement. Mr E said following the PD application he wasn't given an option to extend his agreement, only to increase his monthly repayments.

VWFS issued their final response to this complaint in July 2021. VWFS acknowledged they made an error with setting a payment date but didn't uphold Mr E's concerns about the termination of his agreement.

VWFS explained that Mr E fell behind with either late or missed payments from November 2019. VWFS issued arrears reminders, notices of sums in arrears and default letters to Mr E. VWFS said Mr E didn't keep up with the ATP and failed to contact them about it. So, they believe they fairly ended Mr E's agreement in July 2021.

Unhappy with their decision, Mr E brought his complaints about VWFS to this service for investigation. Having considered all of the evidence, our investigator found that VWFS hadn't acted fairly in the circumstances and recommended that Mr E make a payment to cover the monthly repayments from August 2021 to date, to reflect Mr E's continued usage of the car.

Our investigator also said VWFS should find a suitable solution for Mr E to repay the final payment and the outstanding amount from the PD. Our investigator also recommended VWFS pay Mr E £100 in compensation for the inconvenience caused and to remove any adverse information from Mr E's credit file relating to the agreement.

Mr E felt that he shouldn't have to pay for his continued usage whilst his complaint was being looked into, instead that the agreement should be reinstated to run its original term. As our investigator's view remained unchanged Mr E asked that his complaint be referred to an ombudsman for a final decision.

Whilst reviewing the evidence provided, I considered the details of Mr E's first complaint raised in December 2020, was brought to our service more than six months after VWFS had issued their final response in January 2021. Our investigator contacted VWFS to seek their consent to us looking into this complaint. VWFS responded to say that they deemed the complaint to be time barred because it was referred to us outside of six months and didn't consent to us looking into it.

In January 2023, I issued a final decision explaining that due to exceptional circumstances Mr E's first complaint was one that our service could consider.

I sent Mr E and VWFS my provisional decision on 21 February 2023. I explained why I didn't think the complaint should be upheld. The key parts of my provisional findings are copied below:

Mr E made three complaints to VWFS in relation to his finance agreement. Having considered all the information provided, it seems to me there are about four key issues for me to consider in relation to Mr E's concerns:

- 1. the communication and delays in relation to the PD*
- 2. the repayment dates and arrears letters received*
- 3. the impact to Mr E's credit file*
- 4. the termination of the finance agreement*

payment deferral

VWFS system notes confirm the payments on Mr E's finance agreement were suspended to ensure no payments were taken during the period of the PD. VWFS explained the suspension was due to the manual processing of the PD. Mr E says he wasn't contacted about the PD or informed about the details of it and believes it wasn't applied to his account

properly. VWFS system notes show that Mr E was concerned about the impact on his credit file for the PD being applied incorrectly.

I've thought about the fact that it was an unprecedented and unusual time for lenders, dealing with significant numbers of enquiries from consumers looking to get support with their repayments and finance agreements as the global pandemic unfolded. Many of these enquiries will have brought up issues which were relatively novel, and lenders were having to digest new information, rules, and guidance at a very unusual time.

All things considered; Mr E wasn't expected to make any payments during the PD period. Although this was done outside of the normal VWFS process, I'm satisfied that it was achieved, to offer Mr E the support he required. I acknowledge he wasn't kept informed as much as he would have expected, and I can see that VWFS offered Mr E £200 in compensation in relation to this. In the circumstances, as described above, I think VWFS acted reasonably to ensure the payments didn't come out and fairly compensated Mr E for the inconvenience caused.

arrears correspondence and impact to credit file

In April 2020, the Financial Conduct Authority (FCA) published temporary guidance for businesses in relation to motor finance agreements. The guidance was applicable in the exceptional circumstances arising out of the Covid-19 pandemic and the impact it had on motor finance consumers.

Mr E requested a payment holiday due to a loss of income as a result of the circumstances arising from Covid-19, so the FCA guidance as detailed above is applicable in this complaint.

The guidance says firms should not report a worsening arrears status on the customer's credit file during the payment deferral period.

