

The complaint

Mr T is unhappy with the settlement figure applied by Volkswagen Financial Services (UK) Limited (VWFS) following the early termination of his hire agreement.

What happened

In December 2019, Mr T entered into a hire agreement for a new car with VWFS. The agreement was for 48 months, with monthly payments of £414.

Mr T said that his employer paid him a car allowance, and he used this to pay for the hire agreement. In November 2020 he lost his job. He said he continued to make the payments for a few months as he was hoping to find a new job.

He said he then asked VWFS if he could terminate the agreement early. He said he knew there would be an early termination fee but was surprised when they told him it would be more than £6858 plus VAT.

He said he'd done less than 17,000 miles when he returned it. This was less than the 25,000 miles annual allowance in the agreement. He said that VWFS should've taken this into account when they calculated the settlement figure.

Mr T said the account had been closed in August 2021 with a zero balance. He said he never received a final balance letter from VWFS, until February 2022 and March 2022 when he received letters from them saying he owed them £8,230.

VWFS said Mr T contacted them in May 2021 to tell them he had no income and needed to return the car. They said he also asked to terminate the agreement and requested a settlement figure.

They said they offered him 60 days breathing space to consider his financial position. They provided him with the option to terminate the agreement early, along with the settlement figure of £8,230.

Mr T was unhappy that VWFS were pursuing him for the full amount, so he brought his complaint to our service for investigation.

Our investigator said that VWFS hadn't done anything wrong. He said the charge VWFS had applied was in line with the agreement. He also said that the agreement didn't allow for a refund if the full mileage allowance wasn't used.

Mr T didn't agree with the investigator. He said that his financial situation had been impacted by the Covid 19 pandemic and VWFS had done nothing to help him. He also said that the amount owed should be reduced by the increase in value from having a lower mileage, and should be based on the amount VWFS received for the car at auction.

Our investigator was satisfied that VWFS had made Mr T aware of the costs of termination and the impact it may have on his credit file.

Mr T disagreed – he felt that the extraordinary circumstances arose from the Covid 19 pandemic and this hadn't been taken into account.

Because Mr T didn't agree with the investigator, the matter was passed to me to make a final decision. I sent Mr T and VWFS a provisional decision on 9 September 2022. In this decision I explained why I thought the complaint should not be upheld. Here's what I said:

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 what I consider was good industry practice at the time. Mr T was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Covid 19 pandemic

The Financial Conduct Authority (FCA), the industry regulator, issued temporary guidance, that came into effect on 27 April 2020, about customers who were faced with payment difficulties as a result of Covid-19. This guidance said a firm providing motor finance agreements should grant a payment deferral for "3 months unless the firm determines (acting reasonably) that it is obviously not in the customer's interest to do so."

The FCA issued final guidance in November 2020. They also published "Tailored Support Guidance" – this guidance explained the support firms like VWFS should give to customers whose financial situation may be affected by the pandemic beyond March 2021.

Mr T didn't seek help from VWFS until May 2021. The November 2020 guidance explained how payment deferrals should be offered to customers affected by the pandemic. But this didn't apply in Mr T's circumstances as all deferral requests had to be made by 31 March 2021.

I know that Mr T wasn't seeking a payment deferral, but I've highlighted the purpose of the guidance to show what help the FCA expected firms to provide at that time.

The tailored support guidance did apply in Mr T's circumstances. That's because it applied to customers facing payment difficulties due to events arising from the Covid 19 pandemic who were not receiving payment deferrals. This included customers like Mr T who weren't eligible for a payment deferral – for the reasons I set out above.

The guidance set out what the FCA expected firms to do. This included, treating customers fairly, with forbearance and due consideration, and not pressurising them into repaying a debt within an unreasonably short period of time. It also required firms to give customers time to consider their options and to seek debt advice if necessary.

Section 4 of the tailored support guidance covered reporting information to credit reference agencies. The guidance stated (paras 4.6 and 4.7) that firms should report the status of the account "in the usual way", and firms should be clear about the implications on the credit file of any support or approach offered.

Section 5 of the guidance explains the tailored support the FCA expected firms to provide to customers who, like Mr T, still faced uncertainty about their employment and income prospects. The guidance explains the expectation that firms will work with customers to help them avoid missing payments, and to avoid escalating balances, or a build up of arrears.

Firms were encouraged to put measures in place to avoid this happening. This includes suspending, reducing, waiving, or cancelling interest, fees, and charges.

The guidance also explained that firms should communicate clearly with customers, and in a timely manner, to help them understand their financial position in relation to that debt.

In relation to consumer hire agreements, like Mr T's, the guidance explained the circumstances in which firms could take action to repossess goods or vehicles. This included where the customer asked to voluntarily terminate the agreement and surrender the vehicle.

I need to consider whether or not VWFS treated Mr T fairly and reasonably, and in line with the FCA guidance when he asked to terminate the agreement early.

The settlement amount

In May 2021 Mr T told VWFS he could no longer afford the monthly payment as he'd lost his job. VWFS replied, giving him 60 days breathing space so that he could consider his options. They also confirmed they wouldn't charge any fees or late payment interest during this time.

They also advised him that he could terminate the agreement early. They said this would mean he would be liable for a percentage of the future rentals, plus any arrears. They also explained that they could agree an affordable payment arrangement, and that the balance would show as outstanding on his credit report until cleared.

