

The complaint

Ms H complained that Volkswagen Financial Services (UK) Ltd (VWFS) didn't allow her to cancel the acquisition of a car.

What happened

VWFS supplied Ms H with a used car on a hire purchase agreement in March 2023. The agreement required payments of around £420 for 60 months. Ms H paid a deposit of around £1,100. The total amount payable was around £26,300.

Ms H says that she entered into the contract for the acquisition of the car online and once it was delivered, she realised that it wasn't suitable and didn't meet her needs considering her medical condition.

Less than two weeks after the agreement started, Ms H contacted VWFS to let them know she wanted to withdraw from the agreement. She also referred to a cooling off period and wanting to cancel. VWFS said that she should contact the selling dealer who I shall call S.

Ms H raised a complaint that VWFS wouldn't allow her to withdraw from the agreement within two weeks of entering into it. She said the contract was ambiguous and the terms were unfair and disputed that she also had to contact S. Ms H said that as there was no longer an agreement, there was no payment due from her and she asked VWFS to collect the car. Ms H said that she was told that direct debit payments would be suspended while the complaint was being considered, but further payments were called for. Ms H raised a direct debit indemnity which she says VWFS didn't defend. VWFS subsequently contacted her to ask her to pay the arrears.

VWFS said that Ms H did have the right to withdraw from the credit agreement by paying off the outstanding balance. But if she didn't want to keep the car then she needed to contact S. It declined to help further so Ms H referred her complaint to our service. She said that she should have been allowed to withdraw from the contract because it was a distance contract sold online and she was exercising her consumer rights.

Ms H also pointed out that VWFS hadn't responded to her complaint in the time required and hadn't taken into account her medical condition.

An investigator here looked into the complaint and explained that the right to withdraw from the credit agreement isn't the same as cancelling the agreement for the sale of the car. He said that VWFS had given the correct information that Ms H should contact S. He went on to say that as Ms H hadn't followed the advice given by VWFS she hadn't lost out as a result of an error.

The investigator also pointed out VWFS had correctly advised Ms H was still liable for the repayments and that they had agreed to suspend further action while the complaint was with our service.

Ms H disagreed. She said that the contract was unclear; the process was made arduous by VWFS; and they didn't provide clear instructions on how to cancel.

I issued a provisional decision that said:

Ms H acquired a car which was supplied by VWFS. The hire-purchase agreement contains all the material information I would expect, the term, interest rate, monthly payment and total payable under the agreement. It also tells Ms H about her right to withdraw from the credit agreement. It doesn't set out what to do if she wanted to cancel the acquisition of the car, but it doesn't need to.

What did Ms H want?

Ms H has made it clear that she wanted to hand back the car and unwind the whole agreement including the finance. She has said that she realised the car was unsuitable for her considering her health condition, so she said she wanted to exercise her consumer rights as the car was bought online.

The difficulty here is that Ms H didn't have a cooling off period or cancellation rights – she did have 14 days to withdraw from the finance agreement, but that would only have allowed her to buy the car from VWFS.

The right to withdraw is set out in the terms of the credit agreement. It is also set out in section 66A(7) of the Consumer Credit Act 1974 ("CCA"). This gives the customer a right to withdraw after entering into a regulated consumer credit agreement, without giving any reason, within 14 days. The 14-day period usually begins the day after the agreement is signed. So within that timeframe Ms H could have withdrawn from the finance if, for example, she found an alternative source of funds to pay for the car outright, such as savings or a loan from elsewhere.

There doesn't seem to be any dispute that Ms H does have the right to withdraw, but that wasn't what Ms H wanted to do.

Ms H has said that as it is a distance contract, she should be able to exercise her consumer rights. Ms H hasn't specified what consumer rights she is referring to, but I think she had regard to The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCRs").

It's important to note that the CCRs doesn't cover every contract. It says:

Limits of application: general

6.-(1) These Regulations do not apply to a contract, to the extent that it is-
(b) for services of a banking, credit, insurance, personal pension, investment or payment nature;

The transaction Ms H entered into (at a distance) was to arrange for a car to be supplied under a Hire Purchase agreement. She didn't buy goods that she could return within 14 days. So the transaction of entering into a Hire Purchase agreement is one where the CCRs don't apply. The contract is technically for a financial service. This means that Ms H did not have the right to cancel the agreement and hand the car back within 14 days.

Were VWFS right to say she couldn't cancel?

When Ms H called VWFS to cancel the acquisition of the car the advisor explained that she had the right to withdraw from the finance. However, in order to cancel the acquisition of the

car she would need to contact S. I've listened to this call and I don't think the information that was provided was incorrect. It's clear however that Ms H didn't agree. Ms H said that the contract didn't explicitly say that she needed to contact S.

The terms of the contract don't explicitly state that Ms H needs to contact S to cancel the acquisition of the car. But they don't need to. I appreciate Ms H thinks that the right to withdraw term is unfair because it is unclear, and not informative enough. The agreement doesn't explain that she can contact S to cancel because cancellation isn't a right here, and S is a third-party business. The agreement sets out the terms between VWFS and Ms H – not S. It wouldn't be appropriate for the VWFS agreement to set out the terms that may or may not have enabled Ms H to unwind the agreement with a separate third party – S.

