

The complaint

Mr G complains about a hire purchase agreement he took out with Volkswagen Financial Services (UK) Limited ("VWFS").

What happened

Mr G is represented in his complaint, but for ease of reading I'll refer to everything sent and said on his behalf as if he said or sent it.

In early July 2020 Mr G entered into a hire purchase agreement with VWFS for a used car. To help finance the deal Mr G part exchanged his existing car. The agreement was credit brokered by a third party, a Volkswagen dealership who I will call "W".

Mr G's position is that the agreement was unaffordable as he had no income at the time he took out the agreement. He was unemployed and prior to that he had been a full-time student.

Further, Mr G tells us that he has mental health conditions that should have been obvious to W and by extension to VWFS. He explains that these mental health conditions impaired his thinking, and this also should have been obvious to W and VWFS. Mr G indicates that his mental health conditions also made him act in an impulsive and secretive manner at this time.

In addition, Mr G tells us that within days he tried to return the car. Specifically, his position is that he went to two other Volkswagen dealerships rather than W to try and return the car. Moreover, Mr G's father twice contacted VWFS and on one occasion at least his father told it about his son's mental health, and that in his opinion, as a result his son should not have been allowed to acquire the car from VWFS. Mr G tells us his father then asked VWFS to take back its car.

After these attempts to return the car, Mr G was involved in a road traffic accident. Unfortunately Mr G was hurt and VWFS's car was badly damaged. The car was being held in a garage. Mr G had to pay the garage's storage fees. Moreover, Mr G had acted in a way that meant that his motor insurance company would not indemnify him. In particular, amongst other things, it would not cover the damage to the car. Nonetheless, VWFS was able to collect and sell the car but there is still a balance owing. This is because the sale price of the car was substantially less than the amount Mr G owes. Mr G tells us he was subsequently sectioned. We don't have the date on which this happened.

Mr G wants VWFS to write-off the amount owing under the agreement, end the agreement, and pay the garage storage costs. Mr G is prepared to allow VWFS to keep the car he part exchanged. It appears from the information on the hire purchase agreement that the part-exchanged car had a value of £500. The car Mr G acquired from VWFS had a cash price of £22,990.

VWFS initially did not agree that the lending was unaffordable. Moreover, VWFS also did not accept that prior to the contract it ought to have been aware of Mr G's mental health conditions and the impact that might have on his decision making. VWFS's position is that it is entitled to rely on the terms of the hire purchase agreement.

Further, VWFS did not agree it had not done enough to assist Mr G after the contract was made. To support its position it mentions calls with Mr G's parents. Specifically, it accepted

Mr G's version of events in so far as it also says that Mr G's father had called it, at least twice. But VWFS points out that it did not have any authority to speak to Mr G's father at that stage. VWFS tells us in the first call the conversation was solely about finances. According to VWFS, it was only in the second call that Mr G's father talked about his son's mental health. This call took place shortly before the accident. VWFS also tells us that according to W's records, W spoke to Mr G's mother shortly after the contract began, she asked about how the agreement could be ended. W offered to buy back the car but the figure it offered was less than Mr G owed. VWFS's position is that on that basis, Mr G's mother told W she'd sell the car privately and use the proceeds of sale to settle the finance. W indicates at this point Mr G's mother said nothing about Mr G's mental health.

Moreover, VWFS did not agree that it should have to lose out financially because Mr G's insurance policy would not cover the loss.

For all these reasons VWFS declined to uphold Mr G's complaint. VWFS let us know that Mr G had made no payments at all towards the hire purchase agreement.

Dissatisfied, Mr G came to our service.

One of investigators took a look at Mr G's complaint. Our investigator concluded that the lending had been unaffordable and that if VWFS had taken the steps it should have done before lending to Mr G it would have been aware of this. However, our investigator also pointed out that VWFS is facing a loss due to Mr G's actions. In the normal course of events Mr G's motor insurer would have made a payment that most likely would have covered all of VWFS's losses or most of them. But Mr G's insurers will not indemnify Mr G because of Mr G's behaviour. Our investigator said because the lending was unaffordable VWFS may not charge Mr G any interest. Therefore interest must be taken off the figure owed. But then the remaining balance must be divided in half and VWFS can only pursue Mr G for this sum (i.e. 50% of the balance once interest is removed).

