

The complaint

Mr K complained to Volkswagen Financial Services (UK) Limited ("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 K in March 2020. The total amount owing under the agreement (including interest and fees) came to £15,902. Mr K made an advance payment of £1,000 and the remainder was to be paid in 48 monthly instalments of £196 and a final payment of £5,490 (all figures rounded).

Mr K made his first payment in April 2020 but had difficulty meeting subsequent payments. Following discussions with VWFS, a payment plan for the arrears was agreed in December 2020 to begin in January 2021. This arrangement was to run alongside resumption of normal monthly payments and was amended in February 2021. VWFS said Mr K didn't keep to the arrangement and the agreement was terminated in June 2021.

Mr K complained to VWFS and said the agreement should not have been terminated. VWFS disagreed and didn't uphold his complaint. Mr K brought his complaint to us in July 2021. I understand all collections activity has been on hold while we investigated his complaint and that Mr K has retained the car.

One of our investigators looked into Mr K's complaint and didn't recommend that it be upheld. They found that VWFS didn't act unfairly when it terminated Mr K's hire purchase agreement. Mr K didn't accept this recommendation. He said that he hadn't shown any intention of not paying for the car and has recently paid for annual servicing and tax. He also said that his circumstances due to the pandemic hadn't been considered enough and asked for his complaint to come to an ombudsman to decide.

I reviewed the complaint and sent out a provisional decision on 25 July 2022 to both parties explaining why I thought Mr K's complaint should be upheld. I said that, given the length of time that had passed, the changed external circumstances, and the possibility that Mr K's circumstances have changed, the fairest thing to do would be to:

- reinstate the hire purchase agreement with Mr K; and
- offer Mr K the options he was given on 9 February 2021 which were to sell or part-exchange the car or voluntarily terminate the agreement; and
- consider agreeing a sustainable arrangement with Mr K to clear the arrears and meet the monthly payments on the basis of an objective assessment of income and expenditure (having regard to the Tailored Support Guidance issued by the regulator in January 2021).

Mr K accepted my decision and my proposed redress. Both Mr K and VWFS provided some further points for consideration. I sent out a second provisional decision on 22 September 2022, which included additional points of redress which were to:

- remove any adverse information recorded on Mr K's credit file about this agreement from April 2020 until the complaint is settled; and

- pay Mr K an amount of £300 to reflect the distress and inconvenience this matter has caused to him.

In response to this Mr K provided some further comments for my consideration.

This is my final decision on this complaint and will be legally binding on both parties should Mr K chose to accept it.

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 Mr K said in response to my provisional decision of 22 September, I remain of the view that Mr K's complaint should be upheld and that my redress proposals are fair. For completeness I'll set out again my reasons for doing so and what I think needs to happen now to put things right for Mr K.

In making my decision, I have taken into account the law and relevant regulatory rules. 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 borne in mind more recent guidance issued by the FCA during 2020 and 2021 which set out how it expected businesses to support customers in motor finance agreements facing temporary payment difficulties because of coronavirus. I've quoted some of the relevant sections below.

"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).

Sections 5 and 6 of the Tailored Support Guidance (TSG) issued by the FCA in January 2021 applies to firms dealing with customers facing payment difficulties due to circumstances arising out of coronavirus whether or not they received or were receiving payment deferrals. The guidance said *"Many customers will continue to face uncertainty about their short and medium-term employment and income prospects and may also experience temporary interruptions in income. Customers' circumstances may change quickly, and in a way that might cause or increase vulnerabilities. Firms should provide support to customers that reflects the uncertainties and challenges that many customers are and will be experiencing due to coronavirus."*

Our investigator set out in detail what happened after Mr K 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 again what I understand has happened based on the information both parties have provided.

What happened

Mr K made his first payment by direct debit in April 2020. He told VWFS that month that he was going to be out of work for several months as the company he was working for had shut down. Mr K told VWFS then in May that it could be up to six months before things got back to normal for him. He ended up not making any payments in 2020 apart from his first.

