

The complaint

Mrs C is unhappy with how Volkswagen Financial Services (UK) Limited trading as Audi Finance (VWFS) handled her request for help after she lost her job due to the Covid 19 pandemic.

What happened

In October 2019 Mrs C was supplied with a new car through a hire purchase agreement with VWFS. The agreement was for £26,291, with an advance payment of £235, followed by 48 monthly payments of £378, and a final payment of £7,861.

Mrs C said that she contacted VWFS to explain she couldn't afford her payments after losing her job due to the Covid 19 pandemic. She said her initial request for a payment deferral was rejected by VWFS because she had already missed one monthly payment.

She said VWFS gave her two options: to sell the car privately, or to voluntarily terminate the agreement and pay them the amount to bring it up to 50% of the total cost of credit. She said she reluctantly accepted the voluntary termination option, as they told her this was the only way they would allow her to enter into a payment plan for the shortfall, at an affordable rate.

She was unhappy with the delays in the collection process, and the delays in setting up a payment plan. She said she was also upset when she was told the account was being passed by VWFS to their solicitors.

She said she was upset that VWFS didn't help her. She'd lost her job due to the pandemic, and felt that they didn't help her when she was in a stressful situation.

VWFS said Mrs C contacted them about her financial difficulties in March 2020. They said they received her request for a payment deferral in May 2020. They said they declined his request because her account was already in arrears. They said they felt it wouldn't have been fair to accept a payment deferral as it wouldn't be affordable to her at that time.

They said they explained the various options to Mrs C in June 2020. They said they gave her time to consider the options, and Mrs C chose to voluntarily terminate. They said Mrs C told them in July 2020 she couldn't afford to pay the shortfall amount of £9,879 and arrears of £1,515.

They acknowledged that Mrs C called them frequently between July 2020 and October 2020 to set up a payment plan for the full amount owed of £11,394.

They said they'd passed the account to their solicitors because the amount outstanding was more than £10,000. They said Mrs C had been given time to make an informed decision about voluntary termination, after they'd explained all the forbearance options to her. They agreed they hadn't handled her requests to set up a payment plan as they would have liked to, and for that they'd offered the £500 goodwill gesture.

Mrs C was unhappy with VWFS's response, and she brought her complaint to us for investigation.

Our investigator felt that VWFS should have granted Mrs C a payment deferral when she asked for one in May 2020. This would have covered the payments she'd missed in April 2020, May 2020, and June 2020, and said that they should remove any adverse markers recorded with the credit reference agencies. But they said the £500 VWFS had offered for their poor service was fair and wouldn't ask them to do anymore.

Our investigator then considered what may have happened if VWFS had granted Mrs C a six month payment deferral that she was entitled to following this issue of the guidance from the Financial Conduct Authority (FCA) in April 2020. They estimated the increase in monthly payments, but said there was sufficient information available to say if this would've been affordable to Mrs C. So they felt Mrs C would have had to voluntarily terminate the agreement. Overall, they felt VWFS hadn't treated Mrs C unfairly.

Mrs C disagreed. She said she had sufficient disposable income after the payment deferral period to afford a payment plan to clear any arrears. She said VWFS didn't allow her to sell the car herself and if they had, she says this would have left her with a smaller and more manageable amount to pay.

Because Mrs C didn't agree with the investigator, the matter was passed to me to make a final decision.

I wasn't satisfied with the steps it appeared VWFS had taken when Mrs C asked to exit the agreement. I wrote to them in June 2022 and explained why I felt they could've done more to help Mrs C. Here's what I said, and the information I asked VWFS to provide:

I'm the ombudsman dealing with Mrs C's complaint. I've reviewed the case, and I wanted to let you know that I'm minded to reach a different outcome to that of our investigator.

Before I do that, I would like to invite you to provide further information.

In all her calls with VWFS, Mrs C has been very open about her financial situation. She called you in March 2020 to let you know she could not afford her monthly payments as she'd lost her job due to the Covid19 pandemic. She was very keen to understand her responsibilities and options, and sought advice from you as to what her best options would be.

