

The complaint

Ms C complains Volkswagen Financial Services (UK) Limited (VWFS) unfairly terminated her car finance agreement.

What happened

The details of this case are well known to both parties so I won't repeat them again, instead I will focus on the reasons for my decision.

In December 2024, I issued my provisional findings outlining my intentions to partially uphold Ms C's complaint. I said:

"In summary, Ms C complains VWFS unfairly terminated her car finance agreement following a period when she was experiencing financial, physical and mental difficulty.

As a starting point, I've referred to the terms of the agreement which says the contractual monthly payments (£349) must be paid and if the account falls into arrears and remain unpaid, VWFS may terminate the agreement. Ms C signed the agreement in September 2022 so I'm satisfied she was aware of the same.

Based on the statement of account, I can see from November 2022 Ms C missed a number of contractual payments. Around March 2023, she contacted VWFS to request an arrangement to pay which indicated she was struggling financially. I can see the arrears were around £699 at that point.

Ms C has told our service the reason for this was because she was in between jobs. She also said she had a number of health issues which were particularly challenging and distressing. She's explained this significantly impacted her daily life including her ability to work, study and manage her financial obligations. I thank her for her openness and honesty. I'm very sorry to hear about this and I appreciate it would've been a difficult time for her and why her physical and mental health were her priority at the time.

Where consumers are experiencing financial hardship, I would expect financial businesses like VWFS to treat them with forbearance and due consideration as required by the CONC rules set by the financial regulator. There's not a defined list of the support and measures to be put in place, as it would depend on the circumstances of the individual however it may include agreeing to a payment holiday, freezing interest, deferring payments, setting up an affordable payment plan, etc.

I would expect the financial business to gain a full understanding of the consumer's financial circumstances so tailored support could be put in place. In this case, I can see that's happened. In April 2023, VWFS carried out an income and expenditure review of Ms C's financial circumstances and it was determined she had a disposable income in excess of £300. On that basis and following Ms C's request, it was agreed she would pay an additional £100 on top of her monthly instalments. I consider that to be a fair and reasonable course of action by VWFS.

Despite this, the statement of account shows neither the monthly payments nor the additional amount of £100 were received as agreed. VWFS attempted to contact Ms C by phone, email and text message to discuss further but they were unable to speak to her.

By July 2023, the account was £1,897 in arrears meaning it was around five months behind. VWFS' contact notes show Ms C advised she was still struggling financially. VWFS agreed to do another income and expenditure review and they further advised Ms C on the options to end the agreement early such as voluntary termination, selling the car, part exchange, etc. voluntarily termination, she was informed of what she would be required to pay should she chose that option. I find this to be another example of VWFS' attempts to support Ms C during her time of financial difficulty. By doing so, it gave her information to make an informed decision about how best to proceed.

The Information Commissioner's Office (ICO) provides guidelines about defaults and when it should be implemented. So I've taken that into account when looking into this complaint. It says if an account is at least three months in arrears, a default may be registered and it would expect one to be registered by the time the account is six months behind.

Here, VWFS issued a default notice in September 2023 when the account was around six months in arrears (around £2,400). So I can understand why VWFS sent the notice. I've been provided with a copy of it and I can see it sets out the breach of the terms (missed payments), it states the amount to be paid and the deadline to do so. It also makes it clear if the default notice wasn't satisfied, the agreement would be terminated.

Following the default notice, I can see Ms C contacted VWFS. Her financial circumstances were further discussed and during that conversation, she advised she was due to start a new job on a full time basis and her financial circumstances would improve. Based on the figures she indicated she expected to earn, it was determined she had a disposable income of around £900.

On that basis, it was agreed a further arrangement to pay would be set up starting in October 2023 and to last 10 months. Ms C was required to pay £279 in addition to the monthly instalments. Based on her disposable income, these payments appeared to be affordable so I can't say VWFS did anything wrong by agreeing to the same. It's clear they were trying to support her and give her time to get the agreement back on track especially as she stressed the reliance on the use of the car and the fact she would be starting a new job imminently. However this arrangement to pay wasn't followed by Ms C. A further one was set up in December 2023 but that was also not followed.

In December 2023, VWFS made attempts to contact Ms C by phone and email but without success and an arrears notice was sent in January 2024 stating the arrears were £3,845. It was evident she needed to take action otherwise the agreement was at risk of termination but there's no evidence she did.

In March 2024, a second default notice was issued to Ms C. By that time, the arrears totalled over £4,500 (around 13 months behind). I'm aware Ms C states she was ill during that time so she didn't see the correspondence and wasn't well enough to do anything about it. While I don't doubt what she's said, there's nothing to suggest VWFS were aware of her circumstances at the time so I can't say they acted unfairly by sending it out.

I can see Ms C paid £600 before the default deadline date and another £600 a couple weeks later after the account was terminated. However I don't find the default notice was satisfied, she needed to pay £4,545.

Given the payment history on the account, the broken payment plans, insufficient evidence the account could be brought back up to date in a reasonable period of time and the fact the default notice wasn't satisfied, VWFS decided to terminate the agreement in May 2024. Given these circumstances, I consider that was a fair and in line with the terms of the agreement. Before terminating the agreement, I'm satisfied VWFS demonstrated several examples of forbearance and due consideration to Ms C. Therefore I find the agreement was terminated fairly so I won't be saying they need to reinstate it.

