

## **The complaint**

Miss C complains that Volkswagen Financial Services (UK) Limited (“VWFS”) lent to her irresponsibly and without carrying out proper affordability checks.

## **What happened**

In September 2017 VWFS granted Miss C a hire purchase (HP) agreement which was scheduled to be repaid at just over £385 per month for 47 months with a final payment of approximately £18,000 due in the 48<sup>th</sup> month to make Miss C the owner of the car she was buying. The account was ultimately settled in August 2020.

When assessing the application, VWFS estimated Miss C’s income using statistical data and carried out a credit check before approving the lending.

The investigator thought that VWFS shouldn’t have given Miss C this HP agreement, which it 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 Miss C 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 Miss C’s income using a statistical model, and carried out a credit check when considering her application. Like the investigator, I’m not satisfied that its checks went far enough.

VWFS estimated that Miss C's income was just over £1,900 per month. It does not appear to have confirmed that figure with Miss C, although there has been some lack of clarity about that. However, in its latest submissions, it has used the verb "*verified*" about its actions concerning Miss C's income, which I am satisfied is absolutely not accurate. It used a statistical technique to model – that is estimate – Miss C's income.

Alongside that, it was aware that she had a mortgage repayment of approximately £414 per month, and was considering providing her with this agreement, bringing a repayment of over £385 per month. Taken together, those repayments would represent over 40% of Miss C's estimated monthly income.

VWFS does not accept that its checks were insufficient. It had 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 Miss C had apparently no other unsecured debt; a positive credit history (including with VWFS itself, albeit for a significantly smaller monthly repayment); was a homeowner; and employed full time, and says that in aggregate they were:

*"...sufficient and proportionate data to rely on to indicate that, as a full time employed individual, [Miss C] could afford and sustain the Agreement."*

I agree that Miss C's circumstances did appear to be stable, and that she had an apparently unblemished credit record with no substantial debt burden.

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. Whilst VWFS's checks might arguably have supported the idea that Miss C represented a low risk to a potential lender, 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.

Ultimately, all VWFS knew about Miss C's income was what it had estimated, without any evidenced reference to her. And what it also knew was that, taking into account only her monthly mortgage repayment and the proposed repayment on this HP agreement, nearly half of that estimated income would have been needed to meet those two expenditures.

So that ought to have led it to conclude that there was a risk for her around affordability, and therefore that some further checks were needed, both in respect of her income and her expenditure.

*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 Miss C's financial position in a range of ways. It was under no obligation to review Miss C'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 Miss C's bank statements showed that her monthly income was on average just under £1,700, not the £1,900 estimated by VWFS. It accepts that. She also calculated that Miss C's disposable income significantly fluctuated and overall wasn't enough to sustain the repayment in question via this HP agreement. I would agree with that, but have also thought about the situation in a more holistic way, which I will go on to explain.

VWFS has been provided with the statements in question and highlights that they show that Miss C, "...*had access to savings and received payments from third parties in addition to her salary*".

Both of those points are accurate at face value. However, neither of them actually makes any difference to Miss C's overall financial position. Firstly, there are two savings accounts listed on the statements in question. However, whilst they fluctuate, the balances of them are often minimal, which is explained by the fact that Miss C seems to be reliant on withdrawing from them to pay bills. For example, during June 2017, she all but emptied one savings account, by transferring £1,400 out of it, and appears to have managed to stay in a small amount of credit on her current account as a result. An annual statement for her main savings account shows that she was drawing on it heavily and repeatedly until there was very little left.

We have asked about the 'payments from third parties'. Some individual but sizeable transactions appear to be both from *and to* the same third party. Meaning they ultimately have no impact on how much money Miss C had available to her. She has explained that there were also some occasional loans from friends, which she had to repay.

Both our investigator and VWFS have engaged with the detail of Miss C's expenses; whether she was in arrears with priority bills in 2017; and what her disposable income could fairly be judged to have been on average. However, I'm not convinced that is necessary here. I think ultimately what the statements show is that Miss C had no true disposable income on a monthly basis, because she obviously needed to use her overdraft facility. The facility represented nearly 70% of Miss C's monthly income. The extent of her use of it varies across the months, sometimes it is quite minimal, other times extensive within a week or so of Miss C being paid. But the fact that she was sometimes quite heavily overdrawn, despite the amounts she was withdrawing from her savings account, is of concern.

In the round, if VWFS had completed proportionate checks in this case, I cannot see how it could have concluded that Miss C would have been able to sustainably meet this level of repayment over the course of four years without borrowing elsewhere. It is clear from the statements that her average monthly expenditure was more than her average income. There are no apparent one-off, 'big ticket' items on the statements, and yet Miss C was having to effectively empty her savings, and at times use her overdraft, in order to make ends meet. 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.

### *Miss C's concerns about commission*

Miss C has also complained about the commission VWFS paid to her motor dealer. She says that this was not disclosed to her and that it must have increased the amount she had to pay under the agreement.

However, what I'm directing VWFS to do to put things right for Miss C effectively places her in the position she would now be in had her hire-purchase agreement never existed. I'm therefore satisfied that this unwinds the impact of any commission that VWFS might have paid to the motor dealer for introducing Miss C.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't make a difference to the overall outcome.

### **Putting things right**

In order to put things right for Miss C, VWFS must put her in the position where she has paid only the original cash price for the car, namely £35,750. Reflecting the fact that she paid a deposit of £3,795.93 in 2017, that means that VWFS needs to do the following:

- A) Refund any payments Miss C has made in excess of £31,954.07.
- B) Add 8% simple interest per year\* from the date of each overpayment to the date of settlement.
- C) Whilst I don't think there is any, it must remove any adverse information recorded on Miss C's credit file in relation to this HP agreement.

\*HM Revenue & Customs requires VWFS to deduct tax from this interest. It should give Miss C 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 Miss C to accept or reject my decision before 27 November 2024.

Siobhan McBride  
**Ombudsman**