The crux of Mrs C's complaint is that she was left with no option but to voluntarily terminate. She said this has left her with a debt of £11,394. She said if she'd been allowed to sell the car privately she would have been left with a substantially lower debt.

I've listened carefully to the call recordings you have provided. Both call handlers were polite and empathetic. But I don't consider they fully set out the options available to Mrs C. I say this because neither of them suggested voluntary surrender.

In the first call on 23 March 2020, the call handler explained the three options available to Mrs C. They said she could:

- *part exchange for another vehicle that could result in lower payments*

- *sell the vehicle to an individual, a dealer or a buying website, and pay the amount received towards the settlement figure. (Provided settlement figure of £21,356)*
- *Voluntary Terminate - hand back the car but need to pay shortfall up to 50%*

Mrs C was given the same options when she called on 15 June 2020. But in this call she asked for more information about each option. She specifically asked if you would agree an affordable payment plan for the remaining £3k if she sold the car for say £18,000. The call handler told her this wouldn't be possible.

She was told she'd have to pay the difference within 28 days. You said this was because the other party wouldn't be able to sell the car until the agreement was settled in full and you could release your financial interest.

I don't consider that to be a reasonable response. Especially when she was told in the same call that if she chose the voluntary termination option, you would be able to agree a suitable repayment plan based on her income and expenditure.

It was this advice that persuaded Mrs C that she had no option but to Voluntary Terminate. And leaving her with a debt of more than £11,000.

I'm minded to say this wasn't fair or reasonable. And not in line with regulatory expectations. I say this because she was clearly in financial difficulty, this isn't disputed, but you failed to clearly communicate her options to exit the agreement, leading her to choose an option that resulted her in incurring a significantly higher debt.

You failed to mention the option to voluntary surrender – where she could have returned the vehicle to you, and you could've sold the car. Whilst this isn't in itself a regulatory requirement, I consider it didn't meet the requirement in Principle 6 (Customers' interests) of the FCA Handbook by failing to pay due regard to the interests of your customers and treat them fairly. I consider it more likely than not that choosing this option would've left Mrs C owing a smaller amount, or possibly even no shortfall.

I'm also satisfied that the failure to offer a repayment plan if she sold the vehicle privately is a failure to show the forbearance expected under CONC 7. It appears to me that by prioritising the need to remove your financial interest, you have put your commercial interest above Mrs C's best interests. This isn't in line with the guidance for the motor industry issued by the FCA in April 2020.

This guidance also expected you to consider the fair treatment of consumers who were unable to resume full payments immediate "due to circumstances arising out of coronavirus". I think that refusing to accept a payment plan for a shortfall arising from any option other than voluntary termination is not in line with the guidance.

Putting things right

I'm persuaded that Mrs C would have accepted the option to sell the vehicle privately or to voluntary surrender if she'd been allowed to repay the shortfall through an affordable repayment plan. I've explained above why the failure to do this wasn't in

line with regulatory expectations, and led to Mrs C having a significantly higher debt than she should have.

I'm minded to say that you should calculate the amount Mrs C owes based on what would've happened if she had sold the car privately at that time. I'll also investigate what I think she would have obtained on the open market at that time. She should also receive any rebate on the interest due under the The Consumer Credit (Early Settlement) Regulations 2004.

Before I do so, I invite you to share your comments on my thoughts explained above, including any evidence.

Please can you also let me know:

- If there's any regulatory or other obligation that I haven't relied on that prevented you from accepting a payment plan following private sale or voluntary surrender: and*
- What value did you obtain for the car after you took possession of it?*

Please can you respond by 24 June 2022. If there's a problem then please let me know. If I don't hear from you then I'll issue my decision in line with what I've set out above.

VWFS said that they wouldn't expect the term 'voluntary surrender' to be used or understood by their telephony advisors. They said it is a term they would use where the customer has paid more than one third of the amount financed and wishes to surrender the car back to them. They said they outline the options available to the customer when they say they are struggling to meet the payments. They said this is what they did for Mrs C.

