

## The complaint

Mr W complains that Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (Audi) irresponsibly entered into a hire purchase agreement with him. He says they shouldn't have lent to him because the loan was unaffordable. Mr W further complains about how Audi treated him when he fell into arrears.

## What happened

In July 2022 Audi provided Mr W with finance to purchase a used car. The car cost £28,898 and Mr W paid a deposit of £551. He entered into a hire purchase agreement to finance the remaining £28,347. After interest and charges the total amount due was £37,143.40, repayable in 48 monthly instalments of £485.05 followed by an optional final repayment of £13,300 and an option to purchase fee of £10. Mr W struggled to make the payments and Audi terminated the agreement in October 2023. Mr W is still in possession of the car, and Audi is looking to recover it and the outstanding debt on the agreement.

In October 2023 Mr W complained about the termination of the agreement. Audi investigated but didn't think they'd done anything wrong. When Mr W referred his complaint to our service, he also raised concerns about the affordability of the agreement. Audi noted Mr W hadn't previously raised this with them. Rather than having Mr W go through the complaints process again Audi chose to respond to the affordability complaint when they submitted their file. In summary, Audi said their checks showed the agreement was affordable.

One of our Investigators considered Mr W's complaint. Although she didn't think Audi's checks had been proportionate, it was her view that proportionate checks would have shown that the agreement was affordable for Mr W. For this reason, she didn't think the complaint should be upheld.

Mr W didn't agree with our Investigator's view. He said the Investigator hadn't considered that Audi's collection agents wrongly went to his parents' house to recover the car. And he said that around ten other lenders did ask him for more information when he applied for finance – and declined his application after he'd provided it. So, he thought it wasn't fair to say that Audi would have lent to him had they conducted more checks. Mr W asked for an Ombudsman's decision – and the complaint came to me.

I issued a provisional decision on 23 July 2024, saying I wasn't inclined to uphold Mr W's complaint. In that I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."*

*I was sorry to hear of the impact what's happened had on Mr W. I realise my provisional decision will likely come as disappointing news, but based on the information I currently hold, I don't intend to uphold his complaint*

*The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.*

*CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case. What's proportionate depends on the specific circumstances of each application. We'd expect lenders to think about the nature of the credit (the amount repayable and the term, for example) and about the applicant's individual circumstances. I'd expect a lender to find out more about a prospective borrower's ability to repay if for example, a borrower's income was low, the amount lent was high, or the borrower's credit file reveals an impaired credit history.*

#### *Were Audi's checks proportionate?*

*Audi said Mr W's application showed he'd been employed for four years. CONC 5.2A.15R requires a firm to take reasonable steps to determine or make a reasonable estimate of the customer's current income unless the firm can demonstrate that it's obvious in the circumstances that the customer is able to make the repayments. Audi said they obtained an indicative bureau modelled income from one of the credit reference agencies to estimate Mr W's income. I've seen evidence of this check and I'm satisfied Audi did enough to gain an understanding of Mr W's likely income.*

*The credit check Audi undertook at the time of application showed Mr W had no defaults or County Court judgments. It further showed he had three open credit cards with a combined limit of £11,000 and a total outstanding balance of £8,729. Mr W managed these accounts well, with no missed or late payments. Audi also reviewed a previous agreement Mr W held with them until October 2021, with repayments of around £422 a month. Mr W had managed the agreement well, without any late or missed payments.*

*Mr W provided us with a copy of his credit report, which he obtained in January 2024. This showed Mr W had taken out a mortgage and two loans in the month before he applied for finance from Audi. Audi sent me a copy of the credit check they undertook. And this shows that, at the point of Mr W's application, the new agreements hadn't been reported and thus Audi couldn't have known about them unless Mr W told Audi about them.*

*Audi's application asked about Mr W's living situation, and he told them he lived with his parents and didn't pay rent. I asked Mr W for more details about his circumstances in July 2022. Mr W explained that he'd lived with his parents for around a month after he sold a previous property a few months earlier. He then moved into his new property, but as he didn't have proof of address, he said Audi advised to put 'living with parents' on his application form. It's not clear which entity Mr W refers to here – the credit intermediary is an Audi branded dealership, and Mr W would have completed the application form with them. I wasn't privy to the conversations that took place at the time of Mr W's application, so I can't say what Mr W was told about the address.*

*Importantly, Mr W hasn't said that he was advised not to include his housing costs, and so it's unclear why he didn't disclose the monthly mortgage repayment. And I'm*

*mindful that the application form Mr W completed also asks if he was aware of an imminent change to his circumstances which may affect the affordability of the agreement. Here, Mr W should have told Audi about the mortgage and the two loans he'd taken out. Overall, I think it was reasonable for Audi to rely on the answers Mr W gave and to conclude that Mr W had no housing costs.*

*Mr W said that he'd previously been declined by multiple other lenders, who had all asked for further information from him. It's important to note here that lenders are allowed to decide how they perform the checks required of them under CONC. Audi's process may be different to that of other lenders, but it doesn't automatically follow that they've made a mistake.*

*Overall, based on the information I currently hold, I'm inclined to say Audi's checks were proportionate in the circumstances of Mr W's application. I say this because there was nothing in the information they gathered that ought to have raised concern about Mr W's ability to repay the agreement in a sustainable manner. Once the credit commitments Audi found out about and the repayment under this agreement were met, Mr W would have been left with around £2,268 each month. Based on the information Mr W disclosed to Audi in his application, Audi could reasonably assume this amount would comfortably cover Mr W's committed expenditure.*

