

The complaint

Mrs W complains that Volkswagen Financial Services (UK) Limited, trading as Audi Financial Services (“VWFS”) lent to her irresponsibly and without carrying out proper affordability checks.

What happened

In March 2018 VWFS granted Mrs W a hire purchase (HP) agreement which was scheduled to be repaid at approximately £397 per month for 47 months with a final payment of approximately £14,131 due in the 48th month which would have made Mrs W the owner of the car she was buying. However, I can see that Mrs W voluntarily terminated the agreement and returned the car in May 2021.

When assessing the application, VWFS estimated Mrs W’s household income using statistical data and carried out a credit check before approving the lending. Additionally, it had the benefit of a previous, positive, lending relationship with her to assist it in assessing her situation.

The investigator thought that VWFS shouldn’t have given Mrs W this HP agreement, which it ultimately didn’t accept. So the case has been passed to me for review and 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.

Having done so, I’m going to uphold this complaint broadly for the same reasons as those of the investigator.

VWFS is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook (“CONC”), so I won’t repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Mrs W would be able to repay the borrowing applied for in a sustainable way. As set out in CONC 5.3.1G(2) that means that she could manage the repayments,

“...without...incurring financial difficulties or experiencing significant adverse consequences”

Essentially, she needed to be able to meet her financial commitments and not have to borrow elsewhere to repay VWFS for the HP agreement to be considered affordable and sustainable.

There are two questions I need to consider when deciding this case, which I will deal with separately below.

Did VWFS carry out proportionate checks before granting this HP agreement?

VWFS estimated Mrs W's household income (i.e. that of her and her husband jointly) using a statistical model, and carried out a credit check which incorporated both her and her husband's data when considering her application. Like the investigator, I'm not satisfied that its checks went far enough.

VWFS estimated that Mrs W's household income was around £3,644 per month. It does not appear to have confirmed that figure with Mrs W. Alongside that, it was aware that:

- she and her husband had just over £42,000 worth of debt via revolving credit accounts;
- therefore that those accounts would have required at the very least £840 per month just in absolute *minimum* repayments;
- that they had a mortgage payment of just under £1,000 per month to be met; and that,
- in addition, they had a monthly non-revolving, unsecured debt burden of nearly £1,377.

(At this point, I feel it is worth underlining that the minimum repayments on revolving credit accounts I have calculated are just 2% of the balances. I have done that in fairness to VWFS. But given the size of many of the balances, I in fact believe that bare minimum repayments, to avoid arrears, would likely have been substantially higher than that. Moreover, that would not, in fact, have been sufficient to enable Mrs W and her husband to repay their indebtedness in a reasonable timeframe. So VWFS ought to have thought about a much higher figure when assessing what was affordable and sustainable for her, in the round, taking into account her joint existing debt burden.)

VWFS does not accept that its checks were insufficient. It has rightly highlighted that the relevant rules and regulations do not stipulate the nature of checks required in each instance. I agree. It has highlighted the "...*positive attributes*..." shown by the checks it did carry out, namely that Mrs W and her husband had a strong credit record, and states that this was enough to demonstrate :

"...that the household are successful users of credit with no blemishes..." which
"...supports [Mrs W's] creditworthiness and affordability of the agreement."

It is correct to say that the evidence showed Mrs W and her husband to be, "...*successful users of credit with no blemishes*...". But I do not agree that in and of itself means that any new borrowing must therefore be deemed to be affordable and sustainable for her. That is not the same thing. It would seem that VWFS is somewhat conflating concepts of "creditworthiness" and the regulator's rules around what makes borrowing affordable and sustainable. An individual may indeed be deemed creditworthy if their credit history shows that they have been reliable in paying money back, and so arguably represent a low risk to a potential lender. However, the necessary checks under CONC are *not* designed to protect lenders from the risk of default. They are set to protect consumers from the risk of unaffordable borrowing, which I have already cited above.

Crucially, VWFS was fully aware of Mrs W's household's unsecured debt burden and housing costs, and had estimated a household income which was substantially used up by them. This ought to have led it to conclude that there was a risk for her around affordability – even if not a substantial risk to it around repayment. There is an argument to say that, given the levels of debt revealed by its checks, it would not have been unreasonable for VWFS to have concluded that no further borrowing could be affordable and sustainable for Mrs W. But, as a minimum, some further checks were needed.

What would VWFS have likely found and what ought it to have concluded, had it carried out proportionate checks?