They said they may consider selling the car at a shortfall may be considered where the customer is vulnerable. Before doing so they would review income and expenditure to establish if this was affordable. They said this didn't happen in this case because Mrs C had affordability issues.

VWFS disputed my view that they should have explained the voluntary surrender option to Mrs C. I said this would have been in line with the FCA's principle to pay due regard to the customer's interest. They disagreed and said they thought it would constitute giving the customer financial advice. They also said they had been transparent with Mrs C in line with FCA guidelines for the Motor Industry.

VWFS disputed my comment that they were prioritising their commercial interest above Mrs C's interests. They said they cannot remove interest if a settlement payment has not been received in full. They said this didn't mean they were prioritising their interests above customers. They said it meant they were being fair and transparent, in line with FCA's expectations to treat customers fairly.

They also said it was impossible to expect a finance company to understand and make decisions for a customer on what is best for them as the customer is best placed to do that

They said that Mrs C had accrued arrears of £1,515.40 (4 months' arrears April 2020 to July 2020), meaning out of 8 monthly payments, she had fulfilled half of them.

They said they had a right to ask for the full settlement in line with treating their customers fairly.

They said the car was valued at £15,750 when returned to them.

They also asked me to consider a decision by another ombudsman on a matter they considered not too dissimilar to this complaint. In that case the ombudsman had said that they didn't think in that case it would be fair to require a business to accept less than it was entitled to under the hire purchase agreement.

I sent Mrs C and VWFS a provisional decision on 25 November 2022. In this decision I explained why I thought the complaint should 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. Mrs C was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

I've carefully considered the points made by VWFS in response to my letter to them informing them I was minded to uphold this complaint. Having thought about everything carefully again, I still think this complaint should be upheld.

I'm not satisfied that VWFS paid due regard to Mrs C's interests and treated her fairly as required by the FCA. In particular, I'm not satisfied they provided the necessary forbearance and due consideration expected in the FCA Handbook in rule CONC 7.3.2, or CONC 7.3.6: which requires VWFS to allow the customer, Mrs C, reasonable time and opportunity to repay a debt where the customer is in arrears difficulties.

I'm satisfied that Mrs C was taking appropriate steps to engage with VWFS for assistance when she was impacted financially following the coronavirus pandemic. When it became clear to her that she could no longer afford the agreement that she'd entered into just a few months before her job ended – she sought advice from VWFS.

She wanted to clear her debts, but could only do so with a payment plan. VWFS would only do this if she agreed to voluntary terminate. I'm still unsure why they would allow a payment plan for a VT, but not for a VS.

VWFS said Mrs C had 4 months' arrears as she'd missed payments from April 2020 to July 2020. This is arrears that would've accrued if they had granted her the payment holiday she was entitled to under the guidance for the Motor Industry issued by the FCA in April 2020. But these amounts are still payable so they are entitled to receive those arrears when Mrs C opted to exit the agreement.

VWFS said they wouldn't expect their advisers to use or understand the term voluntary surrender. But voluntary surrender is a common way to end a hire purchase agreement early. I don't consider an explanation of voluntary surrender to be giving advice – it's merely providing her with all of the options available to her. I do agree with VWFS that deciding what route best suited her circumstances was a decision for Mrs C to make. Even if I accept what VWFS said about voluntary surrender, it doesn't change my view that they should've done more to help Mrs C when she told them she was in financial difficulty in March 2020 and June 2020.

I've listened to the calls Mrs C had with VWFS. In these calls, she was told she could part exchange and enter into a lower cost agreement, sell the car herself and pay the amount towards the settlement figure, or voluntarily terminate the agreement.

But as I said to VWFS, the crux of Mrs C's complaint was that she was only offered a payment plan for a shortfall arising from voluntary termination. She called on 15 June 2020 and asked specifically for information about the cost to her arising from each option. She was clearly in financial difficulty, and this was because she lost her job due to the coronavirus pandemic.

