

complaint

Mrs N complains that Volkswagen Financial Services (UK) Limited trading as Seat Financial Services ("Seat") unfairly terminated a hire purchase agreement for a car.

background

In February 2017 Mrs N entered into a four year hire purchase agreement with Seat for a new car. Payments were to be made monthly via direct debit.

In February 2018 Mrs N direct debit was returned unpaid and so Seat wrote to her requesting payment. After a second letter was sent about the arrears Mrs N got in touch with Seat and said that the arrears were due to a change in her salary's payment date and asked for the direct debit payment date to be altered. Seat said this would be reviewed and it altered the payment dates from April 2018.

Mrs N manually paid the February 2018 instalment but she didn't clear the March payment. The direct debit payment for April was then returned meaning the account then had two months arrears. Seat was able to re-debit the April payment which was cleared leaving outstanding arrears for the March 2018 payment.

Letters were sent to Mrs N by Seat in April, May and June 2018 asking for the arrears to be cleared. In June 2018 Mrs N queried why the letters were being sent and she told Seat the bank should have cleared the payment. Seat says it told Mrs N to raise this with her bank as March's payment remained outstanding.

Further letters were sent to Mrs N by Seat in July and September 2018. Mrs N then paid the outstanding March payment at the end of September 2018 and her account was brought up to date.

In December 2018 the direct debit was returned unpaid and Seat wrote to her about the arrears. In January 2019 the direct debit was again returned unpaid meaning there were two months of arrears on Mrs N's account. However Seat was able to re-debit the direct debit for January 2019 a few days later reducing the arrears to one month.

Seat wrote to Mrs N in both January and February 2019 about the outstanding amount on her account. But in March 2019 the direct debit was returned as unpaid. At the end of March 2019 Seat wrote to Mrs N and said that there were two months of arrears now outstanding and that the agreement was at risk of being terminated. Seat asked Mrs N to clear the arrears or contact it to discuss the situation.

In April 2019 Seat issued a default notice to Mrs N advising her she needed to clear the arrears by the end of the month to avoid termination of the agreement. And in May 2019 the direct debit was returned unpaid. The following day Seat attempted to contact Mrs N by leaving a message on her mobile phone and it also sent her an email asking that she make contact.

Seat says there was no contact from Mrs N and so in mid- May it terminated the agreement. Two letters were sent to Mrs N the following day advising her that the agreement had been terminated and that a third party company would now be in touch to make arrangements to either collect the car or for Mrs N to clear the full outstanding balance outstanding.

Two days later Mrs N contacted Seat as she had received contact from the third party company. Seat confirmed the contract had been terminated following non-payment of the arrears.

Mrs N complained to Seat that she hadn't been aware the agreement was going to be terminated and that she was able to clear the arrears. Seat didn't uphold her complaint. It said it had acted fairly and in accordance with the agreement's terms and conditions.

Mrs N handed the car back and it was sold at auction. The sales price for the car didn't cover the full outstanding balance under the agreement and Mrs N was left with a liability of around £3,000 to pay.

Mrs N was unhappy at Seat's decision and complained to this service. Mrs N said her financial circumstances had changed in July 2018 though she was able to keep up payments until a post Christmas drop in income. Mrs N also said she had told Seat about her circumstances and said she would make up the deficit. Mrs N said she didn't receive any letters warning her that the agreement would be terminated.

Our adjudicator didn't recommend that Mrs N's complaint should be upheld. She said that payments had been missed on Mrs N's account prior to the change in her circumstances. And that although Mrs N said she had contacted Seat there wasn't any record of that. Seat had written regularly to Mrs N about the account and had sent emails and left voice mail messages for her to call it back.

A default notice was issued in April 2019 and the agreement was terminated 36 days later in May as Mrs N had made no contact with Seat in that time. Our adjudicator said she thought Seat's actions had been reasonable and fair in the circumstances.

Mrs N disagreed with our adjudicator's view. She said she had never received the letters stating that the agreement was going to be terminated. She said she hadn't understood why Volkswagen Financial Services had tried to make contact with her as her agreement was with Seat. Mrs N said Seat had acted unfairly in not accepting her offer to pay the arrears and also by selling the car at auction as this had left her with an outstanding balance of around £3,000 to pay.