#### *Did Audi make a fair lending decision?*

*Having provisionally concluded that Audi's checks were proportionate. I've gone on to consider if Audi made a fair lending decision. Given what Audi was able to establish about Mr W's credit commitments and housing costs, and the income that Mr W would be left with after meeting his commitments, I'm inclined to say they made a fair lending decision.*

*I appreciate Mr W's actual financial position was significantly different to that set out above. I've seen evidence of his non-discretionary spending following his move into his own home. But I'm satisfied Audi asked Mr W pertinent questions about his circumstances, and I've seen nothing to suggest that Audi was alerted to Mr W's true position.*

*In summary, I'm satisfied that Audi could reasonably have considered that Mr W's income outweighed his existing credit commitments, the payments he'd have to make under this agreement and any committed expenditure, so I'm inclined to say Audi carried out proportionate checks and fairly decided to lend to Mr W.*

#### *Financial difficulties*

*I've considered Mr W's complaint about Audi's treatment of him when he first began struggling to make the repayments not long after the agreement commenced. He said Audi treated him like a criminal. And he's unhappy that collection agents showed up at his parents' home.*

*CONC requires firms to treat customers in financial difficulty with forbearance and due consideration, allowing them time and space to bring things back up to date. I've reviewed Audi's customer contact notes and the letters they sent to Mr W about his arrears and the termination of the agreement. Mr W said he didn't receive the letters. Audi provided us with copies, and I can see they're correctly addressed to the address Mr W provided Audi with at the time of his application. Mr W said Audi couldn't prove the letters were sent. But it's a regulatory requirement for Audi to send letters such as this. Furthermore, Audi's internal contact notes do show that letters were produced on certain dates. Overall, I'm persuaded that it's more likely than not*

*that the letters were sent. I can't reasonably hold Audi responsible if the letters weren't delivered.*

*I could see that Audi didn't call Mr W about his arrears until June 2023. But I'm mindful here that Mr W specifically requested that Audi don't call him. Since bringing the complaint to our service, Audi has offered Mr W £300 because they identified that they could have offered more support to some customers in arrears. Mr W said this is an admission of guilt, but I don't agree. The letter makes it clear Audi hadn't reviewed their interactions with all their customers but decided to contact all potentially affected customers to apologise. Even if I thought Audi hadn't done enough to support Mr W, I'm satisfied that a payment of £300 is sufficient to put things right.*

*Mr W said he felt Audi treated him like a criminal. I can see that Audi warned Mr W that they may need to end the agreement and collect the car. Given Mr W's level of arrears at that point I think it was reasonable for Audi to explain the possible consequences. I appreciate it would have been upsetting for Mr W to hear he might lose his car, but I think Audi's warning was appropriately worded. Mr W said he was particularly upset about collection agents turning up at his parents' home to collect the car. The collection agent is a separate entity and so Mr W should direct any concerns about their conduct to them. But I'll note here that the address Audi held on file for Mr W was that of his parents, and it therefore seems reasonable to assume that the car was kept at that address.*

*Although I don't intend to uphold Mr W's complaint, I'd like to remind Audi to treat Mr W with forbearance and due consideration when arranging for the collection of the car and while he repays the sum outstanding under the agreement.*

*Did Audi act unfairly in any other way?*

*I've also considered whether Audi acted unfairly or unreasonably in some other way given what Mr W has complained about, including whether their relationship with Mr W might have been unfair under s.140A Consumer Credit Act 1974.*

*However, for the reasons I've already given, I don't think Audi lent irresponsibly to Mr W or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here."*

Mr W replied and said he'd offered to pay off the arrears in October 2023 after he'd seen the letter saying Audi would terminate the agreement unless he made a payment or agreed a payment plan. He said Audi declined his offer and sent a termination letter the same day.

Mr W said he had no letters before the October 2023 letter and couldn't understand how Audi could say they sent these letters without proof. Mr W added that he'd hoped to sell the car privately as it would achieve more than at auction.

Audi didn't respond to my 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.

Having done so, my findings haven't changed from those set out in my provisional decision. I understand Mr W would like to see proof that the notice of sums in arrears (NOSIA) and

default letters were sent. Here, Audi's customer contact notes show the dates NOSIA and termination letters were generated. Those dates correspond with the dates on the letters. On balance, I'm satisfied the letters were sent as intended.

I'm also mindful that Audi tried to get in touch with Mr W in other ways. They called him four times between 6 June and 26 June 2023, and the contact notes show that voicemails requesting a call back were left each time. Audi also sent an email on 7 June 2023 and a text message asking for contact on 8 June 2023. So, while I appreciate Mr W says he's not received any of the letters Audi sent, I'm satisfied Audi tried to get in touch with Mr W in other ways. I'm also satisfied that it would have been reasonably clear why Audi were trying to get in touch with Mr W considering the contractual payments weren't being maintained.

Mr W said he contacted Audi in October 2023 to offer to clear the arrears. The contact notes show the call took place on 6 October 2023. The agreement had already been terminated at that point, and so it wasn't unreasonable for Audi to decline Mr W's offer. The call notes show Audi explained the agreement had been terminated and that this couldn't be reversed.

Mr W said he'd prefer selling the car privately to achieve a higher price than Audi might get at auction. I've thought about this carefully, however I have to acknowledge that Mr W doesn't own the car and therefore this isn't an option he can explore if Audi are now seeking to collect the vehicle. I understand Mr W is worried about the potential shortfall after the car has been sold and how he can repay the outstanding sum to Audi. As set out in my provisional decision, Audi is obliged to treat Mr W with forbearance and due consideration when it comes to the repayment. I'd encourage Mr W to engage with Audi to discuss a sensible repayment plan.

### **My final decision**

For the reasons set out above, I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 September 2024.

Anja Gill  
**Ombudsman**