

The complaint

Mr P is unhappy with how Volkswagen Financial Services (UK) Limited ('VWFS') dealt with his request for assistance as a result of financial difficulties.

What happened

On 19 April 2017, Mr P was supplied with a used commercial vehicle through a hire purchase agreement with VWFS. The agreement was for £22,500 over 46 months; with 45 monthly repayments of £399.72, and a final payment of £8,560 (plus a £10 Option to Purchase Fee) if Mr P wanted to keep the vehicle.

In May 2020, Mr P's income was affected because of the coronavirus (Covid-19) pandemic. And VWFS granted him a payment deferral (otherwise known as a payment holiday) for the payments that were due between April and August 2020. In September 2020, Mr P let VWFS know that he'd been made redundant and asked for a further payment deferral. But VWFS declined this request as they no longer thought it was a suitable option. Instead they gave Mr P 60-days breathing space and explained his options to end the agreement.

In December 2020, Mr P contacted VWFS about his situation, and discussed repaying his arrears. He paid token payments of £25 in January and February 2021, before making a three-month payment arrangement from March 2021. Mr P made these payments and then stopped paying. VWFS defaulted and terminated the agreement in October 2021. Mr P then cleared the amount outstanding in December 2021.

Mr P wasn't happy with what had happened and complained to VWFS. He was also unhappy that VWFS were only contactable by phone; that they'd provided incorrect settlement figures, which made it difficult for him to sell the vehicle; that they'd tried to take the £2,500 arrears payment by direct debit, causing him to be overdrawn; and that they'd passed his account over to a debt collection agency.

VWFS partially upheld Mr P's complaint, waiving the £252 debt collection agency fee and offering him £253 compensation. Mr P wasn't happy with VWFS's response, and he brought his complaint to the financial ombudsman service for investigation.

Our investigator said VWFS had treated Mr P with forbearance and due consideration while he was in financial difficulties. VWFS hadn't terminated the agreement until three months after the final payment was due and they'd confirmed the amount outstanding on at least two occasions, which gave Mr P a reasonable amount of time to sell the vehicle. So, the investigator didn't think VWFS had treated Mr P unfairly.

The investigator said Mr P was in contact with VWFS by both phone and email throughout the situation, so they didn't think VWFS made it difficult for Mr P to contact them. And they also said that VWFS had instructed the debt collection agency to collect the debt on their behalf but remained the legal owner. So, any payments Mr P made to either VWFS or the debt collection agency were applied to his outstanding amount.

However, the investigator said that VWFS attempted to collect the £2,500.62 final payment, by direct debit, in error; they delayed sending a copy of the agreement to Mr P when asked; they told Mr P to contact the debt collection agency before they'd transferred the administration of the account; they incorrectly told Mr P that he owed £253; and they sent someone to collect the vehicle after Mr P had repaid the outstanding amount.

But the investigator said that VWFS had waived a fee of £252 and offered Mr P £253 compensation. Which they thought was reasonable. And they didn't think that VWFS needed to do anything more.

Mr P didn't agree with the investigator. He didn't think there had been enough consideration of the points he'd made. Specifically, Mr P:

- didn't think that 60 days breathing space was sufficient, as he'd already paid a large percentage of the amount owing under the agreement;
- said he'd always kept VWFS informed about what was happening, and he didn't try to avoid his obligations;
- didn't think VWFS acted reasonably by asking him to repay the arrears over a 12-month period, as he'd just started a new job and he'd offered them what he could afford;
- was unhappy that there were long wait times to speak to VWFS when he called them at lunchtimes, which was the only time he was able to speak to them;
- thought VWFS acted illegally when they tried to repossess the vehicle without a court order;
- didn't think VWFS had acted reasonably by not providing him with a list of garages where he could part-exchange the vehicle; and
- was unhappy that the final statement they sent him showed that he still owed them money, three months after clearing the agreement;

Because of this, he's asked for an ombudsman to make 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 P 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.

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.

When Mr P first contacted VWFS about being furloughed, this was before the FCA had issued their Covid-19 guidance. So, VWFS offered him 60-days breathing space and asked him to complete an income and expenditure form, to see what assistance they could offer. However, once the FCA Covid-19 guidance was in place, they arranged for a payment deferral. I think this was reasonable in the circumstances.

In September 2020, Mr P advised VWFS that he'd been made redundant, and asked about a further payment deferral. However, payment deferrals were designed to assist people whose incomes had been temporarily affected by Covid-19. And, even though Mr P lost his job as a result of Covid-19, this was more than a temporary adjustment to his income – it wasn't possible for Mr P to know how long he'd be off work for, or what his income would be when he finally returned to work. Because of this, I'm satisfied that VWFS acted reasonably by not offering Mr P a payment deferral, instead offering him breathing space.

I'm aware that Mr P thinks that breathing space was insufficient, because of how much he'd already paid towards the agreement. But I don't agree, as these are separate things. The breathing space allowed Mr P to concentrate on looking for new employment, whereas the amount he'd already paid VWFS would affect whether he could voluntarily terminate the agreement i.e. hand the vehicle back and walk away with nothing more to pay. While Mr P was made aware of this option, he wanted to keep the vehicle at that stage. So, I'm satisfied that offering breathing space was reasonable in the circumstances.

While VWFS issued a Default Notice in November 2020, because of the arrears, they didn't default or terminate the agreement at this point. And, when Mr P asked them about refinancing the agreement / repaying the arrears in December 2020 (even though at that point he was still out of work), VWFS said that this would only be possible over 12-months.