VWFS accepted our investigator's recommendation. Mr G did not.

In summary, Mr G objected to the recommendation for the following reasons. Mr G suggested his mental health conditions and his inability to pay for the car should mean that he has no further liability to VWFS. Moreover, Mr G reiterated that there had been more than one attempt to return the car. His stance is that if VWFS had accepted the return of the car then this would have lessened or totally avoided the loss. Moreover, Mr G suggested VWFS should be happy that he was not asking for damages.

Mr G also provided further information about his mental health at the time he entered into the agreement with VWFS. He explained he was experiencing a manic episode which lasted until he was sectioned. He explained that *"This stage manifests by an impulsive and obsessive behaviour, when any kind of logic, analysis, thought is not used to take any decision"*. Mr G pointed out again that his father had contacted VWFS during the time between him taking out the agreement and crashing the car. He told us his father had also contacted the police at this time.

Mr G asked that an ombudsman take a fresh look at his complaint.

I issued a provisional decision. This is what I said in that decision about what I'd 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."

It appears that there is no longer any dispute that the lending was unaffordable. So what I now need to decide is are there circumstances here including the unaffordability of the lending and Mr G's mental health conditions and the attempts to return the car, that mean it would not be fair and reasonable to permit VWFS to pursue him for payment of the balance owing under the agreement."

In general where I find that a motor finance agreement is not affordable. I would be asking the motor finance provider to take back its car and I would also be saying it could not apply any interest on the balance. Here, because the lending was unaffordable, I am able to find that VWFS must not seek to recover any interest from Mr G and indeed VWFS has already accepted this. But in this instance although the car has been returned it has been returned damaged due to the road traffic accident Mr G had.

Moreover due to Mr G's actions the insurer has refused to indemnify him. Normally VWFS would not have experienced a loss or such a big loss, because depending on the terms of the motor insurance policy, the motor insurer would have paid out for the entire loss experienced by VWFS or for the market value of the car. Here that will not happen. VWFS sought to recover the balance owed under the agreement. Mr G says this is unfair for several reasons and he should owe nothing. The first reason being that Mr G indicates he is a vulnerable consumer. The second reason is that in his opinion this loss would not have happened if VWFS had accepted the return of the car.

A vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. There seems to be no disagreement that Mr G was a vulnerable consumer by reason of his mental health conditions.

Mr G indicates due to his vulnerability he did not have the ability to understand the consequences of his actions in entering into the contract. That, in itself, he suggests should mean that VWFS cannot hold him to the contract.

Further, VWFS is expected to provide its customers with a level of care that is appropriate given the characteristics of the customers themselves. It is expected that frontline staff such as the staff at VWFS and the staff at W who dealt with Mr G, should have the skills and capability to recognise characteristics of vulnerability and respond to individual consumer needs where there are clear indicators of vulnerability. VWFS can be held to account even though it did not deal directly with Mr G at first because it has this responsibility even where, like in this situation, it transacts through an intermediary.

Mr G suggests there were clear indicators of vulnerability in his case before he entered into the deal. Moreover he suggests that VWFS did not do enough after the contract was entered into and his father disclosed his vulnerability due to mental illness. Whereas VWFS disagrees that it acted inappropriately given Mr G's very particular circumstances.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I'll deal first with whether Mr G had the ability to understand the consequences of his actions in entering into the contract. Mr G is suggesting he lacked the mental capacity to contract with VWFS. Lack of mental capacity is a medical diagnosis. I have supporting information from doctors about Mr G's mental illnesses. But I have nothing that diagnoses Mr G as lacking mental capacity at the time he contracted. On this basis I have no proper basis for saying VWFS ought not to be able to properly pursue Mr G for the loss because he lacked mental capacity at the relevant time, that is at the time he contracted.