On 9 June 2021 a settlement amount of £8,084 was provided to Mr T. This increased to £8,230 on 23 June 2021. The breathing space was still in place.

Mr T was unhappy with the amount, and complained that VWFS would not collect the car until he paid the settlement amount. VWFS replied to say they would proceed with the early termination and arrange collection of the car after he accepted the settlement figure they'd provided. They also said they could agree a payment plan if he couldn't afford to pay the amount in one sum.

Mr T said he never agreed the settlement amount. But he'd made it clear to VWFS he couldn't afford to make the monthly payments. I think it was reasonable for them to go ahead and collect the car. If they hadn't done so, and Mr T hadn't made the payments, he would've ended up with a forced repossession, and that would've been more costly.

I'm satisfied that VWFS have applied the early termination settlement amount in line with the terms of the agreement he signed and entered into in December 2019. The key information section at the top of the agreement highlighted that damages would be due if the agreement was terminated. VWFS confirmed the settlement amount was based on 65% of the remaining 29 monthly rentals on the agreement.

Mr T is not disputing the calculation. He's unhappy that VWFS haven't provided the additional help they said they would provide in light of the pandemic. I'm satisfied they've fairly applied the guidance put in place by the FCA. They allowed Mr T time to consider his options, and they didn't apply any extra charges or interest. There was no intention in the FCA's guidance to reduce or remove debt: the intention was to stop additional charges or interest applied for late or deferred payment increasing the debt. So it's fair and reasonable for them to charge Mr T the full settlement amount.

Mr T also said that the settlement amount should be reduced because he did less than the agreed mileage, and the value achieved at auction by VWFS. I disagree. The hire agreement is a formal contract, and one which both parties entered into for a four year

period. There was a contractual amount and that is what is owed. There was a contract term that explained charges that would apply if Mr T exceeded the mileage limit – but the term only covered excess mileage. There was no term providing a refund or reduction if the maximum isn't reached.

I see that Mr T asked about reducing the mileage limit in April 2021. VWFS provided him with a quote and explained the administration fee that would be charged. He declined as it wasn't as beneficial as he thought it might be. In the exchange VWFS explained why the monthly payment had not decreased to as much as he'd expected. But Mr T chose not to go ahead as he didn't want to pay the administration fee.

The credit report

Mr T has complained that his credit report was showing the balance on the account as "zero". Our investigator has told Mr T that he needs to raise this with VWFS. I'm unable to look at this as VWFS may provide a response to Mr T that he's happy with.

Communication

Mr T asked to terminate the agreement in May 21, and the car was collected at end of June 2021. But he said VWFS did not pursue him for the outstanding balance until February 2022. VWFS haven't provided an explanation for this delay.

But it doesn't change the fact that the amount is still owed by Mr T. And if he's still not able to pay the amount in one sum, VWFS should consider his current financial situation and treat him with appropriate forbearance when considering an affordable payment plan to clear the arrears. I think this is fair and won't be asking them to do any more.

I agree with Mr T that these were unprecedented times. He found himself unexpectedly out of work due to the Covid 19 pandemic, and this was the reason he could no longer afford the monthly payments. But the agreement he entered into was a four year hire agreement, and as he's acknowledged, there is a penalty for leaving the agreement early. I've explained above why the help provided by VWFS was in line with the guidance in place at the time.

This doesn't reduce the amount of the debt owed, so it's reasonable for VWFS to ask Mr T to pay that amount.

Both parties responded to my provisional decision. Mr T didn't accept my provisional decision. VWFS accepted it.

Mr T said he continued to make the monthly payment after he lost his job, until he could no longer afford it. He said he doesn't accept the settlement figure as the car had not been used due to the pandemic, so it was in good condition and had low mileage.

He said VWFS closed his account with a zero balance on 19 August 2021. He said VWFS have never explained why this was done. He said he doesn't owe VWFS any money and in the current financial situation, has no money to give them.

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 thought about everything carefully again, I still think this complaint should be upheld. This is for the same reasons I explained in my provisional decision and which I've set out above.

Mr T said VWFS closed his account with a zero balance, and this is shown on his credit report. He said this means he has nothing further to pay.

I said in my provisional decision I wouldn't consider this point as VWFS may give him a response he's satisfied with. I said that because this service only gets involved when there is a dispute. VWFS haven't given their response on this point. If Mr T has raised this with them then I encourage them to do so promptly. If he's unhappy with their response then he can bring that complaint to this service.

For the reasons I stated in my provisional decision I'm satisfied that the debt is still owed. The settlement amount was charged in line with the early termination terms of the agreement he entered into. I explained why the amount was a contractual value, and not related to the lower mileage of the car. So I think it's fair and reasonable that VWFS have charged him this amount.

I know this has been a challenging period for Mr T. He unexpectedly lost a job that he'd been in for ten years – a job that paid him a car allowance. He tried to maintain the payments after he lost the job. And the pandemic made it difficult to find a new job. But I'm satisfied the amount is still payable. Mr T has said that he doesn't have the means to pay this amount at the moment. VWFS and Mr T need to work together to agree an affordable payment plan.

My final decision

For the reasons explained, I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 11 November 2022.

Gordon Ramsay
Ombudsman