

The complaint

Mrs L complains about a hire purchase agreement taken out in her name with Volkswagen Financial Services (UK) Limited trading as Audi Financial Services, to get a brand new car.

What happened

In March 2017, Mrs L says her husband had a finance agreement in place with Volkswagen for a car. She says her husband struggled to meet the repayments due under that agreement, so he made arrangements with a dealer, to exchange the car, for a different, brand new model with lower monthly repayments.

Both Volkswagen and Mrs L say her husband's subsequent finance application was declined. So, Mrs L says the dealer and her husband asked her to apply for a hire purchase agreement for the car, in her name instead. She says she didn't have any involvement with the application process and in 2018, Mrs L told Volkswagen she felt pressured into signing the paperwork.

Repayments were made under the agreement up until August 2019. Mrs L says these came directly from her husband. But the repayments were often late or made a month in arrears. Eventually, Volkswagen decided to terminate the agreement, after arrears or more than £2,000 had accrued.

In late 2019, Volkswagen took steps to repossess the car and arranged for it to be sold. The proceeds of the sale were used to reduce the balance owed under Mrs L's hire purchase agreement. And in early 2020, Mrs L made arrangements to repay the outstanding balance, using a monthly repayment plan.

By that point, Mrs L says her relationship with her husband had broken down. She says that she was left with a debt to repay to Volkswagen. So, in early 2021 Mr L raised a complaint with them about the way the hire purchase agreement was sold to her by the dealer.

Volkswagen responded and said they couldn't have known about Mrs L's personal circumstances at the time the agreement was taken out. They also said Mrs L was involved with the discussions about the finance and that she was still responsible for the outstanding balance due under the agreement.

Mrs L didn't accept Volkswagen's response and brought her complaint to us. One of our investigators looked into Mrs L's case and found that Volkswagen had treated her fairly. He was persuaded that Mrs L was aware of the hire purchase agreement and had allowed her husband to use the car.

The investigator also found that although Volkswagen should have done more to look at Mrs L's financial circumstances, it's likely any information would have shown she was able to afford the repayments. So, the investigator concluded it was fair for Volkswagen to hold Mrs L responsible for the balance owed under the agreement.

Mrs L didn't agree with that and said she had raised concerns about the agreement with

Volkswagen soon after it was put into place. She also said Volkswagen shouldn't have lent her money based on her husband's income.

The investigator didn't change his conclusions and now Mrs L's case has been passed to me to make a decision.

I sent Mrs L and Volkswagen my provisional decision on this case, on 30 November 2022. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

The start of the agreement

This case is about a hire purchase agreement in Mrs L's name taken out with Volkswagen, which is a regulated financial product. As such, we are able to consider complaints about it.

Mrs L's complaint to Volkswagen is that the dealer and her husband put her under significant pressure, to sign the agreement for the car. Mrs L also says that she didn't have anything to do with the car, as it was only ever used by her husband and insured in his name. So, I've thought about what both Mrs L and Volkswagen have told us about what happened when the agreement was taken out in Mrs L's name.

I've looked at Mrs L's personal bank account statements from 2017 and I agree she was heavily financially reliant on her husband and family members. I've also looked at an email from Mrs L to her husband, in November 2018. And Mrs L has told us about the very difficult personal and financial circumstances she has experienced since then.

On the day the agreement was signed, Mrs L says she was aware that her husband was having his own financial difficulties and that he asked her to join him at the dealership. Mrs L says the dealer explained that her husband had failed a credit check, so asked her to take the agreement out in her name instead.

Subsequently, Mrs L says she signed the agreement forms, knowing the car was for her husband. She also says that she signed the agreement forms more out of embarrassment about the situation.

Having thought carefully about everything, I empathise with the circumstances Mrs L found herself in. On balance, I think Mrs L did what she thought was right, because her husband was looking to change his car, to lower the monthly repayments. In turn, this may have helped Mrs L and her husband's overall financial circumstances.

