

complaint

Mrs R complains that Volkswagen Financial Services (UK) Limited (VWFS) has unfairly terminated her vehicle lease agreement as it claims not to have received her initial payment. She wants the contract re-instated and to keep the vehicle until the end of the agreed term.

background

Mrs R tells us she took out a car lease in November. She says the monthly payments are up to date. But she says VWFS claim the initial deposit never reached it - due she believes to an error by her bank, A. And now VWFS have terminated the agreement. Mrs R says that lots of correspondence and phone calls have taken place - and she's asked VWFS to wait (before enforcement) - until evidence is obtained from A. But despite this - she says VWFS sent a bailiff round to her house without warning. Mrs R informs us she's now provided a receipt for the cash she says was paid into the VWFS account. She says the cash was deposited by a family member. And she's also reported this "missing" money to Action Fraud. Mrs R feels it's been difficult dealing with VWFS and that she hasn't been treated fairly - as it now wants to repossess the vehicle and charge for the rest of the lease.

VWFS tells us it never received the initial rental payment. And it had informed Mrs R its two attempts to transfer the money by direct debit, in December, had failed - as they'd been returned unpaid.

It said Mrs R had told them the deposit was paid through a bank account of a third party - but it had checked and could not trace the payment being received. And whilst Mrs R had said she had proof of the payment - and would send it - VWFS says it never received anything. So it issued the default - the payment being four months overdue.

It went on to describe two further calls the following month from Mrs R detailing how payment would be made - but once again it says it received no payment. So it cancelled the agreement in May. Subsequently, it said it received a copy of a deposit slip to A - for the initial deposit amount. But this didn't contain any details of the receiving account or a cashier's stamp. In later contact with Mrs R's authorised representative, H, it said a further promise of payment was made - but H was told that even if this was done the agreement would not be reinstated.

In summary VWFS said Mrs R had never provided firm evidence since the initial failed payment in December. It felt it had given her ample opportunity in the months since to make the payment or provide evidence that it had been made. Consequently, the agreement would remain terminated and it would seek to repossess the vehicle.

Mrs R was not happy with the response of VWFS and complained to us. The investigator did not recommend this complaint should be upheld.

He said that between November and May, VWFS sent a number of letters to Mrs R chasing up the payment. And whilst he'd seen attempts to make the payment - these had not been successful. And after VWFS searched its accounts and found no trace of the payment it had asked Mrs R to supply evidence from the sending bank. But he'd still seen no evidence the payment had been made.

Because of this he didn't think it unreasonable of VWFS to terminate the agreement based on the information it had. It had waited from November to May before terminating - and he

felt that was enough time for Mrs R to provide sufficient evidence of payment. As the agreement is now terminated he confirmed VWFS is entitled to recover the vehicle - even if the payment is now made. But if Mrs R was able to show the payment was made before termination he'd expect VWFS to amend her credit file accordingly. This would mean that her credit file would show the debt as satisfied - rather than defaulted. Although it would show the late payment, he felt this was a fair outcome and wouldn't be asking VWFS to do anything else.

Mrs R didn't agree and asked that an ombudsman make the final decision.

my findings

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

I understand that this has proved a difficult situation for Mrs R. The transfer of the initial payment appears to have suffered a series of misfortunes which is really hard to explain. It's not so much a case of *what's* happened, or more accurately *not* happened, rather than *why* it didn't happen.

It seems the deposit was first attempted through a third party. But having no record of receiving this VWFS made two unsuccessful attempts at transferring the funds by direct debit. Following this I've seen a record of a phone conversation at the end of December involving Mrs R's authorised representative, H. In this call H advised payment would be made within two days - but this never happened.

Over the course of the next three months or so I can see there's been contact between the parties. Throughout this VWFS had maintained its position that it hasn't received the initial deposit - and warned of the consequences both in terms of recording the default and terminating the agreement.

Whilst Mrs R insisted the payment was made in November - she's subsequently given details of a payment made in April. I've looked at the receipt she's supplied - but unfortunately it does not include the receiving bank details. Nor does it appear to have the official stamp of A, into whose branch the money is said to have been paid. And following this there were further promises made on behalf of Mrs R to pay - but again I've seen nothing to show that this was done. So on what I've seen I can only conclude that between November and May the initial payment was never received by VWFS.

Whilst I can't say for sure where the fault lies - I've seen nothing to suggest it's due to anything done by VWFS. It seems probable the issue is between Mrs R and A.

And although I have a good deal of sympathy for Mrs R - if she has been a victim of bank error - I do feel it necessary to mention one area where she may reflect things might have been handled better. On several occasions promises of payment were made - but were not kept. I understand when a sum of money goes "missing" it's not always easy to replace immediately. But where a promise is made - and then broken - it's easy for confidence between business and consumer to be lost. And I suspect at least in part that's what's happened here between VWFS and Mrs R.

That being the case I'm in agreement with the investigator in concluding that VWFS has acted fairly in these circumstances. It can't be held responsible for the mistakes of a third

party - and despite unfulfilled promises of payment it waited several months before terminating the agreement. And it acted properly in reporting the default to the credit reference agencies. A business has an obligation to make accurate reports on account behaviour - which has been done here. So it would not be fair and reasonable of me to ask it to do anything else.

Although I know this will come as a disappointment to Mrs R, I'm in agreement with the investigator - and for the same reasons - that this complaint should not be upheld. But I also echo his view that if Mrs R is able in future to show she paid the deposit before the agreement was terminated - I'd expect VWFC to amend the credit file accordingly.

my final decision

For the reasons given above I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 October 2017.

Stephen D Ross
ombudsman