

Complaint

Miss P has complained about a hire-purchase agreement that she entered into with Volkswagen Financial Services (UK) Limited (trading as “Audi” Finance). She’s being assisted in her complaint by her grandmother (“Ms B”) who says it was not responsible to lend as there was no way Miss P could afford the repayments.

Background

In September 2017, Miss P entered into a hire purchase agreement for a brand-new car. The purchase price was £23,460.00. Miss P paid a deposit of £4,800, which included £1,800 from the part-exchange of her previous vehicle and a dealer contribution of £900. The remaining £18,660.00 was funded through a hire-purchase loan from Audi. The loan had an annual percentage rate (“APR”) of 5.9% and was due to be repaid in 48 monthly instalments of £256.12 followed by a final instalment of £9,670.00, which included a £10 option to purchase fee.

In June 2019, Miss P complained to Audi. She said the monthly payments for the agreement were more than she could afford. Audi didn’t uphold Miss P’s complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend. Miss P was dissatisfied at Audi’s response and referred the complaint to our service.

Miss P’s complaint was considered by one of our investigators. He didn’t think the checks Audi carried out before providing the finance were reasonable and proportionate. He also thought reasonable and proportionate checks would have shown Miss P couldn’t afford to make the monthly payments. This led to him concluding that Audi unfairly entered into the hire purchase agreement with Miss P and that the complaint should be upheld. Audi didn’t agree with our investigator. So the complaint was passed to an ombudsman for a 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.

Taking into account the relevant rules, guidance and law, and considering the main reason for Miss P’s complaint, I think there are two overarching questions that I needed to consider in order to decide what is fair and reasonable in the circumstances of this complaint. These questions are:

- Did Audi complete reasonable and proportionate checks to satisfy itself that Miss P would be able to repay the credit in a sustainable way?
 - If so, was a fair lending decision made?
 - If not, would those checks have shown that Miss P would’ve been able to do so?
- Did Audi act unfairly or unreasonably towards Miss P in some other way?

If I determine that Audi did not act fairly and reasonably in its dealings with Miss P and that she has lost out as a result, I'll go on to consider what's fair compensation.

I'll proceed to consider the first of the overarching questions.

Did Audi complete reasonable and proportionate checks to satisfy itself that Miss P would be able to repay in a sustainable way?

The regulations in place when Audi lent to Miss P required it to carry out a reasonable assessment of whether Miss P could afford to make her repayments in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

Any affordability checks have to be "borrower-focused" – so Audi had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss P*. In other words, it wasn't enough for Audi to think only about the likelihood that it would get its money back without considering the impact of repayment on Miss P herself.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I think that a reasonable and proportionate check generally ought to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to repay a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for a longer period); and

There may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I've thought about all the relevant factors in this case.

Audi's checks

Before I consider Audi's checks in detail, I do have some general observations about what it initially told Miss P and then us while investigating the complaint. In its final response Audi says there is an onus on the customer to ensure that an agreement is financially affordable for them before application. But this simply isn't true for a couple of reasons.

Firstly, a borrower usually won't be in a position to know what the payments are to an agreement before the process is started and they are provided with a quote. And more importantly, as I've already mentioned, it is a regulatory requirement for a lender to take reasonable steps to establish a prospective borrower will be able to repay what they are

being lent – not just whether the borrower meets its lending criteria. Of course, a borrower meeting a lender's lending criteria might be an indication that the payments may be affordable. But it won't always follow that this is the case.

I now turn to the checks Audi says it carried out in this particular case. It seems to me that, in this particular case, Audi's checks were limited to carrying out a credit check on Miss P. I accept that a credit check will often provide some useful information on whether a prospective borrower was able to maintain payments to previous credit commitments. And in circumstances where a prospective borrower has met previous commitments and no obvious difficulties, this in turn could provide a lender with additional confidence that the prospective borrower will be able to make their payments. Notwithstanding this, I have to question the usefulness of carrying out a credit check on Miss P in this particular case.

I say this because this credit check appears to have been carried out the day after Miss P's eighteenth birthday and so was very unlikely to show up any previous credit bearing in mind lenders typically won't advance credit to individuals aged under eighteen. Audi would, or at the very least, ought to have known this and so I'm struggling to understand what it is it was expecting to uncover in a credit check.

More importantly I'm unsure what a clear credit file, in these circumstances, could possibly have told Audi about Miss P's ability to repay approaching £18,700.00 at roughly £250 a month. Miss P might not have had previous difficulty repaying credit – because she never had any – and she may not have had any existing credit commitments to maintain. But this doesn't in itself mean she had the disposable income to make the repayments to this agreement as and when they fell due.

In the absence of anything else to indicate that Audi took any further steps to ascertain Miss P's monthly expenditure, and in circumstances where I can't see that it even recorded what her income was, I'm not satisfied that the checks Audi carried out before reaching the conclusion the agreement was affordable for Miss P were reasonable and proportionate.

Would reasonable and proportionate checks more likely than not have shown that Miss P was able to sustainably make the repayments to this agreement?

As proportionate checks weren't carried out before this agreement was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Audi that it was unfair to enter into this agreement with Miss P.

Miss P has provided us with evidence of her financial circumstances at the time she applied for the finance. Of course, I accept different checks might show different things. And just because something shows up in the information Miss P has provided, it doesn't mean it would've shown up in any checks Audi might've carried out. But in the absence of anything else from Audi showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Miss P's financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Miss P's bank statements because I think that Audi ought to have obtained them before lending to her. I've consulted Miss P's bank statements because they were readily available at this stage and they contain the information I now need to reconstruct the proportionate check Audi should have but failed to carry out.