But, I'm not persuaded this demonstrates that Mrs L was coerced into signing the hire purchase agreement with Volkswagen. I accept Mrs L felt she was in a difficult position, and I'm persuaded she went on to speak to family members about it. On balance though, I don't think Volkswagen put Mrs L under any pressure to sign the paperwork at the dealership, or that they should have spotted any signs of coercion from Mrs L's husband.

However, Mrs L also says she didn't have any income at the time she signed the agreement forms. Volkswagen have also told us that Mrs L's husband had not met their criteria for them to give him a hire purchase agreement. So, I've considered the responsibility of Volkswagen when looking at Mrs L's overall circumstances.

The affordability of the agreement

We've set out our general approach to complaints about unaffordable or irresponsible lending - including the key rules, guidance and good industry practice - on our website. And

I've referred to this when deciding Mrs L's complaint.

Having carefully thought about everything, I think the key questions to ask here are:

Did Volkswagen complete reasonable and proportionate checks to satisfy itself that Mrs L would be able to make repayments due under the agreement in a sustainable way?

- If so, did it make a fair lending decision?*
- If not, would those checks have shown that Mrs L would've been able to do so?*

Did Volkswagen complete reasonable and proportionate checks to satisfy itself that Mrs L would be able to repay her loan in a sustainable way?

Volkswagen provided this agreement under the authorisation and regulation of the Financial Conduct Authority ("FCA"). The rules and regulations in place required Volkswagen to carry out a reasonable and proportionate assessment of Mrs L's ability to make the repayments under this agreement.

This assessment is sometimes referred to as an "affordability assessment" or "affordability check". The checks had to be "borrower" focused – so Volkswagen had to think about whether making repayments sustainably would cause difficulties or adverse consequences for Mrs L.

In practice this meant that Volkswagen had to ensure that making the payments under the agreement wouldn't cause Mrs L undue difficulty or adverse consequences. In other words, it wasn't enough for Volkswagen to simply think about the likelihood of it getting its money back, it had to consider the impact of the repayments on Mrs L.

Checks also had to be "proportionate" to the specific circumstances of the application for the agreement. 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 consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they are seeking.

Even for the same customer, a proportionate check could look different for different applications. In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough when:

- the lower a customer's income (reflecting that it could be more difficult to make any repayment 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); and*
- the longer the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).*

There may also be other factors which could influence how detailed a proportionate check should've been for a hire purchase application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. So, I've carefully thought about all of the relevant factors in this case.

Volkswagen have explained to us that Mrs L's husband went to the dealership in March

2017, because he wanted to lower his monthly repayments. Mrs L says this was because her husband was experiencing financial difficulties. So, I'm persuaded Volkswagen were aware of Mrs L's husband's intentions, to end his previous agreement part way through the loan term and get a new agreement that was more affordable to him.

Furthermore, Volkswagen have told us they declined Mrs L's husband's application in March 2017, because of concerns about affordability. Volkswagen's notes go on to show that an initial application from Mrs L was also declined. On balance, I think Volkswagen had concerns about providing a hire purchase agreement to both Mr L and then Mrs L in March 2017.

Mrs L's hire purchase agreement was for a brand new car using credit of around £38,000, the majority of which was to be repaid over four years. I think the amount borrowed by Mrs L was significant and becomes even more stark given, that Volkswagen initially declined two applications shortly before the agreement was put into place.

Regulated lenders are required to exercise reasonable care and skill, have clear and effective processes in place to assess affordability and also take adequate steps to check and verify the information provided by a customer. This means there's an expectation that a lender shouldn't simply rely on what it is told by a prospective borrower, about matters regarding income and expenditure.

Volkswagen's records about the application show that they noted that Mrs L was a business owner for just over three years and working full time. The records also show that Volkswagen checked Mrs L's details with credit reference agencies. And from looking at a credit report sent in by Mrs L, I can see where the details obtained by Volkswagen in 2017 are consistent with the various accounts she held.