VWFS system notes show that although the PD request was accepted, arrears letters were likely to have been issued to Mr E in error as a result of how the payment holiday was processed. VWFS said the PD was processed manually with the agreement being suspended in May 2020, which caused delays in its processing.

VWFS confirmed that Mr E was sent an arrears letter in July 2020, which was during the PD period. Mr E also provided us with a copy of the notice of sums in arrears letter he received in July 2020. As Mr E was in a PD at the time of the arrears letter, I don't think it would have been fair for VWFS to issue it to him in relation to the suspended payments. However, I note that in their final response, VWFS said that Mr E was in arrears prior to the start of the PD, and that a number of reminders were issued to him at various times throughout it. So, I think it's likely it could have been these arrears which had also caused reminders to be issued.

VWFS issued further arrears letters to Mr E from December 2020 through to March 2021. Mr E confirmed he'd made payments to the agreement in November 2020 following six months of the PD. The statement of account confirms this. VWFS also confirms in their system notes that Mr E's account was in credit in December 2020. So, it's likely that December's arrears letter shouldn't have been issued either.

The issuing of the arrears letters I think we're likely due to the manual set-up of the PD, which may have enabled the correspondence to be generated. VWFS advised Mr E to ignore the correspondence and assured him his credit file wouldn't be affected as a result of the way the PD was arranged.

Although I think it's likely Mr E shouldn't have received the arrears letters during the period of the PD, I'm satisfied that VWFS had resolved the matter fairly in the circumstances, and without any considerable impact to Mr E. For example, I haven't seen any evidence that Mr E's credit file was affected or that VWFS hadn't made the amendments they said they would, or that Mr E suffered some consequential loss as a result of any incorrect data on his credit file during the PD.

payment date change requests

In December 2020 following the conclusion of the PD, VWFS agreed with Mr E to spread the repayments from the PD across the remaining term, in the form of an ATP to run alongside the repayments of the original finance agreement. VWFS weren't obliged to extend the term of the agreement to allow Mr E to repay the PD amount. VWFS system notes suggest Mr E agreed to the terms of the ATP. VWFS calculated the PD repayment amount at £293.32 per month until June 2022. In an email to our investigator Mr E said VWFS wouldn't allow him to change the repayment dates of the ATP.

On 6 Jan 2021 VWFS system notes show that Mr E requested an ATP repayment date change to the 12th of each month to fall in line with his income. The notes show that VWFS amended the date to the 1st of each month commencing February 2021 to account for January's payment, and after a further conversation with Mr E amended it to the 5th of each month together with the finance agreement repayment date.

In VWFS final response they apologised for processing the ATP payment date change when they did, but advised the finance agreement repayment date had a limit to its movement of 30 days, so they couldn't make any more payment date changes to it.

Having considered the circumstances, I can't see that Mr E received arrear's letters or that any adverse information had been recorded on his credit file as a result of any error on VWFS' part in processing the payment date changes. I'm persuaded the ATP arrears were caused from Mr E's inability to keep to the agreed dates rather than any error from VWFS in processing them. In addition to amending the date to the 5th of each month, which Mr E appeared to be satisfied with, VWFS also explained why they couldn't amend the dates of the finance agreement any further.

All things considered, I'm satisfied with VWFS' handling of the matter and won't be instructing them to do anything in relation to this part of the complaint. I think VWFS demonstrated reasonability and consideration in their amendments of the 30-day limitation, for example by ensuring that each of Mr E's monthly repayments were encompassed within any amendment, for example with January 2021's payment that was brought into the following month.

termination of the agreement

VWFS said they terminated Mr E's agreement following a number of late or missed payments from November 2019. VWFS said they issued around 13 arrears reminders and notice of sums in arrears letters to Mr E between December 2019 and May 2021. VWFS also said the terms of the ATP which was agreed with Mr E in February 2021 was broken by him, so they sent text message reminders and issued a default notice in June 2021 which they say Mr E didn't respond to and so they believed they acted fairly when they terminated the agreement in July 2021.

