

## **The complaint**

Mr W is unhappy with how Stellantis Financial Services UK Limited trading as Vauxhall Finance ('VF') handled the situation when his car was written off by an insurance company and he got into financial difficulty.

## **What happened**

Around June 2019 Mr W took a conditional sale agreement with VF to acquire a used car. The cash price listed on the agreement was £13,064.62 and the total amount payable was £16,004.40. Mr W was due to make repayments of £266.74 per month for 60 months.

Unfortunately, Mr W says in December 2020 he was involved in a collision in the car which was written off, and his insurance company did not pay out. He says he told VF this at the time, and it advised him he would need to keep making the repayments towards the finance agreement.

Mr W says he then contacted VF in December 2023 as he had got into financial difficulty and was planning to proceed with an Individual Voluntary Arrangement ('IVA') and had cancelled his direct debit. Mr W says VF told him as he no longer had the car, he would have to pay the full balance within 17 days, and he was told this should've been the case when the car was written off.

Mr W complained to VF. He said the account should've been defaulted when the car was written off, rather than later. He said he'd been paying interest on the agreement when he shouldn't have been. And he said if he didn't have to keep paying the monthly payment, he could've put the funds towards other debts and avoided considering an IVA.

VF issued its final response in December 2023. This said, in summary, that it was in the terms and conditions of the agreement that Mr W needed to inform VF of any loss or damage to the car. It said Mr W owed £1,867.18. It explained if this wasn't paid within 17 days, Mr W would be contacted to set up an affordable repayment plan.

Mr W remained unhappy and referred the complaint to our service. When our service contacted VF, it explained the agreement had not yet defaulted.

VF sent a statement of account from March 2024, showing Mr W owed £1,859.12 under the agreement, as well as £45 of fees and charges. This also showed all payments were made to the agreement until January 2024. Here, a smaller amount began to be paid, apparently through a third party debt advice company.

Our investigator issued an opinion upholding the complaint in part. He said, in summary, that the account should've been defaulted in December 2020. So he said VF should backdate a default on Mr W's credit file. He said he didn't think VF needed to refund interest, as this would've likely applied to a payment arrangement put in place at that time had things gone as they should. But, he said any additional fees or interest should be refunded since Mr W contacted VF in December 2023.

Mr W said he should be paid some funds for distress and inconvenience caused. VF didn't respond. So the complaint was passed to me to decide.

Our service asked Mr W for some more information about his financial circumstances following the collision. Mr W explained the collision left him seriously injured and he had to pay out around £7,800 for private medical bills and £450 for fines at the time.

I sent Mr W and VF a provisional decision on 18 December 2024. My findings from this decision were as follows:

*Mr W complains about the administration of a conditional sale agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr W's complaint about VF.*

*From the notes on file and from publicly available information online, it appears Mr W in fact entered into a Debt Management Plan rather than an IVA. So I'm satisfied this means I can continue with the complaint on Mr W's sole authority.*

*I've considered what VF said about the situation in its final response to Mr W. It said the terms and conditions explained Mr W had to tell it immediately about any loss or damage to the car. I agree this was the case. But, I think it's likely VF did know about the collision at the time, as there are notes from December 2020 with an incident number, incident date and details of the insurance company involved.*

*So, given this, I've thought about what should've happened at the time.*

*The terms and conditions of the agreement Mr W entered into explain:*

*"If the vehicle is declared to be a total loss by the insurer (Total Loss) then the outstanding balance (as defined below) will become immediately due and payable to us and you must pay us this sum less any statutory rebate to which you are entitled."*

*"The outstanding balance clause means: (a) all arrears and other payments due at the date of the total loss and; (b) all repayments that would have become due and payable during the remainder of this agreement except for the occurrence of the total loss less any rebate to which you may be entitled."*

*It isn't in dispute here that the car was deemed to be a total loss. So, I'm satisfied that the full amount owed, minus any rebate, should've immediately become payable at the time.*

*Mr W says if this happened, he would've had the money from the monthly repayments to put towards other debts. But, I don't think this would most likely have been the case, as Mr W would still have owed VF the amount due as set out in the terms and conditions.*

*Our investigator explained he thought this meant a default should be backdated to this time.*

