

Complaint

Mr C has complained that Volkswagen Financial Services Limited ("VW") unfairly entered into a guarantee and indemnity agreement with him, which left him as the guarantor on a hire-purchase agreement his step-sister entered into.

Background

In October 2018, Mr C's step-sister (who I'll refer to as "X") entered into a hire-purchase agreement with VW to purchase a car. The purchase price was £15,094.00. X paid a deposit of £1,400.00 and the remaining £13,694.00 was funded by a hire-purchase agreement with VW.

The finance was due to be repaid in 48 monthly instalments (or rentals) of £203.62 and a final instalment (or rental) of £5,827.50. This meant that the total charge for the credit was £1,907.26, and the total amount to be repaid, minus the deposit, was £15,601.25. VW declined an initial application from X and wasn't prepared to lend to her without her first bringing onboard a guarantor.

As a result, Mr C was approached by X to act as her guarantor and after VW approved him, Mr C signed a guarantee and indemnity agreement with VW – which essentially meant that he would also become responsible for making payments to the agreement in the event that X didn't do so.

One of our investigators considered Mr C's complaint. He told VW that he thought that it was unfair for it to have accepted Mr C as a guarantor on this agreement and upheld the complaint.

VW disagreed with our investigator's assessment and asked for an ombudsman's review. As this is the case the complaint has been passed to me 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.

We've set out our general approach to complaints about guarantor loans as well as guarantee and indemnity agreements - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr C's complaint.

The rules and regulations in place when VW lent to X required it to carry out a reasonable and proportionate assessment of whether she could afford to repay this loan. The existence of a guarantee and indemnity agreement and the potential for VW to pursue Mr C, instead of the borrower, for the loan payments (as well as the security on the vehicle sold) didn't alter, lessen, or somehow dilute this obligation.

As X isn't a party to this complaint, I don't have any evidence of the checks that VW carried out, or the depth that they went into, before it agreed to lend to her. But the lack of

information from both VW and the borrower on this matter doesn't lessen the problem here, as VW is seeking to enforce the guarantee and indemnity agreement. And Mr C had been called upon to make the payments.

It's fair to say that VW entered into an atypical arrangement with Mr C. I say this because guarantee and indemnity agreements are more typically used by guarantor loan providers, when entering fixed-sum loans with all its customers. Such agreements aren't typically entered into where a borrower has already been assessed for credit and that application has been refused by a lender. I think that it's also worth me pointing out that it's incredibly rare for such a guarantee and indemnity agreement to be required on a hire-purchase agreement as the goods being purchased themselves act as a form of security for the loan. I've considered Mr C's complaint in this context.

Although I don't have the full detail behind the checks VW carried out on X before it eventually agreed to lend to her, what I do know is that she only sought Mr C's assistance once VW had declined an initial application for finance from her. As I understand it X's initial application was declined because she was living with parents (as I believe Mr C was), was young, her signature didn't match with her driving licence and she'd only just started employment as a result of previously being a student.

So it seems to me that VW had clear concerns about X's ability to make the payments to this agreement and that's why it declined her initial application. And while I accept that the guarantee and indemnity agreement might have provided VW with additional confidence that it would at least receive its payments, I don't see how this increased X's ability to make her payments.

I'm also particularly mindful that the guarantee and indemnity agreement reduced the incentive for VW to take possession of the vehicle from X, as it would normally be entitled to, in the event of non-payment as it could instead pursue Mr C for the payments under the guarantee and indemnity. Indeed, at the time it responded to our investigator's assessment, VW still hadn't taken possession of the vehicle despite X having been in significant and sustained arrears.

Furthermore, Mr C didn't have the statutory protections X had to limit his liability, such as Voluntary Termination which is afforded under hire-purchase agreements, because he wasn't a party to the underlying agreement. I don't think it was fair and reasonable for VW to enter into a guarantee and indemnity agreement with Mr C in these circumstances – especially when it appears as though it already had concerns about X's ability to make the payments.

Finally, notwithstanding my concerns regarding the fairness of VW entering into a guarantee and indemnity agreement with Mr C when it had concerns about X's ability to make the payments to the agreement, VW, in any event, needed to carry out reasonable and proportionate checks to satisfy itself that Mr C could make the payments in the event he had to. As I understand it, VW approved Mr C as the guarantor for this agreement simply because his application came back with the second highest approval rating. It looks like this approval rating was based on a credit check that VW carried out which showed that the credit commitments in Mr C's name were being maintained.

I've thought about the checks that VW carried out on Mr C.

However, it's unclear to me what a credit check on its own could possibly have told VW about Mr C's ability to repay just over £15,600.00 at over £200 a month in the event he had to. Mr C might have been making payments to existing credit. But this on its own doesn't

mean he had the disposable income to make the repayments to this agreement, as well meet his own commitments, in the event he had to.

VW almost presents it as fact that Mr C being a young adult meeting his credit commitments means he would have been able to meet the payments. But I disagree and I don't understand how it could possibly have reached this conclusion – notwithstanding the application having been approved by its systems – without taking any steps to verify Mr C's monthly income, his employment and non-credit related expenditure.

Indeed, had VW carried out enquiries into Mr C's income it would have seen that he wasn't in employment and that he was relying on out of work benefits to support himself. I'm not saying that a lender should automatically decline an application from a prospective borrower where they are on benefits. But Mr C wasn't the borrower here and him being on out of work benefits does raise significant questions about his ability to make the payments to this agreement as well as meet all of his own commitments.

In these circumstances, I think that had VW carried out reasonable and proportionate checks into Mr C's circumstances, it would also more likely than not have realised that Mr C wasn't really in a position to act as a guarantor on this agreement. And as this is the case, I think that VW's failure to properly look into Mr C's circumstances is a further reason why it didn't act fairly and reasonably towards Mr C when it accepted him as the guarantor to this hire-purchase agreement.

So overall and having considered everything, for the reasons I've set out above, I'm satisfied that VW didn't act fairly and reasonably towards Mr C when entering into a guarantee and indemnity agreement and accepting him as a guarantor to X's hire-purchase agreement. As Mr C is, at least, being expected to make payments to a hire-purchase agreement that he was unfairly accepted as a guarantor on, I find that he has lost out as a result of what VW did wrong.

Fair compensation – what VW needs to do to put things right for Mr C

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr C's complaint for VW to put things right by:

- releasing Mr C from all obligations under the guarantee and indemnity agreement and then terminating it;
- refunding any payments that Mr C may have made to X's hire-purchase agreement;
- adding interest at 8% per year simple on the above payments from the date they were paid by Mr C, if they were, to the date of settlement†;
- removing any information recorded on Mr C's credit file as a result of these agreements;

† HM Revenue & Customs requires VW to take off tax from this interest. VW must give Mr C a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr C's complaint. Volkswagen Financial Services Limited should put things right for Mr C in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or

reject my decision before 28 November 2022.

Jeshen Narayanan
Ombudsman