In an email to our investigator, Mr E said at the point the agreement was terminated, he'd made all the payments required. VWFS agreed a plan which involved Mr E having to pay his

ATP alongside the payment for the finance agreement on 5th of each month, starting in March 2022. Having looked at the statement of account provided by VWFS, it shows different payment amounts were made from February 2021 to July 2021, but it also shows the payments were inconsistent and irregular, and not necessarily on the 5th of each month as per what had been agreed for the ATP, with many entries showing as being rejected or returned. So, although Mr E was making payments towards the agreement, it was likely to have remained in arrears.

The Consumer Credit Sourcebook (CONC), which can be found within the Financial Conduct Authority's (FCA) handbook, says that a business must treat customers in default or in arrears difficulties with forbearance and due consideration. CONC 7.3.5 provides some examples which include, suspending, reducing or waiving interest or charges, allowing payment deferrals or accepting token payments.

I'm satisfied that VWFS demonstrated forbearance, for example in agreeing to the ATP, changing repayment dates and agreeing to the PD.

The Information Commissioner's Office (ICO) Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies, says 'If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down'.

VWFS says they didn't receive any contact from Mr E after they'd sent him arrears notifications in May and June 2021 or when they issued the default notice. VWFS system notes show the last contact Mr E had with them prior to 16 July 2021 was on 20 February 2021. However, during that period, I can see that VWFS made several attempts to notify Mr E about the arrears on his agreement through text messages, email and letter.

I acknowledge Mr E was making various payments towards his agreement, which as our investigator highlighted would have totalled in excess of £7,700, and I also recognise he'd previously tried to amend the repayment dates of his agreement. However, I think it's reasonable for VWFS to expect the repayments to be made on time. I also think it was reasonable to expect Mr E would get in contact with VWFS, within the necessary timescales to address the arrears correspondence he received. In addition, I've seen no evidence to suggest the correspondence wasn't received by Mr E, particularly as the contact details held on VWFS' system is consistent with Mr E's current contact information.

The Consumer Credit Act 1974 requires businesses to serve notice on a borrower before they can become entitled to take certain actions, including terminating an agreement. VWFS provided a copy of the default notice they issued to Mr E on 18 June 2021 which gave him until 7 July 2021 to settle the outstanding arrears. The evidence shows that Mr E didn't make any contact with VWFS during this time to discuss the default or potential action. So, with all things considered I'm satisfied that VWFS acted fairly when they terminated Mr E's agreement.

As I've concluded that VWFS acted fairly in relation to the termination of Mr E's agreement, I don't require VWFS to take any action in respect of this complaint. I leave it to Mr E to liaise with VWFS to agree the next steps in relation to the settlement of any amounts owed.

I invited both parties to make any further comments.

VWFS responded to say they had nothing further to add to my provisional decision.

Mr E responded to say that he didn't accept it. Mr E made some further comments and provided some further evidence. In summary, he said he was forced into taking the ATP and his credit file had been impacted. I'll address these in more detail below, however, the evidence Mr E provided satisfied me that the complaint should be upheld.

As my outcome had changed from my provisional decision, I sent a further email to both parties in May and in June 2023, explaining why it had changed and what I proposed to put things right; I again invited both parties to make further comments.

VWFS responded to say in the circumstances they'd be willing to reinstate the agreement for a period of 12-months. They also accepted my proposals for putting things right. However, they felt that Mr E should pay for the usage of the car since the agreement was terminated, if the car was returned to them.

Mr E responded with some comments which I'll also address below. He also requested a phone call with me to discuss my decision. Ombudsmen do not routinely speak with either party to a complaint by phone, however, as Mr E felt strongly about it, I gave him the opportunity to speak with me directly about his case, and having considered everything, I didn't believe it was necessary for a further phone conversation to take place in order for me to reach my decision. Our investigator however, offered to have a phone conversation with Mr E, to discuss the case.

Now both sides have had an opportunity to comment, I can go ahead with my 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.

Mr E has made submissions which included phone recordings and some further testimony. I have considered all of what it has said. The response challenged certain conclusions I'd reached in my provisional decision. I'll address what I consider to be the main points Mr E has raised and explain why these change the outcome I originally reached.

