

complaint

Mr C complains that Volkswagen Financial Services (UK) Limited ("VWFS") unfairly terminated his hire purchase agreement for a car.

background

In October 2016 Mr C acquired a car via a four year hire purchase agreement. Unfortunately, his financial circumstances changed leading to missed payments on the car between November 2017 and April 2019, although he was able to make several payments at intervals to clear the arrears.

Due to Mr C's management of the account VWFS issued three default notices, one in March and the second in July 2018 and then the third in February 2019. Mr C was also required to complete an income and expenses form to review how the arrears would be cleared.

In March 2019 Mr C called VWFS as there were three monthly payments missing for September and November 2018 and February 2019. A further income and expenditure review was undertaken and it was agreed that Mr C would pay off the arrears over five months starting on a set date in April 2019. The agent speaking with Mr C warned that if the agreed payment towards the arrears wasn't made on the date due then the agreement was at risk of being terminated.

Mr C did not make a payment on the date set and VWFS decided to terminate the agreement and seek to repossess the car.

A few days after the date set for the first payment off the arrears Mr C received three letters from VWFS. One letter said that Mr C had seven days to clear the arrears, another that the situation with the arrears remains unresolved so the account is to be passed on and one informed Mr C that the agreement had been terminated.

Mr C says that he received the letters over Easter so was unable to call VWFS until after the Bank holiday which was five days on from the date of the three letters. Mr C says his intention was to clear the arrears but when he phoned he was told that the agreement had been terminated and could not be reinstated. He complained to VWFS but his complaint was not upheld. VWFS said it had listened to the March 2019 call and confirmed that the date for the payment to be made had been set during that call.

VWFS agreed to give Mr C a couple of weeks to sell the car himself. Mr C says he wasn't able to do so as there was a mistake on the hire purchase agreement as to the model of car meaning the dealership wasn't able to proceed with purchasing it. Mr C says that VWFS didn't assist him with this.

VWFS instructed an agent to collect the car and it was arranged for it to be sold via auction. Mr C saw that the car had been advertised by the auctioneers under the category of government vehicles meaning the car was considered to be from the proceeds of crime. He complained to VWFS who notified the auctioneers and the car was re-advertised. Mr C said this error had deeply embarrassed him and complained to VWFS. VWFS said this wasn't its error but that of the auction house. It had requested the car be removed from the group it had been advertised with straightaway.

When the car was sold Mr C says it reached a lower price than he had been quoted from an online website that purchases cars.

Mr C complained to this service that VWFS had acted fairly in terminating the agreement and had then mishandled the selling of the car. Our investigator partially upheld Mr C's complaint.

Our investigator said that she didn't think it had been unreasonable for VWFS to terminate the agreement as there was a history of missed payments and repayment plans that hadn't been kept too. Our investigator said that Mr C had received a number of letters from VWFS about his account, including past default notices, so she thought Mr C was aware of the consequences of not paying as agreed.

Our investigator said that the three letters sent in April 2019 to Mr C would have caused confusion as they were contradictory. She said she thought it would have been fair to have given Mr C the seven days from the date of the letter that asked him to clear the arrears. However our investigator said that she thought that even if he had been given these extra days Mr C would have been unlikely to clear the arrears looking at the history of how he managed his account. She said she thought £100 compensation would be fair for the distress and inconvenience caused by VWFS terminating the agreement before Mr C had expected.

Our investigator said that she'd seen it was the wrong model of car recorded on the hire purchase agreement. This had first been raised in May 2018 and asked to be amended, but this hadn't happened. However, when the collection agent had raised this issue with VWFS in May 2019, it had been able to confirm on the same day that as the VIN was the same on the car and on the agreement that it was the correct car. She said she hadn't seen any evidence this error had caused a detriment to Mr C and couldn't reasonably say this issue had caused a delay with the sale of the car. Our investigator said there could have been a number of reasons why a dealership may decide not to proceed with buying a car.

Our investigator said that the auction listing error had been outside of VWFS's control and it had sought to rectify the error as soon as Mr C had notified it of what had happened. She also said that she didn't think the price achieved for the car had been substantially different from the price Mr C had had quoted. She said she thought the sale price had been reasonable.

Mr C disagreed with our investigator's view. He said he disagreed that he wouldn't have been able to clear the arrears as he had the money ready in his account. Mr C said it had been unreasonable for VWFS to terminate the agreement.

