

The complaint

Mrs O complains that Volkswagen Financial Services (UK) Limited trading as Audi Financial Services irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

What happened

In June 2020, Mrs O acquired a used car financed by a hire purchase agreement from VWFS. Mrs O paid a deposit of around £644 and was required to make 48 monthly repayments of around £916 with a final optional payment of around £33,036 if she wanted to own the car at the end of the agreement. The total repayable under the agreement was around £77,649.

Mrs O says that the agreement was meant to be set up in both her and her partner's name and the deal was done in her partner's name at the time. But when she received the documents it was only in her name and other details were incorrect. She tried to get the agreement changed to her partner's limited company, but it wasn't allowed. Mrs O says that checks would have shown the agreement was never affordable for just her.

VWFS said that Mrs O signed the pre-contract checklist and the agreement which set out the financial details of the agreement. It said Mrs O provided details of her employment and it carried out a credit check that didn't raise concerns. However it noted the situation Mrs O was in and while it didn't uphold her complaint it said Miss O could voluntarily terminate her agreement with zero cost (meaning the shortfall and arrears wouldn't fall due) but Mrs O would be liable for any excess mileage and refurbishment costs. Mrs O didn't accept VWFS' offer.

Our adjudicator recommended the complaint be upheld. She thought VWFS ought to have realised the agreement wasn't affordable to Mrs O.

VWFS accepted our adjudicator's view but Mrs O didn't respond. Therefore this case has been passed to me for a final 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.

VWFS will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

Before lending, VWFS carried out a credit check on Mrs O and I agree this didn't raise concerns. It says it carried out an affordability check and has provided evidence that Mrs O was recorded as being in employment as a nurse and being a homeowner. However, there is no evidence that VWFS asked Mrs O about her income prior to lending. Without any understanding of what Mrs O was earning, I don't think it was possible for VWFS to make a

fair assessment of her ability to afford the repayments without undue difficulty. It therefore didn't complete proportionate checks.

Given the total amount of credit, the agreement term and the size of the monthly repayments, I think it would have been proportionate for VWFS to have verified Mrs O's income in some way. Mrs O has provided a document showing her annual income from April 2020 would be £4,960. I have looked at her bank statements for the months leading up to the agreement and these show her average monthly income to be around £1,100. As the monthly repayments under the agreement were around £916, this shows that Mrs O couldn't afford to sustainably repay the new agreement as well as her existing commitments. I think VWFS would likely have found this out too if it had completed proportionate checks, it therefore didn't act fairly by approving the finance.

Putting things right

As I don't think VWFS ought to have approved the lending, it should therefore refund all the payments Mrs O has made, including any deposit. However, Mrs O has had use of the car for around 27 months, so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of around £916 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mrs O's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I think a fair amount Mrs O should pay is £750 for each month she has had use of the car. This means VWFS can only ask her to repay a total of £20,250. Anything Mrs O has paid in excess of this amount should be treated as an overpayment.

To settle Mrs O's complaint VWFS should do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund all the payments Mrs O has made, less £20,250 for fair usage.
 - If Mrs O has paid more than the fair usage figure, VWFS should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Mrs O has paid less than the fair usage figure, VWFS should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once VWFS has received the fair usage amount, it should remove any adverse information recorded on Mrs O's credit file regarding the agreement.

*HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mrs O a certificate showing how much tax it's taken off if Mrs O asks for one.

My final decision

I uphold this complaint and direct Volkswagen Financial Services (UK) Limited trading as Audi Financial Services to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 25 November 2022.

Jane Archer

Ombudsman