

The complaint

Mr W is unhappy that Volkswagen Financial Services (UK) Limited trading as Volkswagen Financial Services ('VWFS') have defaulted a hire purchase agreement he had with them and are threatening to repossess the car supplied to him under that agreement.

What happened

In September 2019, Mr W was supplied with a used car through a hire purchase agreement with VWFS. He paid an advance payment of £183.33, and the agreement was for £18,333 over 49 months; with 48 monthly payments of £336.20 and a final payment of £7,537.50.

Mr W's income was affected by the coronavirus (Covid-19) pandemic, and, in May 2020, he contacted VWFS about a potential payment deferral. They advised him to apply for this online. However, Mr W didn't do this until July 2020, at which point he'd missed two payments and was no longer eligible for a payment deferral. So, he completed a financial difficulties form instead. VWFS are not reporting these two missed payments as arrears to the credit reference agencies.

Mr W maintained the required payments from July 2020 onwards, and in February 2021 he agreed a repayment plan of an additional £10 a month with VWFS. However, this plan failed as Mr W missed the April 2021 payment. He then missed further payments in June, July, August, September, and October 2021. At this point his account was £2,689.60 in arrears.

A further repayment plan, this time of an additional £37.33 a month, was agreed in October 2021, but the plan failed in January 2022 as the additional payment wasn't paid. However, this plan was reinstated in April 2022 and Mr W made all payments up to October 2022. After this point, he continued to make the required payments under the agreement but didn't pay the agreed additional payment of £37.33 a month. By October 2022 the arrears had reduced to £2,312.50 and they remained at this level.

VWFS issued a default notice in July 2023, asking Mr W to repay the arrears. He didn't do this, nor did he agree any repayment plan with VWFS. So, in September 2023, VWFS terminated the agreement. VWFS reported the arrears from June 2021, and the default, to the credit reference agencies, in line with their obligations.

Mr W wasn't happy with what had happened, and he complained to VWFS. They didn't think they'd done anything wrong, so Mr W brought the matter to the Financial Ombudsman Service for investigation, asking for the default to be removed from his credit file.

Our investigator thought that VWFS had treated Mr W's circumstances with forbearance and due consideration, and that they had fairly and accurately reported the financial situation to the credit reference agencies.

The investigator also said that if VWFS had arranged a payment deferral when Mr W first contacted them in May 2020, given that he continued to miss payments throughout 2021 his agreement would always have been significantly in arrears. So, the investigator said VWFS were entitled to default and terminate the agreement and look to repossess the car.

Mr W didn't agree with the investigator's opinion. He said that he only missed payments during the Covid-19 pandemic and he's "*not missed a payment since.*" He said that the repayment plan only failed because of an error by his employer not paying him, and VWFS then refused to reinstate it. However, Mr W subsequently said that the £37.33 a month payment arrangement failed because VWFS asked him to increase the amount he was paying towards the arrears.

Mr W was also unhappy that the termination and default happened when he only had two payments left on the original agreement. So, this matter has been passed to me to make a final decision.

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 reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 (if appropriate) what I consider was good industry practice at the time. Mr W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've seen the Statement of Account for the agreement Mr W has with VWFS, and I've seen it shows the missed payments as stated above. It also shows the additional payments Mr W made towards the arrears, as well as when these weren't paid. As such, I'm satisfied Mr W had substantial arrears when the agreement was terminated.

Mr W has said that he only had two payments left on the agreement when it was terminated. However, I don't agree this was the case. While the agreement was taken out in September 2019, and so the original term was due to end in October 2023, this is based on all the payments having been made. And, as specified, this wasn't the case. As such, while there may've only been a few months remaining on the original term when the agreement was terminated, due to the substantive arrears, there were more than the equivalent of two payments remaining.

The agreement Mr W signed on 11 September 2019 allowed VWFS to terminate the agreement if Mr W breached the terms, which included the need to make all payments in full and on time, so I'm satisfied that VWFS acted in line with the agreement when doing so. They also issued a default notice to Mr W on 6 July 2023, explaining that the agreement would be terminated if he didn't take steps to resolve the arrears situation, which he didn't. I've also seen that VWFS had sent Mr W regular notifications of his arrears, which included additional default notices, between 2020 and 2023. So, I'm therefore also satisfied that Mr W was aware of the situation and the steps VWFS were looking to take.

However, I also need to consider if VWFS treated Mr W fairly with regards to his arrears. VWFS have an obligation to treat customers in financial difficulties with forbearance and due consideration. They also had additional obligations as a result of the Covid-19 pandemic, which allowed them to grant a payment deferral of up to six months during 2020.

As such, I would expect VWFS to have treated the missed payments in May and June 2020 as a payment deferral and not class them as arrears and report them as such. While VWFS didn't do this initially, I'm glad to see they have done this, and this included the missed payment in April 2021.

But, notwithstanding this, I'm in agreement that this has made no difference to the overall situation. I say this because Mr W missed an additional five payments between June and October 2021, which were after the additional Covid-19 obligations VWFS had. As such, these missed payments would never have been classed as deferred payments, and would always have been dealt with as arrears – which is what VWFS did.

Given the amount of time left on the agreement when the payments were missed due to Covid-19 in 2020 and 2021, I would expect these to be repaid over the remaining term of the agreement, and this is also the case with any other missed payments. I've seen that VWFS worked with Mr W to put payment arrangements in place, and these arrangements were renewed when they failed. However, Mr W stopped making additional payments towards the arrears in October 2022. So, as the remaining term of the agreement grew shorter, it was only reasonable for VWFS to ask him to not only make additional payments, but also to increase these to clear the balance within the existing term, so far as was possible.

Given this, I'm satisfied that VWFS acted reasonably in the circumstances by defaulting and terminating the agreement when they did. And while I appreciate the impact this has on his ability to obtain further credit, I'm also satisfied that VWFS acted reasonably by reporting the arrears and eventual default to the credit reference agencies, as they are obliged to do.

As Mr W has said, the existing term of his agreement has now finished, and the agreement gave him the opportunity to pay the final payment and keep the car or hand it back to VWFS. However, in doing so, any missed payments are still due. As such, I'm satisfied that Mr W is still in this same position – he can clear the arrears and pay the final payment and keep the car, or he can hand it back to VWFS and make an arrangement with them to clear the outstanding balance on his account. And, if he chooses to do neither, then VWFS are entitled to repossess the car under the agreement and pursue Mr W for the amount outstanding.

So, and while I appreciate this will come as a disappointment to Mr W, for the reasons given, I'm not asking VWFS to remove the default and/or any arrears from his credit file.

My final decision

For the reasons explained, I don't uphold Mr W's complaint about Volkswagen Financial Services (UK) Limited trading as Volkswagen Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 May 2024.

Andrew Burford
Ombudsman