

## The complaint

Mr C believes Volkswagen Financial Services (UK) Limited trading as Audi Financial Services ('VWFS') acted irresponsibly by approving a hire purchase agreement he'd applied for.

Mr C is being represented in this complaint by Ms K. However, for ease of reference, I'll refer to any actions or comments by either Mr C or Ms K as being by Mr C.

## What happened

In November 2020, Mr C was supplied with a new car through a hire purchase agreement with VWFS. There was an advance payment of £2,509.35 and the agreement was for £20,794.65 over 48 months, with monthly repayments of £316.11 and a final payment of £9,571.25.

Mr C has complained that VWFS didn't act responsibly when approving the finance. He's said that he was sold the finance on "*an insufficient affordability justification*", as well as being upsold unnecessary items by the supplying dealership. The dealership bought back the car from Mr C and the agreement was settled on 3 September 2021.

VWFS considered the complaint, but they thought they'd done adequate checks, which showed that Mr C could afford the payments. And they didn't uphold his complaint.

Mr C wasn't happy with this, so he brought his complaint to us for investigation.

VWFS said they carried out checks to see if the finance was affordable, but they weren't able to evidence these checks. Because of this, our investigator said they couldn't say if the checks were reasonable and proportionate. So, they considered what VWFS would've likely seen had these checks been done. The investigator considered Mr C's bank statements and, from these, said they thought the finance wasn't affordable.

However, the investigator initially said that, because Mr C had sold the car privately, and cleared the outstanding finance, then VWFS didn't need to do anything more.

VWFS accepted the investigator's view, but Mr C didn't. He said that the car hadn't been sold privately but had been purchased back by the dealership. And he raised the issue of the deposit being refunded to him, as he was now without both the car supplied by VWFS and the car the dealership took in part-exchange at the start of the transaction.

VWFS agreed that the deposit should be refunded to Mr C, but there was a disagreement as to what deposit was paid, and how much should be refunded. The investigator reissued their view and said that VWFS should refund £2,076.52 (the difference between what Mr C had paid to VWFS and the cash value of the car, plus statutory interest). While VWFS agreed with this, Mr C didn't. And he thought the refund should be a minimum of £2,968.66.

In his comments Mr C also raised a number of issues with how the dealership acted, including, but not limited to, how he thought some of their actions were fraudulent, and his belief that they'd 'overfinanced the car.'

I issued a provisional decision on 22 June 2023, where I explained my intention to uphold the complaint. In that decision I said:

*When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:*

- 1. Did VWFS complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the credit in a sustainable way?*
  - a. if so, did VWFS make a fair lending decision?*
  - b. if not, would reasonable and proportionate checks have shown that Mr C could sustainably repay the borrowing?*
- 2. Did VWFS act unfairly or unreasonably in some other way?*

*And, if I determine that VWFS didn't act fairly and reasonably when considering Mr C's application, I'll also consider what I think is a fair way to put things right.*

*In this instance, it's not disputed that VWFS' checks weren't reasonable or proportionate. Or that reasonable and proportionate checks would've shown that the finance wasn't affordable to Mr C at the point he took this out.*

*As all parties are in agreement with this, my decision will focus on what I think VWFS should do to put things right.*

*I'd also like to clarify that I'm only considering the actions of VWFS. While I appreciate that Mr C isn't happy with the actions of the dealership, as they aren't regulated by the Financial Conduct Authority, I don't have the authority to consider what they've done. As such, any concerns Mr C has about the dealership will need to be raised with them directly.*

*In circumstances such as these, when the car has already been returned by the customer, it is our normal approach to ask the financial business to refund to the customer anything they've paid over and above the cash price of the car, plus interest.*

*However, in these circumstances, the dealership purchased the car back for £20,350, settled the £19,818.66 outstanding on the finance, and refunded the £531.34 difference to Mr C. As such, any remedy I direct will take this into account, and the £531.34 will be deducted from anything I ask VWFS to pay.*

*The main point of disagreement in this matter is the value of the car and the amount of deposit Mr C paid. And this goes directly to the amount Mr C believes he should receive from VWFS.*

*I've seen a dealership vehicle order form, which is dated 11 August 2020 and shows an estimated delivery date of 31 December 2020. This clearly shows that the base price of the car was £18,908.33. However, with adjustments, delivery charge, registration fee, road tax, the additions Mr C had requested, and VAT; this brought the total cost of the car to £23,304.*

*I've also seen the dealership's vehicle sales invoice, dated 4 November 2020. This also takes into consideration the adjustments, charges, fees, taxes, additions Mr C had asked for, and VAT. And it shows the net cost of the car was £23,304.*

*Finally, the finance agreement Mr C signed on 2 November 2020 shows the "Vehicle Cash Price" to be £23,304.*

*Given the above and based on what I've seen, I'm satisfied that the net cost of the car was £23,304.*

*Turning to the deposit, the order form also shows that a £900 deposit had been paid, and that there was a part exchange allowance of £2,600. However, this also says there was a finance deposit allowance of £131.65; that the amount to be financed was £20,794.65; and that Mr C still needed to pay -£1,122.*

