

## **The complaint**

Mr W complained to Volkswagen Financial Services (UK) Limited trading as Seat Financial Services ("VWFS") that it didn't treat him fairly when it terminated his hire purchase agreement.

## **What happened**

VWFS entered into a hire purchase agreement with Mr W in May 2019. The cash price of the car was £11,505 and the total amount owing under the agreement (including interest and fees) came to £15,329. This was to be paid in 47 monthly instalments of £233 and a final payment of £4,365 (all figures rounded).

Mr W made all his repayments on time until May 2020. His direct debit payments for May and June 2020 were rejected. Mr W contacted VWFS on 15 July (the day his July payment was due) and explained that he'd been impacted by the pandemic and had been furloughed. The call notes show that the direct debit facility was reinstated and Mr W's payments resumed in August. VWFS terminated the agreement on 26 August and by the 26 September had repossessed and sold the car and credited the sales proceeds to the account. This left an outstanding balance which Mr W arranged to repay at £70 a month. The Statement of Account shows that Mr W made five payments of £70 after the car was collected.

Mr W complained to VWFS in May 2021 and said the agreement should not have been terminated and it shouldn't have repossessed the car. VWFS disagreed and didn't uphold his complaint. Mr W brought his complaint to us in July 2021.

One of our investigators looked into Mr W's complaint. They found that as Mr W had returned to full-time work by the time he spoke to VWFS in July he was no longer impacted by the pandemic, and so the regulations which applied to customers impacted by the pandemic didn't apply in Mr W's case. In addition, Mr W hadn't made an arrangement to repay his missed payments despite the attempts VWFS had made to contact him. They concluded that VWFS didn't act unfairly when it terminated Mr W's hire purchase agreement and didn't recommend that his complaint be upheld.

Mr W didn't accept this recommendation. He said that he thought he'd applied for a payment deferral when he contacted VWFS on 15 July. He said that he'd tried to get in touch with VWFS before and after this point but the telephone wait times were hours long and he was unable to commit the time. Mr W says that VWFS shouldn't have repossessed his car as he'd been impacted by the pandemic and the regulator had banned repossessions. He also says that VWFS sold the car for less than it was worth, leaving him with a large outstanding balance to repay. He asked for his complaint to come to an ombudsman to decide.

I issued a provisional decision on 25 July 2022 explaining why I thought Mr W's complaint should be upheld. Mr W accepted my decision and VWFS provided some further points for me to consider when making 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.

Having considered everything again, including what VWFS said in response to my provisional decision, I remain of the view that Mr W's complaint should be upheld. I appreciate that will be very disappointing for VWFS and I'll set out again my reasons for doing so in this final decision and refer to its response where appropriate.

As before, I have taken into account the law and relevant regulatory rules when making my decision. These include, for example, the Financial Conduct Authority's (FCA) Consumer Credit Handbook (CONC) which sets out its regulations and guidance for lenders such as VWFS about what should happen before and during credit agreements. I've also borne in mind more recent guidance issued by the FCA on 24 April and 17 July 2020 which set out how it expected businesses to provide “*exceptional and immediate support*” to customers in motor finance agreements facing temporary payment difficulties because of coronavirus.

I disagreed with our investigator's conclusion that this guidance wasn't relevant because Mr W had told VWFS on 15 July 2020 that he'd returned to work full-time and was now in a position to resume his monthly payments. Mr W said he'd been unable to meet his repayments in May and June because he'd been on furlough and was in receipt of 80% of his pay. He told us that his partner was on a zero hours contract and was not working or receiving pay. When Mr W contacted VWFS to ask for help in dealing with the resulting arrears it offered him an arrangement to pay because it recognised that it wasn't feasible for him to pay the whole amount in one go, especially given his circumstances. I consider that Mr W was still impacted by the pandemic at that point as he'd experienced, and continued to experience, temporary payment difficulties as a result of circumstances relating to the coronavirus.

I've quoted some sections of the guidance below as I think these are particularly relevant to this case. The overarching requirement (Principle 6) for VWFS was, and is, to pay due regard to Mr W's interests and treat him fairly.