Within his responses Mr E made the following points:

1. that he was forced into entering a payment arrangement
2. that his credit file was impacted
3. that the car has lost value, so VWFS should absorb the related costs
4. that the compensation proposed is insufficient considering the impact to his mental health

The above is not exhaustive, but a summary of what I considered to be the main points raised in Mr E's responses to me. To be clear, I've considered all the information provided by both parties in relation to this complaint, however to maintain the informal approach of this service I've focussed on what I've considered to be the main issues here.

entering into the ATP

During a phone call between VWFS and Mr E in December 2020, Mr E was told that the repayments from the payment break period (ATP) would be spread across the remaining term, and was to be paid in addition to his normal monthly repayments. So that would be a total of about £1,047 each month. During the phone call, I note that Mr E enquired about what the impact of the ATP would be on his credit file. When VWFS explained that his credit

file would be amended where necessary, he then enquired about repaying the PD amount at the end of the agreement instead of alongside his normal monthly repayments. Mr E was told by VWFS that 'the system' decides how the repayments would work.

Mr E appeared to accept this explanation however he reiterated his main concern, which was the impact on his credit file, rather than the repayments being unaffordable.

In his submission to us, Mr E says he was forced into entering into the ATP and wasn't given the opportunity to have the agreement extended so he could repay it at the end of the original term.

Having reviewed the call recordings and considered all the information, I acknowledge that VWFS didn't present Mr E with any other options to repay the PD amount, other than doing so alongside his normal monthly payments in the form of the ATP. I think that had Mr E been given the opportunity to extend his agreement, it's unlikely he would have ended up in this situation. I say this because it was the irregular repayments of the ATP which resulted in Mr E being issued with the default notice and the agreement being terminated.

In November 2020, the Financial Conduct Authority (FCA) published updated guidance for businesses in relation to motor finance agreements and Covid-19. The guidance was applicable in the exceptional circumstances arising out of the Covid-19 pandemic and the impact it had on motor finance consumers. The guidance said:

"Where a customer can resume full repayments after a payment deferral, but is unable to pay the deferred amounts immediately and in full, the firm should allow them to repay the deferred amounts over the remaining term of the agreement or allow a longer period for repayment. The firm should consider what is most in the customer's interests".

Towards the end of the phone call with VWFS, Mr E appeared to be satisfied with the ATP, for example, by thanking the agent for their help. The statements show that Mr E was able to make the repayments to his agreement alongside the ATP, however it was the irregular nature of his ATP repayments that caused the account to be defaulted and terminated.

So, I think it was clear Mr E was able to resume full payments of the original £754, however I think it was also clear from the call that it would have been more suitable for Mr E to have had a longer period for repaying the PD amount. Mr E specifically requested it. I'm persuaded that had VWFS given Mr E a longer period, there would have been less chance of missed payments because the repayments would have been more affordable; which means the payments were less likely to be irregular, and so preventing the need for a default notice having to be issued.

Impact to credit file

Mr E provided a copy of his credit file showing one late payment over a number of months. The credit file image doesn't however detail the affected months and doesn't specify the date of the report. So, I'm unable to determine the specifics of the missed payment markers.

During a phone call between Mr E and VWFS in December 2020, VWFS confirmed that the arrears in 2020 during the PD period were due to a missed payment from April 2020, prior to the start of the PD. Mr E accepted this conclusion. For example, he accepted that the manual payment he made in November 2020 settled the missed payment from April 2020.

Having considered all the information provided, my opinion in relation to the impact to Mr E's credit file has changed in that I think the arrears correspondence received during the PD was

likely to be in relation to the missed payment in April 2020, which was only settled after the PD had ended.

Having said that, Mr E has been consistent in his claim that his credit file has been affected. Although I'm persuaded that VWFS' intention was to rectify this, I haven't seen any clear evidence that it's been done. In addition, as I've found that the agreement shouldn't have been terminated, I don't think Mr E should have any adverse information on his credit file in relation to this agreement from May 2020.