When considering this second question, our service has had the benefit of several months of bank statements to review. VWFS has said that this service has, “...*incorrectly applied the standards expected under MCOBS 11.6.13 G...*”, that is those required before the approval of a mortgage, and not those required for unsecured lending. But that isn’t the case. I accept that there was and is no requirement on a lender to obtain any particular type of information: they are permitted to source and rely on a range of evidence when assessing affordability, and so VWFS could have opted to gather more information about Mrs W’s financial position in a range of ways. It was under no obligation to review Mrs W’s bank statements and could have looked further at this application without asking for such evidence.

However, the fact remains that it didn’t, and, in the absence of anything else provided, I’m happy to rely on the statements to demonstrate what VWFS would most likely have discovered if it had completed proportionate checks.

The investigator highlighted that Mrs W’s bank statements showed that she was already spending her monthly sole, individual, income, and possibly in excess of that, in general bills and household expenses. So that she had nothing left with which to make the repayment to VWFS.

VWFS objected, saying that the investigator had considered sole income versus joint expenses, which wasn’t right. I have therefore looked at this case on the basis, as VWFS did, of joint, household, income and joint, household, expenditure.

Having done so, I reach the same ultimate conclusion. The statements show a slightly higher household income than that modelled by VWFS. But despite that, the household’s expenditure in terms of day-to-day bills and non-discretionary living expenses, coupled with the household’s substantial debt burden, mean that outgoings exceeded income. This is evident in the level of overdraft in frequent use. There are two instances on the statements of further unsecured borrowing which for much of the timeframe in question kept the account in credit. However, such borrowing is not income, and I have discounted it from my considerations. Without that borrowing, the account would have been substantially overdrawn for the majority of the time. Which is, of course, simply another form of borrowing.

VWFS says that the agreement must have been affordable and sustainable because Mrs W made all repayments on time and made no requests for payment plans or, indeed, holidays, which were offered as a result of the Covid-19 pandemic. To reiterate, the simple act of making repayments does not guarantee that they are being made sustainably and, “...*without...incurring financial difficulties or experiencing significant adverse consequences*”, which is the standard set out by the regulator. The level of overdraft use evident on the statements I have seen very strongly suggests that repayments were being made by borrowing elsewhere.

VWFS also protests that the investigator has placed, “...*no ownership on [Mrs W] for considering her own affordability and sustainability of payments...*” That is indeed the case. And that is because, fundamentally, Mrs W’s actions are not relevant to this outcome. Whilst it is not impossible that a consumer’s actions may, at times, be material to my findings as an Ombudsman, my role is to examine whether VWFS met its obligations. Not to take a stance on the wisdom of Mrs W’s actions or decisions.

In the round, if VWFS had completed proportionate checks in this case, I cannot see how it

could have concluded that Mrs W would have been able to meet repayments without borrowing elsewhere. That is in direct opposition to the requirements in place for responsible lending at the time. In its submissions, VWFS has not persuaded me that its decision was actually compliant with the requirements I've cited. It therefore follows that I uphold this complaint.

Putting things right

In reaching my conclusions about the fair way to put things right for Mrs W, I have taken into account the following:

- That the cash price of the car was £32,852.71.
- That Mrs W paid a deposit of £3,851.
- That the APR on the agreement was 4.8%, and the charge for credit was £4,215.70.
- That she had use of the car for about 39 months.
- That there were no excess mileage charges, and only a very modest "refurbishment" charge of £55 when Mrs W returned the car – meaning that her use of it had not been detrimental beyond expected levels of depreciation.

Having weighed all those factors, I believe the investigator's recommendation that a monthly payment of £380 would represent a fair usage charge is appropriate.

So in order to put things right, I require VWFS to:

- Refund the deposit paid by Mrs W, adding 8% simple interest per year from the date of payment to the date of settlement. If it, or the broker, made a contribution to that deposit, it can deduct that amount.
- Calculate how much Mrs W has paid to it via monthly repayments under the hire purchase agreement and deduct £14,820 for fair usage of the car for around 39 months. If a balance remains, meaning that Mrs W has paid more than the fair usage charge, VWFS must refund those overpayments, again adding 8% simple interest per year from the date of payment to the date of settlement.
- Whilst I don't believe there is any, VWFS should remove any adverse information on Mrs W's credit file which relates to this agreement.

*HM Revenue & Customs requires VWFS to deduct tax from this interest. It should give Mrs W a certificate showing how much tax it's deducted, if she asks for one.

My final decision

For the reasons I've explained, I uphold this complaint and direct Volkswagen Financial Services (UK) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 21 August 2024.

Siobhan McBride
Ombudsman