

Complaint

Miss P complains that Volkswagen Financial Services UK Limited (trading as “Audi” Finance) unfairly entered into a hire-purchase agreement with her. She’s said the agreement was unaffordable and so she shouldn’t have been accepted for it. She is also unhappy at not being provided with appropriate forbearance once she fell into financial difficulty.

Background

In October 2017, Audi provided Miss P with finance for a brand-new car. The cash price of the vehicle was £17,118.13. Miss P paid a deposit of £1,051.00 and entered into a 49-month hire-purchase agreement with Audi to cover the remaining £16,067.13.

The loan had interest, fees and total charges of £2,614.73 (made up of interest of £2,604.73 and an option to purchase fee of £10. So the total amount to be repaid of £18,681.86 (not including Miss P’s deposit) was due to be repaid in 48 monthly instalments of £263.32 followed by an optional final monthly payment of £6,042.50.

Miss P’s complaint was considered by one of our investigators. He didn’t think that Audi had done anything wrong or treated Miss P unfairly. So he didn’t recommend that Miss P’s complaint should be upheld. Miss P disagreed with our investigator and the complaint was passed to an ombudsman 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 explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss P’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss P’s complaint. I’d like to explain why in a little more detail.

Audi needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Audi needed to carry out proportionate checks to be able to understand whether Miss P could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Audi carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired

credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Audi says it agreed to this application after it completed an income and expenditure assessment on Miss P. During this assessment, Miss P provided details of her employment history over the previous three years. Audi says it also carried out credit searches on Miss P which showed two existing credit accounts with outstanding balances.

These accounts had been well maintained and its view when the amount Miss P already owed plus a reasonable amount for Miss P's living expenses were deducted from her monthly income the monthly repayments for this agreement were affordable.

On the other hand, Miss P says she was she'd only just started a new job. There was no evidence of her income going into her bank account and in any event she wasn't asked to evidence the income she was receiving.

I've carefully considered what the parties have said.

The first thing for me to say is that Audi has provided a record of the results of its credit searches. Audi searches appear to show that Miss P had some existing credit commitments and that these had been well maintained.

I appreciate what Miss P has said about her employment status and having been out of work for a couple of months prior to this application. However, the fact is that Miss P was about to start a new job. I don't think that it would be reasonable for a lender to decline an application outright simply because a customer has started a new job - particularly as this is more of a credit risk, rather than an affordability one. In any event, what is clear it that even if Audi had asked Miss P to provide evidence of the fact that she was about to start a new job, Miss P would have been able to provide this.

Furthermore, as Miss P only had two other credit commitments which had been well maintained and was about to start employment, even allowing for the amount she has told us that she paid in rent, it does seem as though Miss P had sufficient funds in order for the monthly payments to this agreement to be made in a sustainable manner.

I accept that it's possible Miss P's actual circumstances may not be fully reflected in the information provided. For example, I know her circumstances changed for the better in 2019 before they were then impacted by the pandemic. And I've also seen what Miss P has said about her personal circumstances at this time too. But Audi won't have known about any of this. All I'd expect it to do is find out what I think it would have been reasonable to know had proportionate checks been carried out. In other words, find out what I have highlighted above.

Overall and having carefully considered everything, while there is an argument for saying that Audi's checks before entering into this hire-purchase agreement with Miss P didn't go far enough because Miss P was not asked to evidence her employment, I've not been persuaded that reasonable and proportionate checks would have prevented Audi from providing these funds, or entering into this agreement with her.

In my view, Audi asking Miss P for evidence of her employment would not have led to it concluding that the repayments were unaffordable for Miss P, or reaching a different conclusion on whether to lend in this instance.

I now turn to Miss P's comments regarding Audi's actions in relation to her arrears and since the scheduled end date of her agreement. It is clear that Miss P has got into contact with

Audi on a number of occasions during the course of the agreement to explain that as a result of financial difficulty, she was unable to make payments. As I've explained above, it is clear that to see that Miss P's financial circumstances have fluctuated over the course of this agreement.

When a lender becomes aware, or it ought reasonably to be aware, that a borrower is experiencing difficulty making their payments, I think that it is fair and reasonable to expect it to exercise forbearance and due consideration, in line with its regulatory obligations. There are a number of ways that a lender could exercise such forbearance and there is no one size fits all approach.

In this case, I can see that Audi has changed payment dates, applied pandemic breaks and even carried out an income and expenditure assessment to try and set up a payment plan to clear the arrears on Miss P's agreement in August 2021. So it wouldn't be fair and reasonable for me to conclude that Audi didn't take any steps to help Miss P.

Unfortunately, notwithstanding Audi's attempts to assist Miss P, she has not been able to clear the arrears. It is also my understanding that a significant proportion of the amount due on this agreement remains an outstanding proportion of the amount lent, rather than any interest and charges, notwithstanding the fact that the original completion date for the finance was some time ago.

I realise that Miss P is worried about the impact not having a vehicle will have on her going forward. I've considered what she's said about what she believes the impact of returning the vehicle will be and I've also seen that she's said that she would have owed significantly less had she been able to make payments from May 2022.

The first thing for me to say is that no payments have been made since May 2022. And in these circumstances, it's difficult for me to say that Audi should have recorded that Miss P's agreement was up to date or that it was receiving payments. So I don't think that it was unreasonable for Audi to record the adverse information that it did.

Secondly, it has always been open to Miss P to attempt to clear the arrears (or retain the funds to be able to clear them now) notwithstanding the fact that she had an ongoing complaint. Therefore, I can't reasonably say that Audi is responsible for the arrears being the at level that they currently are, or the fact that Miss P isn't in a position to clear them.

However, most importantly of all, given the amount remaining owed on the agreement (which is some way off even clearing the amount that was initially lent) and the fact that the original scheduled completion date was as far back as October 2021, I don't think it would be fair and reasonable and reasonable for me to say that Audi cannot take steps to recover the vehicle at this stage.

This is especially given the significance of the amount owing, the fact that the agreement was always secured on the car and it is a depreciating asset. Indeed the longer that this goes on, the greater the risk of Miss P owing a large amount even after the car has been recovered as depreciation will see any value recovered being less. So while I have given careful thought to Miss P's arguments, I'm afraid that I'm upholding this aspect of Miss P's complaint either.

This means I've not been persuaded that Audi acted unfairly towards Miss P when it lent to her or in exercising forbearance when she ran into difficulty making her payments and I'm not upholding the complaint. I appreciate that this will be very disappointing for Miss P. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

Although I'm not upholding this complaint, I'd like to remind Audi of its ongoing obligation to exercise forbearance and due consideration in relation to any outstanding balance on Miss P's account, should the car be collected from Miss P, a balance remains payable and it be the case that she is experiencing financial difficulty if and when it seeks to collect payment.

My final decision

My final decision is that I'm not upholding Miss P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 18 March 2024.

Jeshen Narayanan
Ombudsman