I recognise that after the transaction Mr G was sectioned. But I don't know when that was but it appears to have been some significant time afterwards. I cannot say that in the circumstances the fact that Mr G was sectioned suggests that even if Mr G did have capacity his ability to think was so significantly impacted that it would be fair or reasonable to ask

VWFS to set aside the agreement for this reason.

Alternatively, Mr G indicates he was displaying clear indicators of vulnerability immediately before he contracted and when he contracted. Specifically, he suggests he was experiencing a manic episode and what he was experiencing was obsessive and impulsive behaviour and that his ability to think through his actions was impaired. The medical information I have does not say that in the professional opinion of his doctor Mr G was experiencing a manic episode, rather it suggests that Mr G reports at this time he was experiencing a manic episode.

Moreover, even if Mr G was experiencing a manic episode, the difficulty is was this reasonably apparent to W and by extension to VWFS or ought it to have been given their responsibilities to provide protection to vulnerable consumers? I've looked closely at the timeline of events here. I've done this as I think this will shed light on whether VWFS's actions were inappropriate or not.

It seems the parties agree that the sales process extended over eight days. That is on 27 June Mr G came in for a test drive, on 2 July there was a discussion about the deal, on 3 July Mr G entered into the agreement with VWFS and on 4 July he came back to hand over documents for the car he part-exchanged. This extended period of transacting does not fit with what Mr G tells us about acting without due consideration and acting on impulse and or obsessively.

Moreover W reports it had a number of conversations with Mr G during his visits, W indicates that on at least one occasion, Mr G was accompanied by a companion throughout an entire visit. I think it likely those conversations would have given W a good opportunity to establish, if on the face of it, Mr G was acting in a way that ought to have alerted it to clear indicators of vulnerability on Mr G's part. I find it unlikely that W would have continued to transact if it had witnessed any such clear indicators of vulnerability.

Mr G suggest he tried to return the car to two unrelated dealerships. I've no reason to doubt what Mr G says. But I can't fairly hold VWFS responsible because two dealerships who had nothing to do with the contract were contacted and did not accept the return of the car. I note also that Mr G was driving the car after he acquired it. This does not fit with what he tells us about wanting to return the car after acquiring it in an impulsive state. I might have expected him to have stopped driving the car if he had decided the transaction had been a mistake.

Further, Mr G and VWFS both agree that Mr G's father contacted it at least twice by phone, once on 13 July and again on 15 July. According to VWFS's records, which I have no reason to doubt, Mr G's father did not mention Mr G's mental health in the first call, he asked for a settlement figure. Moreover, according to W's records, Mr G's mother contacted it shortly after the contract was made, as I have already mentioned. It does not appear that Mr G's mother mentioned Mr G's mental health issues. I can well understand if Mr G's parents were reticent about discussing the private matter of Mr G's health in the first instance. However, it appears from this information that at first at least, the primary concern of Mr G's parents was about finances. This is not consistent with what Mr G has told us about experiencing a manic episode for the entire duration of the relevant period and his father being concerned about his manic state.

I appreciate that as far as VWFS knew when it first spoke to Mr G's father, he was an unauthorised third party. That said, when a person is experiencing mental health issues it might not be unexpected that the first contact about this is not with the consumer but with a concerned relative. I would have expected VWFS to have taken what Mr G's father said about Mr G's mental health very seriously and to have acted urgently. I have not seen

anything to suggest that VWFS did take action straightaway.

That said, I don't think that because VWFS did not immediately seek to retrieve its car this led to the loss. Rather, I think that the car crash is unrelated to anything that VWFS did wrong. The loss came about because Mr G crashed the car, and his insurer refused to indemnify him. The refusal to indemnify him seems to have come about because Mr G breached the terms of the motor insurance policy. In addition Mr G tells us he faced a criminal prosecution in relation to the accident and he was convicted of a criminal offence. The criminal courts have decided where culpability lay, and I cannot reverse the decision of the criminal court. Therefore for all of these reasons I have no proper basis to say that VWFS must bear a loss that had no causal link to anything it did wrong.

I recognise this may disappoint Mr G in all likelihood as his position is that there is a direct link between the loss and VWFS's mistake in lending to him in the first place. But I've explained above why I don't see it that way.