Mr C said that when the dealership that had been interested in purchasing the car carried out a HPI check the car had been listed as a different model. He says VWFS refused to help him with this.

Mr C also said that as VWFS had instructed the auction house to sell the car it should be aware of the terms under which it was listing it. He said that listing the car as a proceed of crime had reflected negatively on Mr C and his business.

As the parties were unable to agree the complaint was passed to me and I issued a provisional decision along the following lines.

I'd listened to the call between Mr C and VWFS that took place in March 2019. During this call the agent set out that the account was in arrears by three monthly payments. The agent carried out an income and expenditure review with Mr C and it was agreed that he would pay off the arrears over five months and that these payments would be made in addition to the usual monthly payments. There was then a discussion as to when the arrears payments would commence and Mr C asked if this could be April rather than in March. The agent agreed that this was permissible and confirmed with Mr C that the payment had to be made on a set date in April - which was the same date as the usual monthly payment. It was agreed that Mr C would make these payments manually. The agent also informed Mr C that if this payment plan was broken then the agreement was at risk of being terminated.

I was satisfied on what I'd heard that a repayment plan with a set start date had been agreed between Mr C and VWFS in March 2019. I was also satisfied that he was told what may happen if he defaulted and, looking at the number of letters sent to Mr C by VWFS over the time he'd had difficulties paying regularly, I thought it was reasonable to say Mr C was aware of the consequences of missing a payment.

Mr C missed making the payment against the arrears on the date agreed. So, taking this into account as well as looking at the history of how Mr C had managed this account, I thought it was reasonable for VWFS to terminate the agreement when it did. And once the agreement was terminated it couldn't be reinstated.

I agreed that that the three letters sent by VWFS, all with the same date in April 2019, caused unnecessary confusion to Mr C. I'd seen that these letters were sent after the agreed date for the payment plan to start, but they had led him to think that he may have had additional time to make the payment. However, by the time he had received those letters, Mr C should have already made his first payment under the agreed payment plan.

So, I disagreed with our investigator that it would have been fair for VWFS to provide Mr C with the extra time before terminating the hire purchase agreement. But, as the correspondence would have misled Mr C about what was happening with his account, I thought compensation of £100 for the unnecessary distress and inconvenience caused when Mr C learnt he didn't have extra time to pay was justified.

I'd seen that the car was wrongly described on the hire purchase agreement though the VIN was correctly recorded. Looking at VWFS's notes on Mr C's account I'd seen that he queried this with VWFS in May 2018 and again in 2019. I didn't know why the agreement wasn't amended in 2018. However, VWFS said the dealer's invoice for the car had shown the correct model and when it checked the car's VIN and registration with a credit agency the correct model was also shown. So, I thought if a retailer had queried this then the issue would have been resolved reasonably quickly. I didn't have any evidence that the only reason the dealership approached by Mr C to buy the car in May 2019 didn't do so was solely because of the error on the hire purchase agreement.

I could understand why Mr C was upset by the car being listed and advertised as a proceed of crime by the auction house. But I disagreed that I could reasonably say that VWFS should be liable for this error. I'd seen it had acted to have the listing corrected as soon as this was brought to its attention by Mr C. I didn't think I could reasonably hold VWFS responsible for a mistake made by the auction house.

I'd seen that Mr C was disappointed with the sale price achieved for the car. But I didn't think the price, though lower than had been indicated to Mr C, was unreasonable. The prices car's fetch can vary depending on demand. I didn't think VWFS acted unreasonably selling the car via an auction as this was the usual practice.

So, for the reasons set out above, I was intending to partially uphold Mr C's complaint.

VWFS has agreed with my provisional view but Mr C hasn't responded.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I haven't been asked to look at anything again by either of the parties my view hasn't changed. So for the reasons set out above I'm partially upholding Mr C's complaint and require VWFS to pay him £100 compensation for the unnecessary inconvenience and distress caused by receiving the three different letters about his account on the same day. I accept this would have caused confusion.

my final decision

As set out above I'm partially upholding Mr C's complaint. I'm asking Volkswagen Financial Services (UK) Limited to pay Mr C £100 for the unnecessary distress and inconvenience caused by the confusion which resulted from him receiving three different letters about his account on the same day.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 August 2020.

Jocelyn Griffith
ombudsman