Putting things right

As I've found that VWFS have acted unfairly in not allowing Mr E to repay the PD amount over a longer period, I think it's fair that they put things right for him. As described above VWFS should remove any adverse information from Mr E's credit file in relation to his agreement from May 2020.

VWFS confirmed as of June 2023 that the outstanding balance on Mr E's account was £46,566.29. The amount is consistent with the statement of accounts as at January 2022. So, I'm satisfied that no further interest or charges have been applied. They also confirmed that the agreement would have had around 12 months remaining at the time it was terminated.

Having considered the fairest outcome in the circumstances, I'll be instructing VWFS to reinstate the agreement for a minimum of twelve months at the same monthly repayments as before (this was £754.24 as per the statement of accounts provided). VWFS should apply the same terms on the agreement as before. For example, Mr E should have the opportunity to repay the amount owed and to keep the car, to refinance any balloon payment at the end of the term, or to hand the car back and arrange for the balance to be settled, for example through the process of voluntary surrender.

However, if at the end of the 12 month term, or before, should Mr E decide to hand the car back, I think it's fair that he should pay for the period of use from when the agreement was terminated in July 2021 up to the point of returning the car, and an amount not exceeding any remaining balance. This would include excess mileage charges and any unreasonable damage beyond fair wear and tear guidelines.

If Mr E decides against purchasing the car, and instead chooses to return it to VWFS, I recognise there's likely to be a significant amount for Mr E to pay, for his continued usage as described above. Should Mr E be unable to settle the arrears in full at the point of returning the car, then VWFS should work with him to arrange a suitable repayment plan. For example, this should involve an affordability assessment based on an updated income and expenditure review. Mr E would do well to comply with this. In addition, I remind VWFS of its obligations under CONC to treat consumers in arrears with forbearance and due consideration.

I acknowledge Mr E says that VWFS should absorb that cost, for example Mr E points out that the car would have likely depreciated in value. I don't dispute there may be a degree of depreciation, however this would have occurred whilst Mr E had full use of the car; and despite there being an ongoing complaint where VWFS put a hold on any repossession, I think it's fair to say Mr E could have chosen to return the car himself, particularly if he wasn't prepared to pay for using it whilst the complaint was ongoing. All things considered, and in the circumstances of this case, I don't think it's fair or reasonable to expect that Mr E would have use of a vehicle free from any charges or costs, at the expense of VWFS.

In an email to our investigator in May 2023, Mr E described the distress and inconvenience this whole situation has caused. And in a further email in June 2023 Mr E said he felt my proposal for £300 in compensation was too low in consideration of the impact this has had on his mental health. Mr E has said that he experienced anxiety and depression as a result and that he felt £3,000 would be fair.

I don't dispute the situation surrounding this complaint would have had been impactful to Mr E. However, based on the evidence I've seen, I think that £3000 is significantly excessive. I haven't seen any further evidence besides what Mr E has said that persuades me the amount of compensation should be greater. In the circumstances I'm persuaded that £300 in addition to what VWFS have already offered fairly recognises any distress caused.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances, I uphold Mr E's complaint about Volkswagen Financial Services (UK) Limited trading as Porsche Financial Services and instruct them to:

- Reinstatement or set up a new agreement for a period of at least twelve months, at the same monthly repayment amount as before, and for the total amount outstanding as of July 2021 when the agreement was terminated.
- Allow Mr E the option to purchase or return the car at the end of the revised agreement (or at any time before) in accordance with the relevant terms and conditions of it (which should be the same as what had on his original agreement).
 - If Mr E chooses to return the car, he should be subject to the relevant end of contract charges in addition to paying for the time he had use of the vehicle from August 2021. If Mr E is unable to repay this amount in full, VWFS should support Mr E with a suitable repayment plan (with the considerations as described in my decision).
- Pay Mr E £300 compensation, in addition to what has already been offered, for the distress and inconvenience caused
- Remove any adverse information from Mr E's credit file in relation to this agreement from May 2020, when he entered into the payment holiday

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 25 July 2023.

Benjamin John
Ombudsman