*Mr C has said that this shows he paid a deposit of £3,500. However, the order form also shows a £131.65 deposit allowance and that Mr C has overpaid by £1,122. As such, this order form actually indicates Mr C paid a net deposit of £2,509.65.*

*But the sales invoice also shows "Part Payment Received £250" and "Net P/Ex Allowance £2,600." This left £20,454 to be financed. However, the invoice also says "Due from: [Mr C] - 340.65" and "Due from: [VWFS] 20794.65."*

*VWFS have interpreted this invoice to mean that Mr C received cash back from the deposit, so the actual deposit he paid was £2,259.35. However, this is based on a deposit of £2,600 being paid, and it's clear from the invoice that the deposit actually totalled £2,850. As such, I disagree with VWFS on this. And based on their calculation, the deposit Mr C paid should be £2,509.35.*

*Finally, the hire purchase agreement Mr C signed on 2 November 2020 clearly says the amount to be financed was £20,794.65, and that Mr C paid an advance payment of £2,509.35. This is the amount of the net deposit showing on the sales invoice and is equal to the net deposit showing on the order form.*

*Mr C has provided evidence that he paid the dealership £250 on 29 August 2020, and £650 on 2 November 2020. While these payments total £900, and it's not disputed Mr C received £2,600 part exchange for the car he traded in, it doesn't follow that the whole of this £3,500 was paid to VWFS. And, from what I've seen, some of this may've been retained by the dealership to pay for GAP insurance and key insurance.*

*Because of this, I'm satisfied that the deposit was £2,509.35. And it's for Mr C to raise any difference in what he paid, and what was allocated to the deposit, with the dealership.*

*The Statement of Account that's been provided shows that Mr C paid VWFS a total of £2,595 in payments before the agreement was settled, and that the settlement amount was £19,818.66. As such, when looking at the total of the amounts involved, it gives the following calculation:*

<i>Finance Settlement:</i>	<i>£19,816.16</i>
<i><b>plus</b> Deposit Paid*:</i>	<i>£2,509.35</i>
<i><b>plus</b> Payments made by Mr C:</i>	<i>£2,595.00</i>
<i><b>Total paid by Mr C:</b></i>	<i><b>£24,920.51</b></i>
<i><b>less</b> Cash Price of the Car:</i>	<i>£23,304.00</i>
<i><b>less</b> Sale Surplus already paid to Mr C:</i>	<i>£531.34</i>
<i><b>Total to be Refunded to Mr C:</b></i>	<i><b>£1,085.17</b></i>

*This differs from the amount calculated by the investigator, as they included the full £3,500 Mr C paid to the dealership. But, for the reasons stated above, I don't think this should all be taken into consideration.*

*So, my provisional decision is that VWFS should refund Mr C £1,085.17\* (as per the calculation detailed above), and apply 8% simple yearly interest on this refund, calculated from the date the agreement was settled to the date of the refund.*

*HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr C a certificate showing how much tax they've taken off if he asks for one.*

*\*if any of the deposit paid was by way of a dealer or finance allowance or contribution, this amount should be deducted before any interest is calculated and refund paid.*

## **Responses**

VWFS accepted my provisional decision with no further comments. However, Mr C responded and said, based on my calculations, he would be out of pocket by £1,883.49 and would also be without a car. He acknowledged that the figures on the paperwork he received from the dealership differed from the amount that was paid to VWFS, but he says this was because of “*devious practices*” by the dealership.

Mr C also said that he never received a refund of £1,122, but this was the cost of the insurances “*which was added to the total amount financed from VWFS by [the dealership] i.e. over financing.*”

Because of this, Mr C didn't think he was being put back into the position he would've been had the finance never been agreed. And that VWFS were failing to take responsibility “*for the outlets who sell their cars [and for the dealership] to be made to sell responsibly to young people.*”

## **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.

Mr C's comment that he would be out of pocket by £1,883.49 is based on the £3,500 he paid to the dealership all being applied to the deposit. However, for the reasons given in my provisional decision (repeated above) I was satisfied that the £3,500 was not all used for the deposit and some of this money was used to pay for insurances.

In fact, by referring to the “*GAP, SMART insurance etc.*” he took out, Mr C acknowledges the dealership used some of the £3,500 to cover these premiums. And the resulting lower figure paid as a deposit to VWFS meant the amount he needed to borrow was higher – something Mr C refers to as “*over financing.*” As I explained in my provisional decision, if Mr C is unhappy with the actions of the dealership, this is something he will need to raise with the dealership direct – whilst the dealership may be arranging finance with VWFS, this doesn't make VWFS responsible for their actions.

As such, Mr C's comments don't change my view, and given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

### **Putting things right**

So, given the above, VWFS should refund Mr C £1,085.17\* (as per the calculation detailed above), and apply 8% simple yearly interest on this refund, calculated from the date the agreement was settled to the date of the refund.

HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr C a certificate showing how much tax they've taken off if he asks for one.

\*if any of the deposit paid was by way of a dealer or finance allowance or contribution, this amount should be deducted before any interest is calculated and refund paid.

### **My final decision**

For the reasons explained above I uphold Mr C's complaint. Volkswagen Financial Services (UK) Limited trading as Audi Financial Services should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 August 2023.

Andrew Burford  
**Ombudsman**