However, it remains that Volkswagen didn't record details about Mrs L's income or her position within the business. And Volkswagen didn't make a note of Mrs L's monthly expenditure.

I've carefully considered the circumstances leading up to the signing of the agreement with the background of two previous failed applications. Overall, I think Volkswagen had a responsibility to ask Mrs L for further details about her income and expenditure. Based on all the evidence, I'm not persuaded Volkswagen asked for those details, or for any supporting documents. So, I think there were a number of unanswered questions that Volkswagen needed to address, before it would have been reasonable and proportionate to proceed with Mrs L's agreement.

In these circumstances, as Volkswagen didn't take additional steps to verify Mrs L's income and expenditure, I think their checks before providing the hire purchase agreement to Mrs L, weren't reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Volkswagen that Mrs L would have been unable to sustainably repay this loan?

I don't think reasonable and proportionate checks were carried out before this loan was provided. And 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 Volkswagen that Mrs L would've been unable to sustainably afford the repayments due under the agreement.

Mrs L has provided us with evidence of her financial circumstances at the time she applied for the hire purchase agreement. Of course, I accept different checks might show different things. And just because something shows up in the information Mrs L has provided, it

doesn't mean it would've shown up in any checks Volkswagen might have carried out.

But in the absence of anything else from Volkswagen showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mrs L's financial circumstances were more likely than not to have been at the time.

I've looked at Mrs L's personal bank account statements from December 2016 until March 2017. Having done so, I can see that she received payments from her husband, which were sporadic in frequency and amount. I can also see that these payments are for less than the monthly repayment that was due under the hire purchase agreement. No other form of income is shown coming into Mrs L's account.

Mrs L did receive some child benefit payments and financial support from family members. The bank statements don't show regular outgoings, such as payments to utilities, but Mrs L says her husband paid for those from his own personal accounts. I can see that Mrs L had payments to other lenders, which is consistent with the credit check, carried out by Volkswagen.

Having considered everything, I don't think Mrs L had any regular income of a level to service the repayments to the hire purchase agreement. Her bank statements reveal that she wasn't employed at the time the agreement was signed, which contradicts the information Volkswagen relied upon during the information gathering stage of the application.

I'm mindful that Mrs L's husband's income would have contributed to the finances of the household. But, I've concluded that Volkswagen already had concerns about that, when they declined an application in his name. Also, from looking at Mrs L's bank statements, I don't think they show that her husband was providing her with enough consistent financial support to make the required payments.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mrs L would not have been able to make the repayments due under the agreement, without borrowing further or suffering significant adverse consequences.

Overall, I think reasonable and proportionate checks would more likely than not have alerted Volkswagen to the fact that it shouldn't have provided the hire purchase agreement to Mrs L.

The car has now been repossessed by Volkswagen and the proceeds of the sale have been used to reduce the outstanding balance owed by Mrs L. In all the circumstances, I think it's fair for Volkswagen to allow Mrs L to now exit the hire purchase agreement at no additional cost to her.

I've found that Volkswagen didn't treat Mrs L fairly when they agreed to lend to her. So, I think it's fair for Volkswagen to refund all the charges and interest they've applied to the hire purchase agreement since it started. This refund and adjustment may create a credit balance, which should be paid to Mrs L. If that happens, I think it's fair that Volkswagen adds interest at 8% per year simple, to any overpayments made by Mrs L. I say this because Mrs L hasn't been able to make use of those funds.

I've seen that Mrs L entered into a repayment plan with Volkswagen and this information has been passed to credit reference agencies. In light of my conclusions about Mrs L's awareness and acceptance of the hire purchase agreement, I don't think it would be fair to ask Volkswagen to remove all the information about it.

But, I don't think it's fair for Mrs L to suffer any negative impact as a result of missing or not be able to make the full repayments due under the agreement. So, I think it's fair and reasonable for Volkswagen to remove any adverse information that's been recorded with credit reference agencies.