As the parties were unable to agree the complaint has been passed to me.

my findings

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

Looking at the hire purchase agreement signed by Mrs N, it says on the first page at the top under the heading "*Parties to this agreement*", that it is between "*Volkswagen Financial Services (UK) Limited trading as Seat Finance*" and Mrs N. So, I think it would be reasonable to have expected Mrs N to have read the agreement and seen how Volkswagen Financial Services was involved. However, I'm also satisfied that the correspondence and the email sent to Mrs N weren't misleading. That's because all the arrears letters sent to Mrs N were

under the Seat logo and all showed the car's registration, the agreement number and her account reference.

Seat has provided copies of its contact notes for Mrs N's account. I've seen that following the missed payment in March 2018 Seat wrote to Mrs N regularly, until the payment was made by her in September 2018 asking her to make contact and pay the arrears. However, there is no note that Mrs N made contact with Seat to explain there had been any change in her circumstances. The notes say that Mrs N said it was an error made by her bank that caused the arrears to accrue.

Further payments were then missed in December 2018 and January 2019 and, although January's direct debit was paid when Seat re-presented the direct debit, there continued to be problems with payments in March and April 2019. Mrs N says she made contact with Seat but I don't have any evidence that she did and Seat says it didn't hear from her.

I think, as making the payments were Mrs N's responsibility, that it would be reasonable to expect her to monitor the direct debits particular as letters were sent to her from Seat in January, February and March 2019 about missed payments. Seat's letter, sent in March 2019, said that the agreement was at risk of being terminated and was followed by the default notice in April 2019.

I appreciate Mrs N says she didn't get some of these letters but I have seen they were all correctly addressed and I think it's more likely than not that they were sent. I don't know why Mrs N didn't receive them but I can't reasonably say this was Seat's fault. And it was due to the lack of contact from Mrs N that Seat sent her an email asking her to make contact at the beginning of May 2019. Mrs N accepts she received this email but said she thought it might be a fake as it came from Volkswagen Financial Services and not Seat, and it didn't say it was urgent. She also says the email appeared to have come with an attachment but there was nothing accompanying it. Mrs N didn't respond to this email.

Seat says there was no attachment and looking at the email I can't see that there was anything added to it. Seat also says that as this wasn't a secure medium it wouldn't send any confidential information with the email other than a request for Mrs N to call. Although the email came from Volkswagen Financial Services it was headed "*Seat Finance*" so I'm unclear why Mrs N didn't respond. Had she checked her hire purchase agreement she would have seen that Volkswagen Financial Services was involved in her agreement. I've also seen that this email was part of an attempt to make contact with Mrs N and that a voicemail message was also left asking Mrs N to call, though Mrs N says she didn't receive this.

Due to the lack of contact Seat made the decision in mid May to terminate the agreement with Mrs N. This is in accordance with the terms and conditions of the hire purchase agreement which set out the consequences of missed payments. And I've seen that Seat followed the correct process.

Seat wrote and told Mrs N that it had terminated the agreement and that a third party company would be in touch about either collecting the car or, alternatively, that she would have to pay the whole outstanding balance rather than just clear the arrears. It was only after the third party company contacted Mrs N that she then made contact with Seat. I think Seat acted fairly in not accepting the offer to clear the arrears at that point as the agreement no longer existed.

Mrs N was unable to clear the full balance and so handed the car back. The car was sold at auction, which is the usual practice in these circumstances, so I can't say Seat's action in using this method to sell the car was unreasonable or unfair. Unfortunately, the sales price for the car didn't clear Mrs N's liability under the agreement and there remains an outstanding balance.

So, for the reasons given above, and although I appreciate this will have been a stressful time for Mrs N, I'm not upholding her as I think Seat has acted fairly in the circumstances.

my final decision

For the reasons given above I'm not upholding Mrs N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 12 July 2020.

Jocelyn Griffith
ombudsman