Did Ms H have the right to cancel for any other reason?

While our investigator was looking into the complaint Ms H pointed out that the reason she wanted to withdraw was because the car was unsuitable for her considering her medical condition which she says she told VWFS about. She hasn't articulated that the car was mis-sold to her, so I haven't considered this, but I think she stated this as an additional reason she should be allowed to cancel and is unhappy with how VWFS have handled the matter.

I'm sympathetic to Ms H position considering her health and her reasons for changing her mind about the car, but unfortunately that doesn't mean VWFS should have allowed her to cancel the agreement and return the car. Other than through voluntary termination/surrender (which wasn't what Ms H wanted), the option available to her at the time was to contact S to ask if there was anything they could do, which is what she was fairly told by VWFS.

Missed payments and information reported to the credit reference agencies

Ms H says she was told that payments would be suspended while the complaint was ongoing. I've listened to the call on 16 June 2023 and Ms H makes it clear she is unhappy with how long the investigation is taking. The case handler says that the investigation will take a further one or two days and he will pause the payment and not report adverse information until he issues his final response.

A follow up email was sent which said "while a complaint is ongoing, I have blocked June 2023 rental. Please note there will be no adverse recorded". This doesn't match with what happened in the call. So I can understand why Ms H was also unhappy when she was called in July about an outstanding payment, and that she was chased by email. When she called back, she was told that a hold hadn't been placed, but they would now do that which would stop outgoing phone calls chasing payment, but not necessarily letters.

No clarification was given that a hold was not put on payments, so I can also understand why Ms H would be alarmed to find a direct debit payment claimed later in July.

Although I appreciate that VWFS have sent notices of sums in arrears and the terms of the agreement set out the consequences of arrears, on balance, I think VWFS could have been much clearer here about payments and the consequences of not paying.

Ms H argues that when she raised a direct debit indemnity with her bank to have the funds returned VWFS didn't defend that action. I can see that the reason the bank provided to indemnify the payments wasn't something that VWFS could challenge. The indemnity reclaimed payments that were made in April, May and July 2023 totalling £1,258.74.

Overall I don't think VWFS were wrong to report adverse information on the credit file. The payments were due despite the dispute, and the information on the credit file is a true

reflection of the payment history. I think they offered to pause the payments because it was taking them so long to look into things, but ultimately that has caused more confusion, especially when they didn't get this right.

Ms H has recently commented that our service should have told VWFS to stop taking any further action and to stop reporting any information to the credit reference agencies. Although we can request that a business stops taking further action, it doesn't have to comply during the investigation. It only needs to respond to a direction made in a legally binding decision, providing it is accepted by the consumer.

However I will go on to consider the information reported on the credit file further when I look at VWFS's overall handling of the complaint.

Overall handling

Ms H is unhappy with how VWFS have handled things overall and the delays in issuing their final response. Ms H had told VWFS about her medical condition and had identified herself as being vulnerable. It took VWFS around 16 weeks to respond to her complaint. I can imagine that this would have been frustrating.

VWFS have provided incorrect information about her right to withdraw in some of the calls. I've listened to the call on 16 June and the case handler says that there may have been the right to cancel if the agreement was signed offsite, and she would have received notification of this with her welcome pack, which seems to allude to what Ms H says about cooling off. VWFS don't seem to have got to grips with Ms H's complaint points, and considering they were the experts I think it would have been fairer had they explained more clearly, and at an earlier stage, Ms H's options and reasons why she couldn't cancel the acquisition.

But the answer Ms H ultimately received was the same as she had been told originally, and VWFS didn't uphold her complaint. Explaining this more definitively at an earlier stage wouldn't have put Ms H in a different position, as she still wouldn't have been able to cancel, but it may have allowed her to understand where she stood sooner, and she perhaps could have taken a different route to resolve things.

It seems quite clear what Ms H wanted to do at an early stage. VWFS could have made sure she had an explanation for her various points, for example: the right of withdrawal and what that means; why there was no cancellation period; why the CCRs didn't apply.

During the consideration of the complaint VWFS could also have been clearer about what payments were due and the impact of missing payments. During the call on 16 June the case handler says that the investigation will take a further one or two days and he will pause the payments and not report adverse information. Had the investigation only taken an additional one or two days that might have been fine, but the final response wasn't issued until 10 August. Further communication followed on 7 September which made it clear that arrears would be reported to the credit reference agencies.

So I think that even though there was also unclear information about payments and adverse information initially, VWFS made their position on the outstanding balance quite clear by 7 September 2023.

At that point I think Ms H could have expected there to be some adverse information reported on her credit file. In March 2024 Ms H's solicitor wrote to VWFS to reiterate her position, and said that if adverse information wasn't removed then Ms H might lose out on a property sale. I don't have any further evidence of whether there was a loss, but as the payments were due under the agreement, I can't fairly say that VWFS are responsible.