The usage of the car

Volkswagen have told us that the car obtained under the hire purchase agreement, had been driven for around 60,000 miles when it was recovered in September 2019. So, in around two and a half years, I think the car had covered a significant number of miles.

While I accept Mrs L may not have used the car herself, I've concluded that it's likely she was aware of, and accepted being party to the hire purchase agreement in March 2017. So, I think it's fair for Mrs L to pay for how much the car was able to be used. There isn't an exact calculation for reaching a figure for the usage of the car. So, I've considered what I think to be fair and reasonable to both sides of the dispute.

The hire purchase agreement shows that the purchase price of the car was £40,530. When the car was recovered and sold by Volkswagen, they received £14,000. This means the car's value decreased by around £26,000.

The account statements for the hire purchase agreement, the initial deposit and the recent payments made to a collection agent, show that around £25,000 has been paid towards the agreement. I've also thought about the annual mileage allowance under the agreement and the mileage the car had covered. Additionally, I've thought about the value of the sale proceeds, given what we know about the condition of the car that was returned to Volkswagen.

In the round, I think Mrs L has paid for the fair usage of the car and it's fair for Volkswagen to retain the repayments made under the agreement. I recognise that Mrs L has received significant financial help from family members to make payments to Volkswagen.

And I know that this may have caused further personal difficulties. But, I have to consider how much the car was used and overall, I think it's fair for Volkswagen to expect payment for that.

I also think it's fair that if any balance remains outstanding after all the adjustments have taken place, that Volkswagen ends their pursuit of Mrs L for repayment. I can see from a very recent letter from Volkswagen to Mrs L, that they may have ended their pursuit of the debt already.

Distress and inconvenience

Mrs L has described the events leading up to the signing of the hire purchase agreement in 2017 and the breakdown of her relationship with her husband. I empathise with the circumstances she's told us about and the difficult situation she continues to deal with. And I hope Mrs L finds that her circumstances improve.

But, when looking at the distress and inconvenience she has experienced, I need to consider just the impact of Volkswagen's actions, rather than anything that may have been caused by a third party.

I can see from Volkswagen's records that Mrs L had raised concerns about the way her agreement was provided in 2018. I can also see where the pursuit of the outstanding debt has put a strain on Mrs L's financial circumstances, and she says this has had an impact on

her health. Similarly, I can understand where the adverse information recorded with credit reference agencies has caused Mrs L worry.

Overall, I think Volkswagen were able to intervene at an earlier stage here and that the worry caused to Mrs L has added to an already difficult time for her. So, I think it's fair for Volkswagen to make an award to Mrs L in light of the delay and worry they've caused. In all the circumstances, I think it's reasonable for Volkswagen to pay Mrs L £250 for the distress and inconvenience she has experienced.

Both Mrs L and Volkswagen replied and accepted the provisional 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.

Both parties have accepted my provisional directions about how this complaint should fairly be resolved, so I see no reason to come to a different conclusion.

Putting things right

For these reasons Volkswagen Financial Services (UK) Limited trading as Audi Financial Services should:

1. allow Mrs L to exit the hire purchase agreement at no additional cost to her;
2. refund all interest and charges accrued under the hire purchase agreement;
3. add interest at 8% per year simple on any overpayments, if any, from the date they were made by Mrs L to the date of settlement;
4. after the adjustments, pay any credit balance created by the refund to Mrs L;
5. pay £250 to Mrs L for the distress and inconvenience caused; and
6. remove any adverse information recorded with credit reference agencies, about the hire purchase agreement from the start of the agreement, to the date of settlement of this complaint.

Volkswagen must pay these amounts within 28 days of the date on which we tell them Mrs L accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Volkswagen deducts tax from any interest they pay to Mrs L, they should provide Mrs L with a tax deduction certificate if she asks for one, so she can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Volkswagen Financial Services (UK) Limited trading as Audi Financial Services to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 13 January 2023.

Sam Wedderburn
Ombudsman