*“Firms should make it as easy as possible for their customers to contact them both online and by phone... Where customers have been unable to reach timely agreement with firms for a payment deferral because of firms' operational difficulties and subsequently miss a payment which is reported to their credit file, or where they have entered into a similar temporary payment deferral arrangement with their lender as a result of the coronavirus situation which has resulted in a worsening arrears status being reported, we would expect firms to work with customers and Credit Reference Agencies to ensure that any necessary rectifications are made to credit files to ensure no worsening arrears status is recorded during the payment deferral period. Firms should also ensure no default or arrears charges are levied in relation to payments missed in these circumstances.”*

*“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.”*

*“Where the customer has the right to use the vehicle, firms should not take steps to*

*terminate the agreement or seek to repossess the vehicle (whether by way of any requisite legal proceedings or otherwise) where the customer is experiencing temporary payment difficulties as a result of circumstances relating to coronavirus and needs use of the vehicle. We consider that seeking to terminate the agreement or commencing or continuing repossession action as described above is very likely to contravene Principle 6 - absent exceptional circumstances (such as a customer requesting that repossession continues)."*

The guidance highlighted the unfair relationship provisions set out in the Consumer Credit Act 1974 (CCA) - in particular, sections 140A(1)(a-c) and 140A(2). Section 140A states:

*"140A(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following:*

- a) any of the terms of the agreement or of any related agreement;*
- b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*
- c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*

*140A(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor)."*

Examples of the orders set out in Section 140B include reducing or discharging any sum payable by the debtor.

Our investigator set out in detail what happened after Mr W took out the agreement in their view to both parties. Neither party has disagreed with this account so I don't think the events themselves are in dispute. For completeness I will summarise what I understand has happened based on the information both parties have provided.

#### What happened

Mr W contacted VWFS on 15 July 2020 and said he hadn't been able to make his previous two payments because he'd been furloughed. He said he'd tried calling a couple of times before and had been on hold for over two hours, and this was his fourth time attempting contact. VWFS apologised and said that it was incredibly busy at the moment.

When Mr W did get in touch, he explained that he was back to normal now with work but has been left with two months' worth of arrears. The VWFS representative said that they could reinstate Mr W's cancelled direct debit so that increased arrears didn't make his situation worse and that his August payment would go out as normal. They offered Mr W an arrangement to pay to clear the arrears of, for example, £20 or £30 a month, instead of asking for the total saying that it wasn't always feasible especially as he'd just gone back to work. Mr W was told "We can definitely set that up, yes" and was transferred to another team to continue the call.

I understand this was a 'blind transfer' meaning Mr W would need to go through the security checks again and explain his situation. Mr W says he didn't have sufficient battery charge to continue the call and that he worked outside with no access to a

charger. He told us that he'd called back that evening and on other occasions but been unable to get through. I understand the next time Mr W spoke with VWFS was on 3 September.

Meanwhile VWFS sent Mr W a default notice for his arrears on 17 July, and an SMS message about them on 11 August. This was followed by a letter on the 26 August explaining that the agreement had been terminated. Mr W's monthly payment for August had been collected by direct debit as agreed.

### My considerations

I've considered whether VWFS treated Mr W fairly when he missed payments on his agreement in 2020 and asked for help.

VWFS sent Mr W several letters about his missed payments prior to his call on 15 July 2020. The letters stated "If there has been a change in circumstances which has impacted your ability to pay then call us on [-] and speak to a member of our team between 9 am and 6 pm Monday to Friday". The letters don't refer to any website content or make any mention of coronavirus-related support, nor did the representative on the call on the 15 July.

VWFS told Mr W in its final response to his complaint that its collections department doesn't offer a managed account service whereby it calls all customers who are in arrears, and that it was reasonable to expect him to act upon letters sent to him and inform it of any difficulties faced with payments.

I appreciate that Mr W didn't speak with VWFS before or during the time he missed his first two payments. However, I don't think VWFS made it easy for Mr W to make contact during this time. It seems to me that VWFS's operational difficulties prevented Mr W from receiving a timely and appropriate response to his payment difficulties which were coronavirus-related.