By the end of the year Mr K's arrears had built up to £1,371. On 23 December VWFS's collection department offered Mr K a 12 month payment plan for these arrears to run alongside his monthly payments. The email said *"Thank you for your recent email relating to vehicle registration [-]. We can set an arrangement of £115.00 per month for 11 months and then a final payment of £106.09 on the 12th month to clear these arrears. Is this affordable for you? As you would like this to be taken by direct debit we need a date in advance to set this up, this means payments will have to start in January for the arrangement to pay. Which date in January 2021 is best for payments to be taken?"*

Mr K agreed to this arrangement to pay (ATP) saying *"Thanks for the email. Due to current circumstances the maximum per month I can afford to pay for the car will be £114 per month. Happy for this to be taken out at the end of each month via direct debit."* I don't know whether a new direct debit mandate was set up following this exchange. VWFS hadn't been able to take payments via direct debit since May 2020 and said (in its final response letter to Mr K) that was because the direct debit had been cancelled. VWFS attempted to take payment from Mr K on 24 January and couldn't for the same reason.

Mr K got in touch with VWFS on 6 February 2021 by email to say that the payment arrangement agreed in December would be unaffordable until April because of the restrictions due to the pandemic. VWFS replied on the 9 February and let Mr K know that he could voluntarily terminate the agreement, sell the car or part-exchange it and take out a new finance agreement. Mr K spoke with VWFS on 10 February, and the call notes state *"Customer advised he will try to maintain rentals and pay towards arrears £10.00 pm - ATP then increased when in better position"*.

VWFS sent Mr K a letter on 10 February 2021 confirming the new arrangement to pay. It states *"this letter is to confirm the payment arrangement that has been agreed with you to bring your account up to date"*. It sets out a 12 month plan with monthly payments of £10 plus a large final payment. It also states *"You will need to continue to make any remaining regular instalments by your current payment method"*.

The account statement shows that Mr K made his normal monthly payment of £196 plus £10 on 24 February and again on 24 March 2021. However, Mr K's direct debit in April was returned. VWFS explained that unless the reason for the return was because the facility had been cancelled it would automatically attempt to take payment again. The reason for the returned payment was 'refer to payer'. This means the bank wasn't in a position to make the payment, which could be due to a number of reasons. An automatic second attempt was successful, and Mr K continued to make his agreed payments in May and June 2021.

VWFS sent Mr K a letter on 28 April 2021 saying *"We have previously agreed a payment arrangement with you to bring your account up to date. Our records indicate that this arrangement has been broken due to non-payment"*. The letter also states *"Please take no further action and accept our apologies if you have made the payment referred to since the date of this letter"*.

VWFS then sent Mr K another Notice of Default letter on 11 May. The customer notes say that VWFS sent him a number of emails, texts and voicemails in an attempt to discuss his account with him. VWFS then terminated the agreement on the 24 June 2021, after which Mr K complained. Mr K spoke to VWFS on 21 July to discuss its response to his complaint. I've set out below some of the call notes:

“Advised April 2021 rental was late & successful on second app and this caused the ATP to break. Advised without a formal option in place or the arrears cleared in full he failed to satisfy the NOD therefore we were entitled to terminate.”

“Advised when your finance provider issues you a NOD then attempts to text, call and email on multiple occasions it is reasonable to us to assume he understood the urgency”.

“Customer advise he made his monthly rentals & ATP payments. Advised the ATP payments were token payments after ATP broke and in order to remedy breach he needed to clear arrears in full or reset ATP”.

My considerations

I've considered whether VWFS treated Mr K fairly when it terminated his agreement in June 2021. VWFS considered that a late payment in April 2021 was enough to end the ATP put in place in February 2021. Mr K had asked for this arrangement because he couldn't manage the existing arrangement due to the impact of the pandemic on his employment. He'd told VWFS on 6 February that he was hoping to be able to have working income again in April.

The Tailored Support Guidance says that the FCA expects firms to be flexible and employ a range of short-term and long-term forbearance options. Section 5.14. states that *“Firms should not take a ‘one size fits all’ approach and a firm offering a single solution to all customers is unlikely to be acting in a way consistent with this guidance or our rules.”*

Sections 5.26 – 5.28 state:

“Where a customer, without prompting or pressure from the firm, makes a proposal to the firm, the firm may put this in place without undertaking an income and expenditure assessment. The firm should make clear to the customer that they can request a review of this arrangement at any time. The firm should also contact the customer after 60 days of the arrangement being in place, to confirm whether they require further support or a review of the sustainability of their arrangement (for example, on the basis of an income and expenditure assessment).