*But I also don't agree on this point, as I haven't seen enough to persuade me that the full balance owing would've automatically involved a default being applied. I'll explain why.*

*I appreciate there are some hypotheticals here. But, as above, I need to consider what I think would most likely have happened at the time had things gone as they should. The full balance as above should've been due from Mr W in December 2020. Given this, I think a conversation should've taken place with him to discuss his circumstances at the time and to agree a way forward.*

*At this point, Mr W had lost his car, was injured and needed expensive medical treatment. So, VF should've discussed his options, bearing this in mind. Its obligations at the time, including those under the Financial Conduct Authority ('FCA') Consumer Credit Sourcebook ('CONC'), and the Principles for Business Handbook ('PRIN'), meant it needed to treat Mr W's situation with forbearance and due consideration, and pay due regard to his interests and treat him fairly.*

*I've also considered that while the finalised version wasn't published until a few weeks after the collision, the FCA had also published its consultation on the fair treatment of vulnerable consumers in July 2019. Given what happened to Mr W and the injuries he sustained, I think he would've at least been classed as a potentially vulnerable consumer and VF would've also needed to consider this when dealing with him.*

*Taking the above into account, I think the most likely outcome from these conversations would be that a monthly arrangement to pay would have been put in place for the balance owed. Given this, and considering that VF told our service it had not applied a default to the account, I'm not convinced VF would've applied a default to the account at this time, assuming payments were made to the arrangement.*

*It's difficult to know exactly what this arrangement to pay should've looked like. But, I don't think I need to make a specific finding on this. I say this because Mr W continued to make the original monthly repayments for a considerable time, so I can move on to consider what this now means.*

*I've next thought about the amount that should've been owed at the time the car was written off. As things currently stand, Mr W has been paying towards the total original amount owed. So I've considered whether this should've been the case.*

*The Consumer Credit Act 1974 ('CCA') under section 95 explains:*

*"Regulations may provide for the allowance of a rebate of charges for credit to the debtor under a regulated consumer credit agreement where, under section 94, on refinancing, on breach of the agreement, or for any other reason, his indebtedness is discharged (or is discharged in part) or becomes payable before the time fixed by the agreement, or any sum becomes payable by him before the time so fixed"*

*And the Consumer Credit (Early Settlement) Regulations 2004 explain under section 2:*

*"Where early settlement takes place the creditor shall, subject to the following provisions of this regulation, allow to the debtor under a regulated consumer credit agreement a rebate at least equal to that calculated in accordance with the following provisions of these Regulations.*

*Early settlement takes place under paragraph (1) where—*

*(a) the indebtedness of the debtor is discharged or becomes payable before the time fixed by the agreement—*

*(i) under section 94(1) of the Act,*

*(ii) on refinancing,*

*(iii) on breach of the agreement, or*

*(iv) for any other reason,*

*(b)the indebtedness of the debtor is discharged in part under section 94(3) of the Act, or*

*(c)any sum becomes payable by the debtor before the time fixed by the agreement.”*

*(emphasis added by me).*

*I've already explained above that I'm satisfied the amount due under the agreement should've become payable before 'the time fixed by the agreement'. Thinking about this I'm satisfied Mr W was entitled to a rebate at the time. This means the amount owed at this point would not be the amount Mr W has been paying off.*

*From VF's contact notes, on the day in December 2020 that the insurer's details and claim reference number were updated, a settlement quote was produced and it's noted:*

*“Settlement figure backdated to the date of incident and saved”*

*Under the same entry, it's noted:*

*“Rebate Amount : 1412.79*

*Net Receivable Amount : 10057.03”*

*So, thinking about all of this, I'm satisfied the amount that should've become payable by Mr W in December 2020 was £10,057.03.*

*From the payment history provided, I can see Mr W continued to make the original monthly repayments to the agreement of £266.74, from December 2020 until December 2023, meaning 36 payments were made. I can see a payment of £8.06 was made in January 2024.*

*This means Mr W has paid around £9,610.70 towards the agreement since the full amount should've been due. Assuming Mr W continued to pay the £8.06 for the following months, this would mean around £9,691.30 has been paid.*

*So, roughly speaking, Mr W would currently owe around £365 under the agreement – not over £1,850 as he has been told.*