I can understand why it might have been difficult to get through to with VWFS on the phone to discuss missed payments, however I don't think VWFS managed to mitigate this by providing immediate and exceptional support to Mr W when he informed it that the reason he'd missed his payments was because he'd been furloughed from work due to the coronavirus. And, while it assured him he could begin to make his repayments as normal and that it would set up a repayment plan to clear his arrears, it continued with collections activity.

In response to my provisional decision VWFS said:

- *Whilst the waiting time on our phone lines was significantly longer than usual due to the unprecedented amount of calls we were receiving from our customers, we cannot see that Mr W attempted to contact us by using any other channel: post, email or website;*
- *The business has made the customer aware of arrears by sending letters, the first contact Mr W had with VWFS about arrears was on 15 July [2020]. We would have expected the customer to contact us sooner if they had financial difficulties due to Covid-19;*
- *As we have not received any payment deferral request from Mr W, we correctly considered the missed payments as arrears and terminated the agreement. There was no reason why the business would have considered the missed payments as deferred payments because Mr W had never made a payment deferral request.*

VWFS provided copies of several letters it sent to Mr W about his arrears and all of them requested that he get in touch by phone to make a payment by card or to discuss any financial difficulties. I appreciate that it took Mr W some time to make contact by phone but, as mentioned, it wasn't as easy as usual to get in touch given the circumstances.

VWFS told us that it had been offering payment deferrals to impacted customers at the time. The regulations in April and June state that *"... if, during an interaction between the firm and the customer, the customer provides information suggesting that the customer may be experiencing or could reasonably expect to experience temporary payment difficulties as a result of circumstances relating to coronavirus, the firm should ask whether the customer wishes it to consider granting a payment deferral."*

It seems to me that VWFS was required to be proactive in its dealings with consumers impacted by the pandemic. As it was offering deferrals at that time it seems odd that it didn't consider giving Mr W this option. I remain of the view that VWFS could have acted in line with the regulator's guidance here and considered Mr W's arrears as deferred payments. It could have been more flexible regarding its collections activity and not exercised its rights under the agreement, given the circumstances.

I also think that VWFS treated Mr W unfairly and without due regard to his interests when it terminated his agreement and repossessed the car. Although it had sent him letters regarding arrears, it shouldn't have treated Mr W as though he wasn't engaging with it, given the conversation they'd had in July and that Mr W had made his payment on 15 August as agreed.

### **Putting things right**

Mr W says he lost out financially because VWFS sold the car for less than he'd seen similar models advertised elsewhere, yet it continued to pursue him for the balance owing under the agreement. In order to resolve his complaint Mr W wishes to have the outstanding balance written off, which I understand is over £4,105 as of April 2021.

In response to my provisional decision, VWFS said *"After the repossession, the vehicle was sold as per our process. It is in our interest to obtain the best possible sale price and in this case the vehicle sale did not cover the balance due under the finance agreement. When a vehicle is repossessed, the customer is liable for the outstanding balance which means that if the sale price is lower than the balance, the customer is liable for the shortfall."*

While this might describe what usually happens, I've concluded that in this case VWFS should not have repossessed and sold the car. And I remain of the view that Mr W shouldn't continue making payments for a car he is now without due to this unfair repossession. In order to put things right for him VWFS should write off the outstanding balance.

This balance will include the unpaid rentals from May to July 2020. I have noted that Mr W has paid £350 since October 2020 and so has not yet covered the cost of the three months rental when he did have the use of the car but didn't make any payments.

However, we can consider awards to compensate for the practical and emotional impact a business's mistake had, in addition to compensation for a financial loss. As set out on our website, an award of between £100 and up to £300 might be suitable where a business's actions have resulted in an impact that lasts a few days or weeks and causes some distress and inconvenience. I think that Mr W suffered distress and inconvenience when the car was repossessed and that this difference in payments appropriately reflects that

impact. So I don't consider that Mr W needs to pay anything further.

I also think that Mr W should not have his credit record impacted due to any adverse information recorded regarding this agreement. If any has been recorded then VWFS needs to take steps to amend this.

### **My final decision**

For the reasons I've explained above I am upholding Mr W's complaint and direct Volkswagen Financial Services (UK) Limited trading as Seat Financial Services to take the above steps to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 September 2022.

Michelle Boundy  
**Ombudsman**