Firms should also monitor the arrangement for signs that it may not be sustainable (for example, based on information the firm holds or missed payments).

If the firm identifies signs that the arrangement is not sustainable, the firm should review the arrangements with the customer and put in place a sustainable arrangement on the basis of an objective assessment of income and expenditure under this guidance.”

It seems to me VWFS was following this guidance by agreeing an ATP with Mr K at that time which allowed him to make payments of £10 a month towards his arrears while meeting his usual repayments. However, I don't think it was acting in line with this guidance when it considered the ATP broken because a direct debit payment was returned on the first attempt and taken successfully on the second attempt and so terminated the agreement. This seems to be an inflexible response to Mr K during a time when he was being impacted by the restrictions in place due to the pandemic. I haven't seen any evidence of VWFS taking steps to contact Mr K before then to check if he needed further support or a review of the sustainability of the arrangement. It could have been more flexible regarding its collections activity and not exercised its rights under the agreement, given the circumstances.

The Tailored Support Guidance states that from 31 January 2021, firms may terminate regulated agreements and repossess goods or vehicles, but only as a last resort. Section

6.6 states that “action to repossess should not be started unless all other reasonable attempts to resolve the position have failed. Firms should therefore be able to evidence that all relevant forbearance options have been appropriately considered before commencing repossession action as a last resort.” And Section 6.7 states that “Firms should not commence or continue repossession action where an agreed forbearance arrangement is in place.”

I don't think VWFS was acting in line with this guidance when it terminated Mr K's agreement because I don't think it took this action as a last resort. I think what should have happened here is that if VWFS considered a payment being returned on the first attempt to be a sign of the arrangement not being sustainable for Mr K, then it should have reviewed the arrangements with him and looked to put in place a sustainable arrangement on the basis of an objective assessment of income and expenditure (Section 5.28). I think that VWFS treated Mr K unfairly and without due regard to his interests when it terminated his agreement.

I have borne in mind that Section 6.9 says that firms are not prevented from taking action to repossess as a last resort where the customer has failed to engage with the firm despite the firm having made all reasonable attempts to engage with the customer. However in this case, Mr K should have had an existing ATP, was continuing to meet his payments under this and hadn't in fact missed any of these payments. As shown in the contact notes, Mr K had previously been told to disregard arrears letters and had also previously agreed a way forward with VWFS after having been sent a Notice of Default in 2020.

Events have moved on since the agreement was terminated in June 2021. I understand that Mr K hasn't made his usual monthly repayments of £196 since then, though has been making his £10 monthly payments towards the arrears. Mr K says *“I was capable of paying for the car throughout the course of 2021. I made that clear to Volkswagen & the only reason the payments have stopped is because my contract was terminated. I am still paying £10 towards the arrears every month which was agreed on the phone with Volkswagen in early 2021.”*

VWFS said in response to my provisional conclusions and proposals that:

“We have the option to reinstate the agreement ... subject to underwriting criteria. Because Mr K had late payments reported on his credit file, a reload application may be declined. Furthermore, we do not know if the monthly payments would be affordable for the customer moving forward.”

“The business may allow customers to sell their vehicle after a hostile termination in exceptional circumstances, please note that the outstanding balance would need to be settled in full, for instance if the customer sells the vehicle for less than the settlement amount, we are not able to accept an arrangement to pay for the shortfall. Mr K had the right to complete a Voluntary Termination after paying 50% of the total amount payable, this is £7,950.88 as stated on page 1 of the signed terms and conditions. Mr K paid £2,225.22 up until the date of termination and no further payments have been received ever since. This means Mr K would need to pay a shortfall of £5,725.6 for Voluntary Termination, should the Ombudsman decide that VWFS have to allow this option to the customer.”

The guidance issued by the FCA on 24 April and 17 July 2020 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. It stated: *“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.”

As mentioned in my provisional decision, I didn't think Mr K had actually missed payments prior to the termination. Bearing in mind the above guidance, it seems to me that VWFS should not have reported any negative information about this account to the credit reference agencies over the period in question, in other words from April 2020, and so it shouldn't take this into account when reinstating the agreement. It should also remove any adverse information it has reported in relation to this agreement from then until this complaint is settled.

