

The complaint

Mr S complains about a number of issues relating to his car finance agreements with Volkswagen Financial Services (UK) Limited (VWFS).

What happened

The background to this complaint is well known to both parties so I won't repeat them again. Instead I will focus on the reasons for my 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.

Firstly I'm aware Mr S has raised a separate complaint against VWFS about issues relating to a Covid-19 payment deferral and a part-exchange. As those matters were resolved under a separate complaint, I won't be commenting on it. Instead I will be focusing on events after that.

Mr S has raised a number of complaint points relating to two car finance agreements with VWFS which I've carefully considered. I want to assure both parties that I've reviewed everything on file including emails, call recordings, etc. If I don't comment on something, it's not because I haven't thought about it, I have. Instead, I've concentrated on what I consider to be the key issues to reach a fair outcome, our powers allow me to do this.

The monthly instalments

From my understanding, following the initial complaint as mentioned above and the arrears on the account, VWFS agreed to set up a three month arrangement to pay in December 2021 to bring the accounts back up to date. However evidence shows this wasn't followed by Mr S.

In February 2022, when discussing the arrears on the account, Mr S complained that in November 2021, he made a request to VWFS to change his bank account details so the direct debits could be made. He said because that didn't happen, it led to further payments being missed, meaning the accounts remained in arrears and adverse information being reported on his credit file.

VWFS accept an error was made and Mr S' instructions weren't carried out, that isn't in dispute. To put things right, they've agreed to remove adverse information for the impacted dates from Mr S' credit file (November 2021 to February 2022). They agreed to set up a six month arrangement to pay and offered to pay £200 compensation.

So what's left for me to decide is whether that was enough to put things right. VWFS updated Mr S' bank details and promptly amended his credit file. As it wasn't his fault the bank details weren't updated by VWFS which led to missed payments, I agree the adverse

information for the impacted months be removed. I'm satisfied VWFS' actions to remedy their error was fair and reasonable. They made it clear to Mr S what he needed to do to bring the accounts up to date (follow the arrangement to pay), allowed him reasonable time to do so and according to Mr S the payments were affordable.

In March 2022, VWFS' contact notes indicate Mr S told them he had tried to purchase another car but his finance application was declined. He believed it was due to the adverse information on his credit file that had yet to be removed as agreed. However he was told by VWFS that their underwriters had taken the above situation into account but they had decided Mr S didn't meet their lending criteria. So I can't say VWFS' above failure caused the finance application to be declined.

The first payment of the six month arrangement to pay wasn't met by Mr S in March 2022. Evidence suggests a few days before it was due to be paid, Mr S told VWFS he would cancel the direct debit unless he spoke to a particular VWFS advisor as he remained unhappy with the situation. However I note, he later said it remained active but VWFS confirmed their records stated the direct debit had been cancelled. According to Mr S, VWFS had changed the bank details on one agreement but not the other. There isn't enough evidence for me to say with any certainty whether that was the case or if it was due to Mr S cancelling the direct debit as he said he would.

By May 2022, the arrears across both accounts were in excess of £7,600. VWFS agreed to set up another arrangement to pay for the month of July 2022. Following a discussion with Mr S, they agreed he was able to make payments to clear the arrears in full by the end of that month. It would appear VWFS gave Mr S the benefit of the doubt about the cancelled direct debit and they agreed to remove adverse information from his credit file from March to July 2022 (dates of the arrangements to pay). I find VWFS' actions were fair, it's evident they were trying to work with Mr S to bring the accounts back up to date. They also made it clear any arrangements to pay would be reflected on his credit file.

However despite this further arrangement, the arrears weren't cleared in July 2022 as agreed. By September 2022, the arrears were in excess of £9,000. So I can understand why VWFS issued a notice to Mr S of their intentions to default the accounts. The relevant guidelines as published by the Information Commissioner's Office says firms can instigate default proceedings if there's at least three months arrears. As that was the case for these accounts, I can't say VWFS did anything wrong by taking such action.

In response, I can see Mr S told VWFS that the reason why the payments weren't made was because the direct debits had been cancelled around June 2022 by his bank as there were concerns his account was victim to fraudulent activity. VWFS asked for evidence from his bank to support the same. However they determined the evidence provided wasn't enough to support Mr S' version of events and he needed more. He was also advised while the account remained in arrears, adverse information would continue to report on his credit file. So I'm satisfied it was made clear to Mr S that he needed to take action to clear the arrears but I'm not convinced he did enough to do so.

The agreement makes it clear that Mr S is responsible for paying the monthly instalments and if he failed to do so, it could impact his credit file. In light of the situation, I believe it's fair to say if the direct debit had been cancelled by the bank, Mr S ought to have made payment by other means - bank transfer, online, by phone, etc. But there's insufficient evidence he done so despite VWFS making these options clear.