Miss P's contract of employment says she had a basic annual income of around £5,000.00. In the months leading up to the application Miss P's bank statements show that she was in

receipt of an average of around £550 a month. It's clear that the monthly payments alone for the finance would have swallowed up a significant portion of Miss P's monthly income.

Audi would also have been aware that Miss P's age and the brand-new car she was sold meant that she'd also be faced with a significant outlay for insurance. And when the running costs of the vehicle are added to monthly finance payments, it's clear that Miss P's had nowhere near enough in funds to meet the cost of this vehicle in a sustainable manner.

So in these circumstances, I think that reasonable and proportionate checks would have alerted Audi to the fact that Miss P wasn't able to make the payments to this agreement without experiencing financial difficulty and/or borrowing further. And so it follows that she wasn't in any sort of financial position to sustainably make the repayments to this agreement.

Did Audi act unfairly or unreasonably towards Miss P in some other way?

I've thought about everything provided. Having done so, I've not seen anything here that leads me to think Audi acted unfairly or unreasonably towards Miss P in some other way.

Conclusions

Overall and having thought about the two overarching questions, set out on pages 1 and 2 of this decision, I find that:

- Audi *didn't* complete reasonable and proportionate checks on Miss P to satisfy itself that she was able to make the payments to this agreement;
- reasonable and proportionate checks *would* more likely than not have shown Miss P was unable to sustainably make the repayments to this hire purchase agreement;
- Audi *didn't* act unfairly or unreasonably in some other way towards Miss P;

The above findings leave me reaching the overall conclusion that Audi unfairly and unreasonably entered into this hire purchase agreement with Miss P.

Did Miss P lose out as a result of Audi's shortcomings?

I've considered whether Miss P suffered adverse consequences as a result of Audi unfairly entering into this hire purchase agreement with her. As I understand it the car was taken back by the dealer in November 2019 and Miss P ended up paying an additional amount so that the voluntary termination settlement figure was reached. Given Miss P will have paid a significant amount and was left without a vehicle – as a result of returning it - I think Miss P lost out.

So overall and having thought about everything provided and what's fair and reasonable in all the circumstances of this case, I find that Miss P lost out because Audi unfairly entered into a hire purchase agreement, which it ought to have realised was unaffordable for her, with her. And this means I think that Audi needs to put things right.

Fair compensation – what Audi needs to do to put things right for Miss P

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is

reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Audi putting Miss P in the position she'd now be in if she hadn't been sold the car in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. Miss P was given the car in question and it has since been returned to the dealer. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss P back in the position she would be in if she hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Audi to put things right in the following way.

Our website sets out the main things we consider when looking at putting things right in cases where we conclude a lender did something wrong in irresponsible/unaffordable lending complaints. We usually say that the borrower needs pay back the credit amount provided and that the lender should refund any interest, fees and charges that the borrower paid. This is because the borrower will have had the benefit of the credit that they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

So, in this case, this would mean Miss P paying back the £18,660.00 she was originally lent less the amount that the car was sold for. But I don't think that a refund of the interest fees and charges is appropriate here. The car was taken back relatively soon after the agreement started and a settlement on this basis would mean Miss P paying for the full amount lent without owning the car at the end. I've therefore given careful thought to how else it might be fair and reasonable to put things right for Miss P bearing in mind she was provided with a hire-purchase agreement here.

In circumstances where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for, it's usually appropriate for the car to be returned and the agreement ended. I've already explained that Miss P's car was returned to the dealer who sold it to her in November 2019 and the agreement was ended at this point. So clearly there is no need for Miss P to now return the car. But Audi does need to write off the monthly payment the statement of account suggests is outstanding.

I've also thought about the deposit and the final payment Miss P made. It's clear that Miss P only made these payments because she was provided with an unaffordable hire purchase agreement. So I'm satisfied that Miss P's deposit of £3,900 (not including the dealer contribution of £900) and the additional final payment of £3,750 (irrespective of the exact make up of this amount) should be returned to Miss P, with interest of 8% simple a year added from the date these payments were made.

Miss P did have use of the car for a period of time. And I think that it's fair and reasonable for my award to reflect this. There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Miss P's usage of the car and what sort of costs she might have incurred to stay mobile if she didn't have this car. In doing so, I'm mindful that although Miss P did already have a car when she entered into this agreement, she was nonetheless provided with a brand-new car and she will receive a refund of the part exchange value which was used as a deposit towards this agreement.

Bearing this in mind, and the monthly cost a car of the type Miss P had use of isn't too far off the amount of the monthly repayment, I think that it's fair and reasonable for Audi to keep all

of the monthly payments it collected while Miss P had use of the car. I want to make it clear that by collected I'm saying that anything paid prior to the additional final payment of £3,750 (which I've confirmed needs to go back in its entirety to Miss P) Miss P made after the car had already been returned in November 2019.

I now turn to Miss P's credit file. Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of any credit they shouldn't have been given. I've not seen anything in this case which leads me to think such a direction would be unfair here.

So having carefully thought about everything, Audi should remove any negative information that it has recorded on Miss P's credit file about this agreement.

All of this means that it is fair and reasonable in all the circumstances of Miss P's complaint for Audi to put things right in the following way:

- Refund Miss P's deposit of £3,900 and the additional final payment of £3,750 with interest of 8% simple per year; AND
- Removing any adverse information it has recorded about this agreement on Miss P's credit file.

My final decision

For the reasons I've explained, I'm upholding Miss P's complaint. Volkswagen Financial Services (UK) Limited trading as Audi Financial Services should put things right in the way that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 21 December 2020.

Jeshen Narayanan
Ombudsman