I appreciate that VWFS won't know until it looks into things whether or not the repayments are now sustainable for Mr K but, as per the TSG, it needs to consider putting in place a sustainable arrangement with him to clear the arrears and meet the monthly payments on the basis of an objective assessment of income and expenditure. Reinstating the agreement would be the first step towards putting Mr K back into the position he would have been in, had VWFS not terminated it.

I think it is reasonable for VWFS to offer Mr K the option of settling the agreement or treating the agreement as voluntarily terminated. I can accept that, given the length of time that has now passed, should Mr K choose to settle the agreement, it would seem reasonable that any shortfall would need to be paid relatively quickly and not via a long repayment plan.

Mr K has not indicated that he wishes to take either of these options. He said in response to my proposals that he was *“happy to reinstate the hire purchase agreement with VW and agree to a sustainable arrangement to clear the arrears and meet the monthly payments on the basis of an objective assessment of income and expenditure.”*

If Mr K is subsequently unable to meet his repayments, then VWFS should have regard to CONC 7, which sets out rules and guidance for business in their dealings with customers regarding arrears, defaults, recoveries and repossessions. I would expect VWFS to resume its usual reporting to the credit reference agencies, and Mr K should be aware that if he doesn't manage to meet his repayments under an agreed repayment plan going forwards then this might impact adversely on his credit record.

Mr K also told us *“I am really disappointed with the way [VWFS] terminated my agreement last year despite proving I had intentions to make all payments.”* Mr K expanded on this in his response and said that VWFS didn't treat him fairly in its communications with him, for example he says that it terminated his agreement without speaking with him when he had requested this. He was told that this was due to a staff member's annual leave and was offered £20 compensation. Mr K also said that he had planned to undertake a long journey for work the day he was told the car was to be taken away and subsequently had to cancel this work.

Mr K told us that this matter caused him *“considerable stress, anxiety, mental health issues and has prevented me from progressing with my career plans. When I was told that my car was going to be taken away from me I no longer felt it was possible for me to travel abroad for my work. I am a former [-] and was trying to get back into [-] by exploring opportunities abroad, unfortunately due to the situation I was in with [VWFS] I felt it would be very difficult*

for me to travel abroad as I thought my car was going to be taken away from me and that I would need money to pay for the difference in auction." I understand Mr K is receiving ongoing support for his mental health issues.

In response to my provisional decision of the 22 September, Mr K emphasised the above points and said that VWFS's actions had affected the course of his career in an extremely negative way.

Let me say again that I am sorry to hear things have been so difficult for Mr K. I want to reassure him that I have carefully considered what both parties have told me in this matter when coming to a final decision. As I'd said previously, Mr K will appreciate that I cannot consider VWFS to be the sole cause of his difficulties, but I can accept that VWFS's errors exacerbated the impact his personal circumstances were having on his mental health. I think it would be appropriate for VWFS to pay him some compensation in recognition of this impact.

As set out on our website, an award of over £300 and up to £750 might be fair where the impact of a mistake has caused considerable upset and worry and significant inconvenience that needed extra effort to sort out, typically over weeks or months. Having considered this point again, I've concluded that an award in this range is appropriate here.

Putting things right

I remain of the view that the proposals I put forward in my provisional decision of the 22 September are a fair resolution of Mr K's complaint.

In summary, VWFS needs to:

- reinstate the hire purchase agreement with Mr K; and
- remove any adverse information recorded on Mr K's credit file about this agreement from April 2020 until the complaint is settled; and
- offer Mr K the options he was given on 9 February 2021 which were to sell or part-exchange the car or voluntarily terminate the agreement, with the proviso that any shortfall from the sale of the vehicle would need to be cleared relatively quickly; and
- consider agreeing a sustainable arrangement with Mr K to clear the existing arrears and meet the monthly payments on the basis of an objective assessment of income and expenditure (having regard to the TSG January 2021); and
- pay Mr K an amount of £300 to reflect the distress and inconvenience this matter has caused to him.

My final decision

For the reasons I've explained above I am upholding Mr K's complaint about Volkswagen Financial Services (UK) Limited and it now needs to take the above steps to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 November 2022.

Michelle Boundy
Ombudsman