*I should make it clear to VF that while I have based these figures on what I've seen, if it disputes this in any way it should provide any reasoning and evidence in response to this provisional decision.*

*I have considered whether VF could've applied interest to the total amount when it became due and when Mr W would've entered into a repayment plan. But, thinking about its obligations as I've set out above and what would be fair and reasonable, I don't think that it should have.*

*In summary, I think it's likely VF knew in December 2020 that Mr W's car had been written off. I'm satisfied this meant the full amount, minus a rebate, should've become payable at that point. I'm satisfied its most likely this amount would've been £10,057.03. I'm satisfied it's likely Mr W would've entered into an arrangement to repay this amount on a monthly basis.*

*And it isn't in dispute that Mr W did continue to pay £266.74 a month for around the next three years.*

*I've then thought about what should now be done to put this situation right.*

*I find that Mr W has been caused distress and inconvenience here. I think it must have been*

*very distressing when he informed VF that he was in financial difficulty and in response it then told him a full, incorrect, balance was due from him in a short time frame. And I think it must have been upsetting for him to be told that something that should've been done three years ago was not done. While it isn't clear, it's also quite possible that had things gone as they should, Mr W may have paid a smaller amount towards a repayment plan.*

*I would normally consider awarding an amount to Mr W to reflect this distress and inconvenience caused. But, thinking about things in the round and the amount he should likely owe on the agreement, I think the most fair and reasonable thing to do is for VF to instead write off any outstanding balance, including any fees and charges.*

*I've thought about what should happen to Mr W's credit file. As far as I'm aware, VF haven't applied a default to Mr W's credit file, and I don't think this would be reasonable to do – neither now nor from December 2020. I think it should instead update this to what I think should've shown at the time – an arrangement to pay in December 2020, this being paid off over the following months and then cleared.*

*Finally, I have thought about the scrappage value of the car. But I haven't seen any evidence anything was returned to Mr W, nor VF. So, without further information, I don't think I need to make any findings on this point. If VF or Mr W has any information or evidence here, I will of course consider this as part of my final decision.*

VF didn't respond to my provisional decision. Mr W responded, explaining VF had now defaulted the agreement and providing evidence of this.

I then sent Mr W and VF a second provisional decision on 6 February 2025. My findings from this decision were as follows:

*In response to my previous decision, Mr W explained VF had now defaulted the agreement.*

*As set out above, I explained that I didn't think VF would've automatically applied a default when the full amount under the agreement should've become due following the collision. In part, this was because, as far as I was aware at the time, VF hadn't currently applied a default. However, Mr W has explained it now had.*

*I've carefully thought about this again. The CCA explains VF would've needed to send Mr W a default notice in order to demand payment from him when the car was written off, as per the terms and conditions. And I think it's likely the default notice would've been given Mr W a short period to pay the full amount.*

*From what Mr W has told us about his finances at the time, I don't think it's likely he would've been in a position to pay the full amount due.*

*As I previously explained, I still think it's likely Mr W would've then paid these funds back on a monthly basis. But, given VF have applied a default, it would've given Mr W a default notice and the debt would've been paid off over a reasonably long period, I now think it's most likely VF would've applied a default around December 2020.*

*I don't have information from to show when VF did, presumably relatively recently, apply a default to the account. But, for the reasons set out above, I think the default should be shown on Mr W's credit file from December 2020. So, if this isn't the case, I think it's fair and reasonable that VF should backdate it.*

*In other general terms, having thought about everything again, I'm still satisfied what else I explained in my previous provisional decision and set out above is fair and reasonable under*

*the circumstances.*

I gave both parties a further two weeks to respond with any further comments or evidence. Neither Mr W nor VF responded.

### **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.

Having thought about all of the information again, I still think the complaint should be upheld. This is for the reasons I explained in my provisional decisions and set out above.

### **My final decision**

My final decision is that I uphold this complaint. I instruct Stellantis Financial Services UK Limited trading as Vauxhall Finance to put things right by doing the following:

- End the agreement (if it has not already done so)
- Write off any outstanding balance and/or arrears from the account including any fees or charges
- If the default has been applied later, backdate this to December 2020
- Show the account as settled on Mr W's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 March 2025.

John Bower  
**Ombudsman**