

### **The complaint**

Mrs H complains about the actions of Volkswagen Financial Services (UK) Limited (VWFS) when her car finance agreement came to an end.

### **What happened**

In March 2019, Mrs H entered into a 48 month hire purchase agreement for a new car. The car's cash price was £16,759. She paid a deposit and the rest was financed by a loan with VWFS. She was required to pay monthly instalments of £259 with a final payment of £6,322 if she decided to keep the car.

As the agreement was coming to an end, Mrs H applied to re-finance the final payment. However this was declined by VWFS, they stated she hadn't met their lending criteria.

The agreement ended in April 2023 and Mrs H wanted to keep the car because she needed it for work. She asked to enter into a payment plan to pay the final payment. This was refused by VWFS.

As the final payment went unpaid for quite some time, it was passed to VWFS' collections department. Mrs H stressed she was trying to come up with the funds to pay it but she needed time to do so. VWFS agreed to give her 60 days 'breathing space' and said they wouldn't take any further action until the end of August 2023. However on that same day, Mrs H says recovery agents attended her address to recover the car. She complained she had not received notice of this, she hadn't received a default letter, she had been told no action would happen until the end of August 2023 and she had been told the account hadn't been passed to an external third party. She complained about this and the overall level of service provided by VWFS.

VWFS said the matter had been referred to their legal team who had advised as the agreement had ended, it wasn't necessary to issue a default notice and she was also subject to an Individual Voluntary Arrangement (IVA). VWFS confirmed a 60 day breathing space was applied until 25 August 2023. They apologised that recovery agents attended her address without notification.

Mrs H later went on to pay the final payment in August 2023.

Unhappy with their response, the complaint was referred to our service. Our investigator recommended the complaint was partially upheld. He said VWFS had provided conflicting information to Mrs H about the risk of the car's repossession and the account being passed to a third party company. He said distress and upset had been caused by the situation and recommended VWFS pay £150 compensation.

VWFS accepted the findings. Mrs H disagreed and maintained her stance. In summary she said:

- A default notice was required by law to repossess the car;

- Repossession should be the last resort and she wasn't given enough support or help to pay the final payment;
- As she had paid over a third, a court order was necessary for VWFS to take back the car;
- This situation has significantly impacted her mental health, physical health and her ability to work. She's a vulnerable consumer;
- VWFS' overall level of service and communication was poor especially when she spoke to their agents by phone.

As an agreement couldn't be reached, the complaint has been referred to me to decide.

### **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 done so, I've decided to partially uphold Mrs H's complaint. I'll explain why.

It's evident Mrs H wanted to own the car at the end of the agreement. So as a starting point, I've referred to the contract terms. It says to own the car, the monthly payments, the option to purchase fee (£10) and the final payment (£6,322) must all be paid. Until those sums are paid, the car remains the property of VWFS.

That means if Mrs H wanted to own the car outright at the end of the agreement, she needed to have satisfied the above. If not, the car would need to be returned to VWFS. Mrs H signed this agreement in March 2019 so I'm satisfied she was aware of the same and what was required to own the car.

Shortly before the agreement ended, Mrs H applied to refinance the balloon payment however her application was declined by VWFS. While I appreciate she was upset about this, such an application would be subject to affordability and credit file checks. In this case, VWFS said Mrs H didn't meet their lending criteria. I note Mrs H was subject to an IVA around this time so it's fair to say her financial circumstances were not necessarily in a good position. The terms say the consumer must not be subject to a bankruptcy order, administration order or enter into any arrangement with your creditors to repay your debts. I consider this term would apply to Mrs H's IVA.

VWFS' decision about the declined refinance application was communicated to Mrs H promptly so I can't say they acted unfairly. I must emphasise based on the terms, there is no absolute right to apply for the refinance of the final payment. So where a financial business like VWFS allow applications to be made, its approval isn't guaranteed as it would be subject to checks as mentioned above and potentially other factors.

Mrs H was told about the declined application in February 2023 which was around two months before the agreement was due to come to an end. Meaning she had reasonable time to seek alternative arrangements to pay the final payment. If that wasn't possible, there were other options available to her like part exchange, selling the car privately or ultimately giving the car back. Such options were communicated to her by VWFS well in advance of the agreement ending. So I'm satisfied she was provided with sufficient information to make an informed decision about what to do when the agreement ended.

I appreciate Mrs H's upset about the above and I acknowledge she didn't have the funds for the final payment when it became due. However for the reasons outlined above I don't find

VWFS were under any contractual obligation to assist her financially with it, for example agreeing to a payment plan.

As the final payment was due and went unpaid for quite some time, Mrs H was in breach of the terms and there was insufficient evidence she was able to pay it. From VWFS' contact notes, I can see they reiterated to her on more than one occasion that as long as the final payment remained outstanding and the car wasn't returned, it would impact her credit file, there was a risk of termination and it may impact future applications for credit. So I can't say she wasn't made aware of the same.

Mrs H complains recovery agents attended her address without notice to take back the car and they weren't allowed to do so without a court order as she had paid more than a third of the total amount payable under the agreement. I've seen correspondence sent to her in June 2023 which confirms recovery agents had been instructed and she had been asked to provide details to facilitate collection. However I've also seen correspondence where she was told the account hadn't been outsourced to a third party and a default notice would be issued (however she was later told one wouldn't be necessary as she was subject to a IVA). So I agree with the investigator that conflicting information was given to Mrs H by VWFS. As the car wasn't repossessed by the recovery agents, I can't agree VWFS breached the terms.

I've carefully thought about VWFS' overall level of service especially when they told Mrs H that they would give her 60 days breathing space and wouldn't take any action such as taking back the car until the end of August 2023. Given what Mrs H said about trying to get the money to pay the final amount, I believe VWFS acted fairly by allowing her this time to do so. Therefore I can understand her shock and upset that on the same day she was told this, agents arrived at her address to take back the car.

On balance, I believe it's more likely than not the agents were instructed to do so before VWFS agreed to the 60 day breathing space meaning there wasn't enough time for it to be cancelled before they attended. But I can understand from Mrs H's perspective, this caused her worry and upset as she had been given conflicting information by VWFS. She's explained the attendance of the agents at her address impacted her physical and mental health including stress and anxiety which has caused her to seek medical care. I'm very sorry to hear about the impact of this situation on Mrs H's health.

In light of the same, the investigator has awarded £150 compensation for the distress and inconvenience caused. I consider this is a fair amount given the above circumstances.

### **My final decision**

For the reasons set out above, I've decided to partially uphold Mrs H's complaint.

To put things right, Volkswagen Financial Services (UK) Limited must pay £150 compensation to Mrs H for the distress and convenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 3 September 2024.

Simona Reese  
**Ombudsman**