VWFS told her she could sell her car but would have to pay any shortfall within 28 days. And she was told in the same call that they would agree to a repayment plan if she chose to voluntarily terminate. I'm satisfied that she only chose to voluntarily terminate as she wanted to fulfil her responsibilities and repay the debt, but could only do so by way of a repayment plan.

I'm persuaded that she would have sold the car herself, or perhaps voluntarily surrendered, if VWFS had allowed her to pay the shortfall by way of a repayment plan.

I don't think that was fair or reasonable. VWFS unfairly limited her options, potentially leaving her with a significantly higher debt. That shortfall might have been reduced if she had been allowed to sell the car herself.

The agreement sets out what is due when a customer exercises their right to voluntarily terminate the agreement. Under the heading 'Termination: Your Rights', it informs Mrs C that if she ended the agreement she would have to return the car and she would owe VWFS half the amount payable. In this case, that amount is £13,145.

VWFS said they valued the car at £15,750 when it was returned to them. I've checked car valuation tools available to me and this amount is what those tools suggest Mrs C would've obtained for the car if she'd sold it in June 2020. So I think it's reasonable for me to ask VWFS to use that value when calculating what the arrears/shortfall might have looked like if Mrs C had sold the car and paid £15,750 towards settling the agreement.

VWFS have told me no valid reason why they couldn't enter into a payment plan for the lower amount following a voluntary surrender. They said they couldn't remove interest if a settlement payment has not been received in full. I don't accept that response because it doesn't explain why they could do that for voluntary termination but not any other option.

Putting things right

I'm persuaded that Mrs C would have accepted the option to sell the vehicle privately, or to voluntarily surrender, if she'd been allowed to repay the shortfall through an affordable repayment plan. I've explained above why the failure to do this wasn't in line with regulatory expectations, and led to Mrs C having a potentially higher debt than she should have.

I expect VWFS to consider Mrs C's current financial situation and treat her with appropriate forbearance and agree an affordable payment plan to clear the arrears.

They should recalculate the arrears. The outstanding arrears (the shortfall) will be the lower of:

- 1. The amount they calculated when the agreement was voluntarily terminated in 2020;*
or

2. *The amount that would have been outstanding if Mrs C had sold the car and paid £15,750 to settle the agreement.*

They should also ensure no negative markers for missed payments have been placed on Mrs C's credit file.

They should calculate this from June 2020, as I'm satisfied Mrs C would've exercised this option if she'd been given this option at the time.

Both parties responded to my provisional decision. Mrs C said that VWFS had never paid her the £500 they had offered her.

VWFS provided arrears amounts under both options I'd set out in my provisional decision. They said the VT shortfall was £9,879.58, and the arrears at the time of voluntary termination was £1,515.40.

They said that Mrs C's liability under option 2 – if she's been allowed to sell the car and settle the agreement – would've been £1,215.40. They also said that they hadn't yet paid to Mrs C the £500 they'd offered her as a gesture of goodwill. They said they would reduce the balance by this amount, leaving Mrs C owing £715.40.

They also confirmed they were happy to agree an affordable payment plan with Mrs C for this amount.

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.

I'm satisfied that VWFS should've allowed Mrs C to sell the car and settle the agreement, and agree an affordable payment plan for the shortfall. This would've resulted in her meeting her obligations and leave her with a lower amount of debt. This is in line with the necessary forbearance and due consideration expected in the FCA Handbook.

VWFS has responded positively to my provisional decision, and I'm satisfied that the offer they've made under option 2 is a fair and reasonable offer. I also think this is in line with what would've happened had they made that offer available to Mrs C at the time.

Putting things right

VWFS should reduce the total amount of Mrs C's liability to £715.40.

I expect VWFS to consider Mrs C's current financial situation and treat her with appropriate forbearance and agree an affordable payment plan to clear the arrears.

They should also ensure no negative markers for missed payments have been placed on Mrs C's credit file.

My final decision

For the reasons explained, I uphold Mrs C's complaint about Volkswagen Financial Services (UK) Limited trading as Audi Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 13 January 2023.

Gordon Ramsay
Ombudsman