

## **The complaint**

Mr L complains about Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (VWFS) terminating his hire purchase agreement.

## **What happened**

In November 2019 Mr L was supplied with a used car through a hire purchase agreement with VWFS.

The total repayable under the agreement was £35,266. Mr L was required to make 48 monthly payments of £458, and a final payment of £13,252.

Mr L said he'd been unwell since May 2021 and had been admitted to hospital in September 2021. He said he was in arrears and the reason for this was directly related to his ill health. He said he'd never missed a payment prior to his illness. He said that he told VWFS in January 2022 that he was willing to clear the arrears. He said that he contacted VWFS after he came out of hospital to set up a repayment plan. But he said VWFS ignored his exceptional circumstances and terminated the agreement.

He said he'd explained to VWFS why he relied on the car for work and family reasons. He also said VWFS's actions had caused him significant stress and anxiety, and his mental health was deteriorating.

He said he offered VWFS a payment plan that would clear the arrears, or asked that VWFS extend the agreement by six months. He said that VWFS told him that the only options following termination of the agreement were to return the car, or repay the full amount owed on the agreement.

VWFS said that when they terminated the agreement Mr L was in arrears for June 2021, September 2021, October 2021, November 2021, and December 2021. They said Mr L had breached the terms of the hire purchase agreement, so they were entitled to terminate it.

They said they had communicated with him through December 2021, advising him his agreement was at risk of termination if he didn't pay the arrears in full. They said Mr L had told them he had been unwell and that he was able to start payments in January 2022. They said they wrote to him on 12 January 2022 seeking confirmation that the payments were affordable. They also said that they'd told him he had to reply within seven days as the agreement was at risk of termination.

VWFS said they'd taken Mr L's circumstances into account, and they'd allowed additional time to make payments or agree a plan to clear the arrears. They said they terminated the agreement on 20 January 2022 when he didn't clear the arrears and didn't complete an income and expenditure form. They said Mr L complained to them on 25 January 2022, and they wrote to him on 19 May 2022 not upholding his complaint. In that letter they told him they would arrange recovery of the car and gave him three weeks to arrange alternative transport.

Unhappy with their response, Mr L complained to this service. Our investigator said he'd reviewed all the correspondence between VWFS and Mr L from July 2021 to the termination date. He said he was satisfied that they'd given information about the amount of arrears, including issuing default notices that explained the consequences of not clearing the arrears. He noted that VWFS had attempted to discuss the arrears with Mr L on several occasions and had tried to arrange a payment plan that was affordable to him.

He said that VWFS were entitled to terminate the agreement in November 2021 but had allowed Mr L two more months to review his financial circumstances. He also said that VWFS didn't have to accept Mr L's offer to pay the arrears in instalments because the agreement had already been terminated.

Mr L disagreed. He said VWFS caused the whole situation by refusing to accept a payment plan.

Because Mr L didn't agree with the investigator, the matter was passed to me to make a final decision. I sent Mr L and VWFS a provisional decision on 16 March 2023. In this decision I explained why I thought the complaint should be upheld. Here's what I said:

*The crux of Mr L's complaint is that VWFS refused to accept a payment plan to clear the arrears after he came out of hospital. He wanted to keep the car, and offered to make payments that would allow him to keep the car.*

*He's unhappy that VWFS terminated the agreement, and wouldn't unwind this, even after he'd made offers to clear the arrears.*

*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 L 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'm not satisfied that VWFS paid due regard to Mr L's interests and treated him fairly. And I'm not satisfied they provided the necessary forbearance and due consideration expected by the industry regulator, the Financial Conduct Authority (FCA). The FCA's Handbook sets rules and guidance for firms like VWFS. CONC 7.3 of the Handbook deals with how firms treat customers who are in arrears or default.*

*CONC 7.3.2 reminds firms they must treat customers in arrears or default fairly – in line with Principle 6. CONC 7.3.4 requires them to treat customers in default or arrears with forbearance and due consideration.*

*And CONC 7.3.6 requires VWFS to allow the customer, Mr L, reasonable time and opportunity to repay a debt where they are in arrears difficulties.*

*I accept that Mr L's health issues and hospitalisation prevented him from engaging with VWFS. I can see why VWFS decided that termination of the agreement was the appropriate next steps. They had issued default notices and other correspondence to Mr L since July 2021. These included arrears letters, formal 'Notice of Sums in Arrears', and a default notice: and this notice explained why he was in breach of the agreement, and that he needed to pay the arrears before 23 November 2021 or they may terminate the agreement and recover the car.*

*On 13 December 2021 in response to a message from VWFS, Mr L confirmed that he had been extremely unwell. He also said that he would make a payment that month, resume*

normal direct debits in January 2022, and clear the arrears by the end of the following month.

On 10 January 2022 he apologised for not responding and explained that he had been unwell again, but he still wanted to pay by direct debit.

On 12 January 2022 VWFS acknowledged his email, confirmed his outstanding balance, explained his next payment was due on 27 January 2022, and asked him if he could afford to make the payment.

Importantly, they also explained that they required him to respond within seven days or they would terminate the agreement. I can see why they took the decision to terminate the agreement: he had said he'd make payments in December and January but hadn't done so, and he had failed to respond in the seven days period they'd given him.

But I don't think that was fair or reasonable. They were fully aware of his continuing ill health, that he'd been in hospital, and how this had prevented him communicating. I can see that they reviewed the file and considered that Mr L wasn't vulnerable. I disagree. The FCA's definition of vulnerable consumers includes those who, like Mr L, are struggling with ill health. VWFS should've considered Mr L as vulnerable, and if they had, I don't think they would have terminated the agreement at that point.