Around this time, it would seem VWFS had concerns about whether Mr S could afford the payments. I can understand why given the accounts remained in arrears for quite some time and multiple arrangements to pay hadn't been followed despite Mr S maintaining it was

affordable and he wasn't in financial difficulty. So I'm glad to see VWFS spoke to him about his overall financial circumstances. They determined the agreements remained affordable and based on his disposable income, the arrears could be cleared within a couple of months which Mr S agreed to do.

Additionally VWFS provided him with the various options to end the agreement early, such as selling the car and provided a settlement figure. Mr S told VWFS he had enquired about part exchanging one of the cars but he was told he couldn't do so as the account remained in arrears.

Mr S argues that an agreement was made with a particular advisor that he would call him on an agreed date in October 2022 and he would make a payment however the advisor didn't do so. VWFS accept the call wasn't made as the advisor stopped working for them, they offered £50 compensation for the same which I consider to be fair.

While I accept the promised call back wasn't followed through as agreed, I wish to make it clear that doesn't absolve Mr S of his contractual obligations to make sure the payments were made and on time, whether it was actively sought by VWFS or not. Therefore I find it would've been reasonable for him to have contacted VWFS sooner than he did to make a payment or paid by alternative means rather than letting the arrears accumulate.

During calls in January 2023, VWFS confirmed they were satisfied with the further information from Mr S' bank confirming the direct debit instruction had been cancelled by them. They agreed to remove any adverse information from his credit file reported between May and October 2022. I believe this was a reasonable course of action.

During these calls, VWFS outlined the arrears were excess of £9,400 across the agreements. I can see Mr S mentioned about giving the car back but he also asked about refinancing the final payment for one of them. He was told the arrears needed to be cleared for such a request to be considered and the approval for refinance wasn't guaranteed. His options for ending the agreement early were once again highlighted to him. VWFS offered to set up an arrangement to pay and stressed if followed, the arrears would be cleared before the agreements came to an end. He was reminded of the impact to his credit file if the account wasn't brought up to date. Mr S was unhappy as he said he had a short time to pay the arrears but said he would consider his finances before taking next steps.

Based on what I've seen and heard, in the subsequent months that followed there was much back and forth with Mr S about the arrears on the account. He's argued that he tried to make payments but VWFS wouldn't allow him to do so. However based on what I've seen, there is no evidence of the same. On the contrary, I can see VWFS were making much effort to work with him for payments to be made. In April 2023, a three month arrangement to pay was set up to clear the arrears (around £8,000).

From my understanding, one agreement was subsequently settled and for the other one, the arrears related to the monthly instalments was eventually cleared around July 2023 which was two months after the agreement came to an end in May 2023.

Taking everything into account, I'm satisfied VWFS have made Mr S aware of the status of his accounts regarding the arrears. They've spoken to him by phone, emails, letters etc. So Mr S was aware he needed to take action but from what I've seen he didn't do so in a timely manner. Throughout the history of the agreements, VWFS have set up a number of arrangements to pay, considered Mr S' financial circumstances to make sure the payments were affordable, provided end of contract options, provided alternative ways to pay, etc. This is in line with what I would expect so I can't say they acted unfairly.

Despite these efforts, the accounts remained in arrears for quite some time. VWFS are obliged to report fair and accurate information to credit reference agencies as to how the agreements are being managed. As evidence shows the accounts remained in arrears after October 2022, I won't be asking VWFS to remove any further adverse information from Mr S' credit file from that date onwards.

I know I've summarised events in a lot less details than both parties but based on the evidence provided, I'm satisfied VWFS has done enough to put things right. Overall VWFS has agreed to remove adverse information from Mr S' credit file from May 2021 to October 2022 and pay a total of £250 compensation for their level of customer service. The investigator recommended VWFS pay a total of £200 but it seems he didn't take into account the £200 already offered for VWFS failing to update Mr S' bank details. I find VWFS' offer to pay a total of £250 compensation for the level of service is fair and reasonable.

The part exchange

Mr S complains due to the above issues regarding the arrears and the impact it was having on his credit file, he was unable to part exchange the car when he enquired about it. He said he was previously offered a higher value for the car but that figure decreased as time went on.

I can see on more than one occasion, VWFS made it clear to Mr S that the arrears would need to be cleared before he could part exchange the car. As the account remained in arrears, I can't say VWFS did anything wrong. While I can understand Mr S' upset about this, I can't reasonably hold VWFS liable for the diminished part exchange value of the car. It's reasonable to expect a car's value will depreciate over time.

The final payment

As the agreement was coming to an end Mr S said he wanted to keep the car. However he complains due to the above issues, this negatively impacted his ability to refinance the final payment.

I wish to emphasise that in such finance agreements, when it ends the consumer either gives the car back or pays the final payment. It may also be possible to part exchange the car.

Here, the agreement sets out what is required for Mr S to keep the car at the end. He must've paid the advance payment, paid 47 monthly instalments of £1,365, pay the final payment of £72,247 and the option to purchase fee of £10. Meaning if Mr S wanted to keep the car at the end of the agreement in May 2023, he needed to pay a total of £147,454.