However as mentioned above, the ICO guidelines say a default should be in place by the time the account is six months in arrears. Here, the default wasn't applied until May 2024 and it was 13 months in arrears. Although I find VWFS acted fairly in defaulting the account, I believe they should've done so sooner rather than letting the arrears accumulate to the extent it did. To rectify this, I find VWFS should backdate the default from the time the agreement was six months in arrears (I calculate that to be around August 2023) and they should update internal and external records to reflect the same. As previously explained to Ms C, the default will remain on her credit file for six years from the date of the default.

The direct debit

Ms C has strongly argued that on more than one occasion she had been told by VWFS that they had set up a direct debit to take both the contractual monthly instalment and the payment subject to the arrangement to pay but they failed to do so. She maintains because of this, the agreement fell further into arrears and led to the termination.

VWFS has confirmed separate direct debits would need to be set up and couldn't be taken together. However they accept in September and December 2023, they failed to correctly set up the direct debit for the arrangements to pay. As a result, they agreed to another one in January 2024 but that also wasn't followed by Ms C, nor did she make the monthly contractual payments.

I've carefully considered this and whether it was the principal cause of the termination. Having done so, I'm not persuaded it was. I say this because by the time VWFS failed to set up the direct debit, the account was already significantly in arrears. Moreover I haven't seen sufficient evidence that Ms C had enough funds in her account to pay the same. So even if the direct debit had been set up correctly by VWFS, I can't say for certain she would've been able to afford the payments. If Ms C wishes to provide her bank statements from September 2023 to May 2024 to show she had enough funds to cover both the contractual payments and those under the arrangements, I will take it into consideration. I must stress the statements must show her account balance.

For their error, VWFS has offered £250 compensation and in the circumstances, I consider that to be fair and reasonable in the absence of any other evidence.

Ms C also says she was told by VWFS not to make manual payments for the contractual amount as it would impact the direct debit. However based on the evidence presented to me, I haven't seen sufficient evidence of that.

Taking everything into account, I find VWFS acted fairly and in line with the terms of the agreement by terminating the account however it should've happened sooner so they should backdate the default. For their error in not setting up the direct debit correctly, I find their offer of £250 compensation is fair".

Response to the provisional decision

VWFS accepted the findings. Ms C disagreed with the findings, in summary she said:

- She's provided her bank statements from September 2023 to May 2024 which shows she had money. She says she also had sufficient savings to pay the contractual payments and the arrears as per the payment plans;
- VWFS failed to set up the direct debit and that issue had been going on since October 2022. It was their error;
- During a call with VWFS, she was told not to make manual payments as it would break the payment arrangement;
- Following her ill health and her providing evidence of the same following the termination, VWFS ignored her pleas to reinstate the agreement, she says they showed a lack of empathy;
- She was too ill to take action following the default notice in March 2024;
- VWFS has since offered a further £400 compensation in addition to the £250 which is an admission of guilt;
- She needs the car for work and the impact of the default will significantly impact her financial circumstances.

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 thank both parties for their responses and evidence which I've carefully considered however my overall opinion remains unchanged. I'll explain why.

I've reviewed the bank statements as provided by Ms C. Having done so, I don't find there was sufficient funds in her current accounts to afford the contractual payments nor the arrears. While I accept there were funds in her savings account, the amounts weren't enough to cover the arrears as required by the default notice (that was around £4,500).

In relation to the direct debit, I've already addressed this in my provisional decision and my opinion remains unchanged. Even if the direct debit had been correctly set up by VWFS, the evidence shows there was insufficient funds to satisfy the payments. I accept Ms C's testimony that she often transfers money from her savings to her current account to meet her financial obligations (her bank statements support this), however I can't see the amounts she's transferred would've been enough. This further supports my belief that even if the direct debit was correctly set up, there wouldn't have been enough money in the account to cover the contractual payments and those subject to the payment plan.

I'm also not persuaded she was told not to make manual payments as it would break the payment plan as I've seen evidence on more than one occasion where VWFS has specifically provided their bank details so manual payments or bank transfers could be made. On occasions, they've also asked her to call so payment could be taken over the phone.

While I accept in good faith what Ms C has said about her illness especially around the time of the default notice in March 2024, I'm not convinced she was incapacitated as she's alleged meaning she couldn't have taken any action. This is because based on her bank statements, I can see a number of transactions were made around that time. So if she was able to make other transactions during that time, it would've been reasonable for her to contact VWFS about the default notice but there is no evidence she did before the April 2024 deadline meaning the notice wasn't satisfied.

Overall, for the reasons already explained, I'm satisfied VWFS acted fairly in defaulting the account but it should be backdated. I appreciate the significant impact this will have on Ms C's financial circumstances and her likely disappointment with this decision but I hope she understands my reasons for doing so.

On the basis I haven't been provided with any further information to change my decision I still consider my provisional findings to be fair and reasonable in the circumstances.

My final decision

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

To put things right, Volkswagen Financial Services (UK) Limited (VWFS) should:

- Backdate the default to when the account was six months in arrears and update internal and external records to reflect the same;
- Pay £250 compensation to Ms C as previously offered (if not already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 3 February 2025.

Simona Reese
Ombudsman