While Mr P doesn't think this was a long enough period; given that his agreement only had around six-months of its original term to run, this would mean extending the agreement by roughly the number of deferred payments. Which I think was reasonable. While Mr P would've liked a longer term, I wouldn't expect VWFS to necessarily offer this, especially given the age of the vehicle.

When Mr P returned to work, he tried to arrange to repay the arrears with VWFS. He also asked about part-exchanging the vehicle and is unhappy that VWFS didn't give him a list of garages that would do this for him. But I wouldn't expect them to, as I wouldn't expect VWFS (as a finance provider) to be aware of what multiple unrelated dealerships were doing and whether they'd accept the vehicle as part exchange. So, it's reasonable they expected Mr P to make his own enquiries.

I've seen that, in a letter dated 22 February 2021, Mr P had agreed to pay VWFS £10 a month in March, April, and May 2021, followed by a payment of £2,500.62 on 30 June 2021, which would clear off all the arrears. And this would just leave the final payment of £8,560 owing. Mr P also had a direct debit set up, from which to make these payments.

Because of this, I can't agree that Mr P was unaware that VWFS were going to try and collect £2,500.62 from his account. But I agree that he wouldn't have expected them to try and take the payment when they did – on 15 July 2021, around two weeks later than they told him. And VWFS have acknowledged their error in doing this.

Mr P had asked about refinancing the arrears on 12 July 2021, which was before the agreement ended and the final payment fell due on 19 July 2021. VWFS provided him with a quote, but he didn't ask them to go ahead with this until 15 August 2021. At which point he'd already been sent two arrears notices confirming he now owed £11,060.62 (the arrears plus the final payment).

Given that the final payment was now due, I don't think that VWFS acted unreasonably by not agreeing to just refinance the arrears. Mr P owed more than just the £2,500.62 he was trying to refinance, and the full outstanding balance was due immediately. What's more, with the two letters he'd been sent in July 2021 confirming this amount, I'm satisfied that Mr P was reasonably aware of what he owed.

VWFS gave Mr P until 20 October 2021 to repay what he owed. And, because they'd made him aware of what was owing in July (twice) and again on 9 September 2021, I can't say that VWFS stopped Mr P from selling the vehicle by not telling him how much he needed to repay. And, when Mr P hadn't repaid the agreement by 27 October 2021, I think VWFS acted reasonably by defaulting and terminating the agreement.

It's not disputed that Mr P asked VWFS for a copy of the agreement on 7 September 2021, and they didn't provide this to him until 6 October 2021. But I can't see how this would've stopped him from selling the vehicle, or otherwise repaying the agreement, and the other correspondence he'd received from VWFS made it clear what he owed. Mr P has also said that VWFS failed to provide him with the service history for the vehicle, which also stopped him selling it. But I don't think this was VWFS's responsibility, while VWFS provided the financing, the supplying dealership provided the vehicle, so they would be who Mr P needed to contact if the service history was missing.

I've seen the letters VWFS sent to Mr P on 27 October 2021, about the termination of the account. And one of these said his account *"will be transferred [to a debt collection agency] who will be contacting you, either for the return of the above vehicle, or for full settlement."* And the debt collection agency contact details were provided.

I've seen that Mr P contacted the debt collection agency on 27 October 2021, the same day that VWFS told him they 'will be transferring' the account. He also contacted them two days later. And on both occasions, the debt collection agency told him that the account hadn't been transferred yet. Mr P also paid £1 to VWFS on 1 November 2021, and this payment wasn't returned to him.

Because of this, Mr P feels that VWFS were lying to him about the transfer to the debt collection agency. But I don't agree. He was told on 27 October 2021 that his account was being transferred, not that it had been transferred. And, even if the management of the debt collection had been outsourced, this doesn't mean that VWFS didn't still own the debt. So, I'd expect any payment Mr P paid to be credited to his account – which it was.

Mr P also made further payments to his account - £10,000 on 24 December 2021 and £1,009 on 29 December 2021. This left him with an outstanding balance of £0.62. And VWFS also added a £252 fee for transferring the account to the debt collection agency. Which they later agreed to waive

Mr P is unhappy that the debt collection agency tried to repossess the vehicle in February 2022, which he says was around six weeks after he'd cleared the account in full. But the account hadn't been cleared in full, he still owed either £0.62 or £252.62, depending on whether the waiver of the £252 fee had been processed at that point.

I don't think this was a reasonable course of action as, once the fee was waived, Mr P owed less than £1. And the collection of this outstanding amount could've been dealt with differently. However, to Mr P's point that VWFS acted illegally and needed a court order to repossess the vehicle; as this is a legal issue it's best dealt with by the courts, so is something I won't deal with in my decision.

Mr P was also unhappy that VWFS had long call waiting times at lunchtimes, which was the only time he could call them; and that a statement they sent him in March 2022 said he still owed them £8,762, when this wasn't the case. With regards to the call waiting time, it's unfortunate that Mr P was limited in when he could speak to them. But I can't say that VWFS have done anything wrong by having longer call waiting times at what would be peak times for incoming calls. And I've seen that Mr P was able to use email to raise his queries.

I've also seen that VWFS have explained why the statement didn't mean that Mr P owed £8,762 but issuing a statement that implied this was the case is confusing for customers. VWFS have already waived the £252 fee they charged Mr P, and they've offered him an additional £253 compensation. Given the above, this is in line with what I would've directed, had nothing been recommended. As such, it's now for Mr P to decide whether to accept this amount or not, and I won't be asking VWFS to do anything more.

My final decision

For the reasons explained, I don't uphold Mr P's complaint about Volkswagen Financial Services (UK) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 October 2022.

Andrew Burford
Ombudsman