I think they should have contacted Mr L before termination and explain what they were about to do. If they had, he would have told them how reliant he was on the car, and his willingness to agree a payment plan. Instead, they engaged a recovery agent, and this was how Mr L discovered the agreement had been terminated.

After the agreement was terminated, Mr L offered to repay the arrears through a payment plan – this was proposed by him, by a debt advisor, and by his solicitor. But VWFS refused this, saying it was too late as the agreement had already been terminated.

I don't think this was fair or reasonable – CONC 7.3.8 requires firms to allow customers in default or arrears difficulties alternative, affordable payment amounts to repay the debt due in full. So VWFS should've considered Mr L's proposal. If they had done so at that time I expect they would've found he could afford the payment plan that should've been put in place.

VWFS should now agree a suitable and affordable payment plan with Mr L. I remind them that CONC 7.3.3.3 says that firms can allow unmade payments to be made beyond the original term of the agreement.

### **Putting things right**

I've explained above why I would've expected VWFS not to terminate the agreement without making further contact with Mr L. I've also explained why they should've considered his payment plan.

VWFS should do what they can to keep Mr L in the car. In this case they should consider unwinding the decision to terminate the agreement. I understand this may involve setting up a new agreement.

They should agree a suitable and affordable repayment plan with Mr L to clear the arrears and bring the account up to date. I'm satisfied that it's appropriate for Mr L to pay all outstanding arrears payments as he's had continuous use of the car since the termination in January 2021. So it's reasonable that he pays for that usage.

*VWFS should remove any charges applied for termination or late payment.*

*Mr L has explained how this situation has affected his mental health. I don't underestimate the distress he's felt. I agree this situation could've been avoided if VWFS had acted differently at the time. So I propose an award of £750 to reflect the distress and inconvenience he's been caused.*

Both parties responded to my provisional decision. VWFS accepted it.

Mr L accepted my findings but didn't agree that he should have to pay the outstanding arrears. He also explained why he felt that my award for distress failed to reflect the serious implications on his health, nor the substantial loss of earnings he said was caused by VWFS's refusal to accept a payment plan, and the time it has taken for this complaint to be upheld.

### **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've paid particular attention to Mr L's comments about the impact of VWFS's failure to treat him in line with the FCA rules at the time. I've also read the points he's made in his subsequent responses. I want to reassure Mr L that I've considered all of his points even if I haven't referred to them below.

For the reason I stated in my provisional decision I'm satisfied that Mr L should pay for the use of the car. Mr L says that he shouldn't have to pay back the arrears because he has not been able to use the car for his business – he said he lost 90% of his business, and he attributes this to VWFS's failure to accept a payment plan, offered by him and by his representatives.

Mr L said that his ill health caused him to default on his mortgage, and this meant he couldn't get finance for another car. I've carefully thought about this, and I'm not persuaded that the fear of losing the car was the sole cause of his loss of business, and income. Irrespective of how VWFS treated him, they kept him mobile – and that's why I don't feel it fair to hold VWFS responsible for that loss.

Mr L told our investigator he had a plan in place to clear the arrears. But he now doesn't think it's fair that he has to pay the arrears because there wouldn't have been any arrears if VWFS had accepted his offer of a payment plan in January 2021.

I don't think it's reasonable to allow free use of the car. Mr L used the car for the full period, and VWFS halted all proceedings when the complaint was brought to this service. And I haven't seen anything that shows they pursued him for the amounts owed during this time. I appreciate that he feared that VWFS would take the car from him. He said it was that fear that prevented him from accepting new work because he cannot do his type of work without a car.

But he had the car, he was using it, and VWFS wasn't taking steps to recover it from him. So I can't say it's reasonable that he doesn't pay for that usage.

I appreciate the significant impact on Mr L's physical and mental health. Mr L has said how VWFS's actions led to a loss of business and subsequent income – I've explained why I don't think VWFS is responsible for those losses.

Mr L described my award as a fine and set out why a more substantial fine would act as a deterrent and encourage them to rethink their approach to customers like him and treat them fairly. My role isn't to fine businesses for their mistakes. My role is to make an award that reflects the impact on the customer. The award I've made I think reflects the considerable distress and upset caused to Mr L and is in line with our approach as set out on our website.

I understand this has been a challenging period for Mr L. He was seriously unwell, in and out of hospital, and unable to work. He was clearly vulnerable and VWFS should've recognised this and treated him fairly, by agreeing a payment plan with him at the time and allowing him to stay in the car. It's right that VWFS should do what they can to keep him in the car, but as I've explained above, it's reasonable that Mr L pay the arrears for the period he's had the car. VWFS and Mr L need to work together to agree an affordable payment plan that will allow him to stay in the car.

### **Putting things right**

VWFS must take the necessary steps to keep Mr L in the car. They should unwind the earlier decision to terminate the agreement. I understand this may involve setting up a new agreement.

They should agree a suitable and affordable repayment plan with Mr L to clear the arrears and bring the account up to date. This remains subject to Mr L agreeing to an affordable payment plan.

VWFS should remove any charges applied for termination or late payment.

VWFS should pay £750 to reflect the distress and inconvenience he's been caused

### **My final decision**

For the reasons explained, I uphold Mr L's complaint and Volkswagen Financial Services (UK) Limited trading as Audi Financial Services should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 May 2023.

Gordon Ramsay  
**Ombudsman**