How to put things right

I've thought carefully about how to resolve this. Although I'm sympathetic to Ms H because of the unfortunate position she found herself in, I don't find I have grounds to direct VWFS to take the car back with nothing to pay.

However, I think a fair way to resolve this complaint would be for VWFS to allow a reasonable amount of time for Ms H to either bring payments up to date or settle the agreement before they take any further action. I think eight weeks is a reasonable amount of time and that would start, if and when, Ms H accepts my final decision.

I've thought about the information reported to Ms H's credit file. While it might be a true reflection of her payment history it seems unfair that her credit file is made worse where VWFS have given conflicting information and missed opportunities to answer the complaint early on. So once payments are up to date, VWFS should remove any adverse information from Ms H's credit file.

I think VWFS explanations could have been much clearer, and the delays in handling things compounded Ms H's frustration which would have had more impact considering her health condition. So I think VWFS should also pay £300 in compensation.

VWFS responded to the provisional decision and didn't have anything further to add. Ms H responded and broadly agreed that she now understood how the agreement worked, but made some additional points about a suitable remedy which I've summarised here:

- Ms H would have sought an alternative solution if given a clear explanation. But because of adverse information reported to the credit reference agencies this option is no longer available. She has asked for the adverse information to be removed before she settles the finance.
- Ms H provided evidence she said demonstrates other lending was declined solely on the basis of the adverse information, which led to a financial loss.
- Ms H said that the ongoing matter isn't helpful considering her health and is concerned that VWFS sought medical evidence unnecessarily. She would like additional time to settle the agreement, or bring the arrears up to date, if she needs it.
- Ms H said it isn't fair to pay many months of interest considering she might have settled the agreement earlier had the complaint been handled effectively.
- Ms H said she wanted clarification about how VWFS supplied the car so that she can understand how the arrangements between the parties work.
- Ms H said that VWFS have been in touch to award £300 compensation which isn't related to this complaint. She asked for clarification on what this was for.

I've considered all the responses in order to make my 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.

I'd like to thank both parties for responding to my provisional decision. I appreciate why Ms H has put forward her points and suggested alternatives. However I haven't seen any particular arguments which materially change my mind about the decision that I've reached. I'll explain why in answer to Ms H's points.

As I said in my provisional decision, the information that VWFS gave Ms H initially wasn't incorrect. She didn't have the right to cancel the agreement and hand the car back. So I think Ms H had sufficient information from an early stage to mitigate the unfortunate situation she found herself in. For example she could have sold the car and continued the dispute. Even if VWFS delayed things or could've provided a fuller answer sooner, it still wasn't responsible for all the extended problems given its initial advice.

Ms H was bound to pay the interest on the agreement from the moment she entered into it. That wasn't caused by how VWFS dealt with the complaint. The agreement is working as per the terms that she agreed to. Ms H could have chosen to settle the agreement earlier and this would have reduced the interest she had to pay. If the agreement is settled in full VWFS will calculate the settlement figure up to the point of settlement. This means Ms H won't pay the full amount of interest shown on the finance agreement if she settles it early.

I think it's fair the adverse information is removed once the arrears are brought up to date and not before. That will be a fairer reflection of how the account has been managed. Ms H doesn't need to settle the agreement in full, she needs to bring the arrears up to date within eight weeks, and then the adverse information can be removed. If further contractual payments are missed after the adverse information has been removed, then VWFS may report those to the credit reference agencies.

I think eight weeks is a reasonable amount of time, and Ms H will also have up to 28 days to accept or reject this final decision.

Ms H has provided an email from her mortgage broker from March 2024 which confirms an application didn't proceed due to adverse information on her credit file. The payments were rightly due under the agreement, and the consequences of non-payment were clarified by 7 September 2023. I'm not persuaded the loss she may have experienced has been caused by VWFS so I'm not directing them to pay it.

When Ms H agreed to finance the car there was an underlying transaction where the car was sold by S to VWFS. This meant that the car was supplied to Ms H by VWFS. But the contract Ms H entered into was a hire purchase agreement with VWFS.

VWFS have contacted Ms H about a £300 award and said it isn't related to any complaint she has made. I don't have any further information about this. But Ms H can ask VWFS for further clarification.

I can understand Ms H's concerns that she provided medical evidence to help support her case. VWFS may have asked her to voluntarily provide this for several reasons. It could have needed to check if it needed to communicate in a different way or to check if it could freeze payments. I don't think VWFS acted unfairly in asking for this information, but it could have explained what it was considering.

I can appreciate that Ms H might not be wholly in agreement with my decision and as a reminder she doesn't have to accept it. She's free to pursue the complaint by other means, such as through the courts, if she wishes.

My final decision

My final decision is that I uphold this complaint and direct Volkswagen Financial Services (UK) Ltd to:

- Allow eight weeks for Ms H to either bring the arrears up to date or settle the agreement before taking any further action to recover the vehicle or the debt.
- If the arrears are cleared within eight weeks, then Volkswagen Financial Services (UK) Ltd should remove any adverse information from Ms H's credit file.
- Pay £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 4 October 2024.

Caroline Kirby
Ombudsman