As the agreement was coming to an end, Mr S asked about refinancing the final payment with VWFS. I want to stress there isn't a term or provision that says VWFS must or should allow the same, it isn't an automatic right. However it's common for consumers to make such requests but like all lending decisions, that would be subject to a number of factors such as affordability and credit checks.

Mr S complains he was given confusing and misleading information about the final payment by VWFS' advisors. On one hand he was told the arrears needed to be cleared in full before the final payment was due otherwise a refinance application wouldn't be accepted. On the other hand he was led to believe that a refinance application could be made within three months of the agreement coming to an end. I can understand the confusion this caused Mr S.

While I accept at times he was told different information, I don't believe it made a material difference nor am I persuaded Mr S would've acted differently. I say this because all advisors made it clear the arrears needed to be cleared before a refinance application could be made and its approval wasn't guaranteed. I also need to bear in mind Mr S was previously told he didn't meet VWFS' lending criteria and he had been told to refer to his credit file and the information inputted by other creditors. Therefore I don't believe it would've come as a complete surprise to him that VWFS' position on lending to him hadn't change. Especially as the account remained in arrears for some time. Whether or not the refinance was agreed, Mr S was always liable to pay the arrears based on the agreement terms.

I appreciate Mr S wants a clearer explanation as to why his refinance application was denied but I find the explanation as noted above is sufficient. He believes this is due to VWFS' failure to amend his bank details in 2021 and the subsequent impact it had. However I'm not convinced that is the case. I say this because the adverse information was removed from his credit file from May 2021 to October 2022 however the account remained in arrears for several months thereafter. Based on this and how his agreements were managed overall, I can't say VWFS did anything wrong by not agreeing to refinance Mr S' final payment. It's their commercial decision to make and not something our service would interfere with.

As Mr S was unable to refinance the final payment with VWFS, it was made clear to him that he must either hand the car back or pay the final payment in full. It's evident he's unhappy with this, he wants to keep the car and he's been trying to enter into further negotiations with VWFS about it. That is, to allow an arrangement to pay for the final payment or potentially to accept a reduced amount to settle the agreement. On more than one occasion, VWFS has said neither is possible and I don't find they are obliged to offer the same.

Mr S has argued he has told VWFS on several occasions that he's willing to give the car back but they won't allow him to do so. While I can see notes to say the same, I can also see in communication thereafter he enters into discussions about keeping the car stating he has the money to do so. So from VWFS' perspective, I can understand Mr S' intentions are unclear and it's causing confusion. I've seen correspondence where VWFS has sought clarity that if he wants to return the car, they will arrange that for him. However I can't see Mr S responded to confirm that is what he wanted to happen, he continues to talk about the final payment.

Mr S has maintained he can make the final payment and told our service the same. He also said VWFS won't allow him to pay it and he was advised he shouldn't pay anything further until our service has reached an outcome. However I don't find there's enough evidence to support the same. Rather, I can see VWFS has said he can't make part payments for the final payment, it must be paid in full.

During our service's involvement, our investigator has tried to facilitate (by acting as a mediator) to bring matters to a resolution especially in light of Mr S' recent health concerns. Mr S confirmed he wants to keep the car but he's unable to pay the final payment by bank transfer or cheque. VWFS said he could call them or pay online the daily limit of £10,000 over a number of consecutive days but to date, that hasn't happened. It's clear VWFS were trying to accommodate Mr S. Despite this, it's disappointing to hear Mr S continues to want to enter into negotiations about making part payments for the final payment when he's already been told this wouldn't be possible.

At the time of writing this decision, although the agreement ended around 12 months ago, Mr S is still in possession of the car and the final payment remains outstanding. VWFS decided not to take any further action against Mr S or attempt to retrieve the car while this complaint has been ongoing at our service which is fair. But I've now reached a final decision about how this complaint should be resolved.

If following this decision Mr S can't pay the final payment in full as required, he must return the car to VWFS. After all, it belongs to them, not Mr S. If he doesn't, it's likely VWFS will take action to retrieve it and they would be entitled to do so. Under the terms of the agreement when the car is returned, it's likely it would be subject to excess mileage charges and refurbishment charges.

In my opinion, Mr S has been given ample opportunity to pay the final payment in full or return the car but to date he hasn't done so, so if VWFS has recorded this as adverse information on his credit file, that wouldn't be unreasonable.

My final decision

VWFS has already removed adverse information from Mr S' credit file and agreed to pay a total of £250 compensation to settle the complaint. I think this offer is fair in all the circumstances.

So my decision is that Volkswagen Financial Services (UK) Limited should:

- Pay a total amount of £250 compensation to Mr S due to their level of service (if not paid already);
- Remove any adverse information from Mr S' credit file from May 2021 until October 2022 (if not done so already).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 June 2024.

Simona Reese
Ombudsman