For all of these reasons I don't uphold this part of Mr G's complaint."

My provisional decision was as follows:

"My provisional decision is that Volkswagen Financial Services (UK) Limited can only pursue Mr G for the balance owing under the agreement minus any interest on the balance."

I invited Mr G and VWFS to respond to my provisional decision should they wish to do so.

Mr G responded about both the affordability aspect of his complaint and about his mental health at the relevant time.

Mr G's response about the affordability part of his complaint was, VWFS *"entered an agreement with [Mr G], without doing the proper research and minimal care regarding the affordability. For that alone they should bear responsibility."* Moreover, Mr G's parents, *"advised immediately of that fact and offered solutions. They wouldn't want to engage".*

As to his mental health Mr G suggested that at the time society was not able to provide the appropriate care and his condition was undiagnosed and not necessarily recognisable. However, his parents *"knew something was not right"*. Further, according to Mr G, before his parents' eyes Mr G's situation became very negative very quickly, to such an extent that in their opinion he was a danger to himself and others. Mr G suggested his doctor could confirm this. We have asked Mr G twice to provide this medical information if he wants to do so but I have seen nothing to suggest that we have received this information.

Mr G reiterated that his parents told VWFS, the police, and doctors what was going on but to *"no avail"*. Moreover, Mr G does not consider VWFS is giving a good faith account of its interactions with his parents.

For all of these reasons, Mr G's stance remains that any loss here flows from the actions of VWFS.

VWFS responded to say it had nothing further to add to what it had already said.

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.

I thank both Mr G and VWFS for their responses to my provisional decision.

I'll look first at the affordability part of Mr G's complaint. In relation to this complaint point, there is no disagreement now between Mr G and VWFS that the lending was unaffordable. The disagreement concerns only the remedy for this. VWFS agrees it will only pursue Mr G for the balance of what is owed without any interest on that balance. Mr G's position is that

because the lending was unaffordable the entire balance should be written off. In general where lending was unaffordable this service would not ask the lender to write off the whole balance owed. Rather, this service would normally ask that the asset that is the car here be returned and then depending on the individual circumstances of the complaint we would look at whether it was fair or reasonable for the lender to be able to pursue the consumer for anything further.

In this instance Mr G returned VWFS's car to it damaged. So the balance remains higher than it would have been than if he had returned the car undamaged. But the point remains just because the lending was unaffordable does not mean that it is fair or reasonable that the whole of the balance be written off for this reason alone. Moreover I have to take into account why that loss occurred and as I mentioned in my provisional decision I don't find that the loss flows from the unaffordable lending. Therefore it follows that I have no proper basis for saying that because the lending was unaffordable VWFS must write-off the balance due to this.

I regret to hear that Mr G felt he was left with only the support of his parents at a time when he indicates he was very unwell due to mental health conditions. I can well understand that it may well be distressing to feel like that. However, the difficulty for Mr G remains that his response does not persuade me that the reasoning I set out in my provisional decision about this complaint point should be set aside or amended.

Neither do I agree that I can fairly say that Mr G's parents offered solutions but VWFS did not engage and therefore VWFS should bear the entire loss. In my provisional decision I found it likely that Mr G's mother offered to sell the car privately as W suggested. That solution would not have avoided the loss in the circumstances though and in any event Mr G would have had to have bought the car first which he had not done. Also in my provisional decision I found it likely that Mr G's father did ask VWFS to take back its car but that does not mean that because VWFS did not do this it must bear the loss for this reason alone either. I cannot overlook that it was not VWFS's actions or inactions that caused the loss, rather, it was Mr G's actions that led to the loss.

I have not been persuaded by Mr G's response to my provisional decision. It follows that I have come to the same conclusions for the same reasons as I set out in my provisional decision and repeated in this decision.

My final decision

My final decision that Volkswagen Financial Services (UK) Limited can only pursue Mr G for the balance owing under the agreement minus any interest on the balance and minus any charges related to the initial decision to lend.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 November 2022.

Joyce Gordon
Ombudsman