

The complaint

Ms M complains that Volkswagen Financial Services (UK) Limited trading as Audi Financial Services was irresponsible when it provided her with a car finance agreement.

What happened

I issued a decision where I set out my provisional findings and gave both parties an opportunity to provide further comments and evidence before I make my final decision.

In my provisional decision, I set out a detailed background to this complaint and my reasons for being inclined to reach different conclusions from the investigator. My provisional decision should be read in conjunction with this decision.

The key parts of my provisional decision are below.

“Audi will be aware of all the rules, regulations and industry practice we consider when assessing complaints about irresponsible/unaffordable lending. We’ve set out our general approach to these types of complaints - including all of the relevant rules, guidance and good industry practice - on our website. So, I don’t think it is necessary to set it all out in this decision.

Audi hasn’t provided evidence of any checks it says it carried out. In its final response to Ms M, it says she declared she was employed and there was nothing within her credit file that was concerning. But it hasn’t provided Ms M’s application or the results of its credit search despite this service requesting this information. On that basis, I can’t conclude that it took reasonable steps to satisfy itself that Ms M could maintain the repayments on the credit it was providing to her throughout the term of this agreement. But the fact Audi didn’t conduct sufficient checks doesn’t mean it lent when Ms M couldn’t afford it.

Where a business hasn’t carried out sufficient checks, I need to think about what sufficient checks would likely have shown had it done so.

Ms M has provided copies of her bank statements and credit report from around the time of sale. In the absence of any evidence from Audi about its reasonable checks, I think it’s fair for me to rely on the information Ms M has provided to understand her circumstances at the time.

From the information Ms M provided, she did receive wages for plastering in December 2021 and January 2022, this was around £400 in December and around £200 in January. I can’t see she received this in February. Ms M also received benefits in the form of working/child tax credit and child benefits. The total benefits she received was around £1,110 per month.

I can see that a few days before this loan, Ms M took out a high-cost credit loan, she was also repaying at least two credit card accounts. The bank statements show Ms M was repaying around £500 on average on her credit card accounts.

I’ve also considered Ms M’s living expenses at the time and excluding food and transport; Ms M was spending around £416 on her living costs. I wasn’t able to identify a housing payment on Ms M’s bank statements, so I haven’t taken this into account. From the figures

of Ms M's income and identifiable expenses, I think it's clear she couldn't afford to afford a monthly repayment of £981.34.

I don't think Audi did take reasonable steps to carry out customer focussed checks to ensure its lending was compliant with relevant rules and regulations. Had it done so, I think it is likely to have found the agreement was unaffordable for Ms M.

In my opinion, Audi has provided credit when it shouldn't have, and it needs to put things right."

The time to respond has now passed and Audi hasn't provided a direct response to my provisional findings. Ms M has responded to say my decision referred to her deposit as £659.50 but she paid £4,628 – which was fund from a loan she took shortly before this car finance.

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 reconsidered all the available information and the response from both parties to my provisional decision and request for information, I haven't seen anything that persuades me to depart from my provisional findings.

Ms M sent copies of invoices showing the payment of £4,628 at the point of sale. I've asked for Audi's comments on the amount Ms M paid towards the deposit of the car that is the subject of this agreement.

Audi has provided evidence to show Ms M did pay £4,628 at the point of sale but most of that money went towards settling her previous car finance agreement. Only £659.50 of that money went towards this agreement and that represented the deposit Ms M paid towards the agreement.

I find this to be a reasonable explanation given Ms M did have a previous agreement and she needed to settle that first before taking on this new one.

Ultimately, I think Audi has lent to Ms M when it ought to have seen she couldn't afford it and it needs to put things right.

Putting things right

Ms M has now handed the car back to Audi and it has said there's an outstanding balance of £34,268.18. As I'm satisfied Ms M should never have been given the agreement, my starting point is that she should be put back in the position she would have been in had the agreement never been entered into.

I would typically direct a business to return a borrower's deposit plus interest, together with any payments that were made, in circumstances where an agreement is ended in this way. The lender is then entitled to deduct an amount from any refund to reflect the fact that the vehicle will have depreciated, and the borrower will have had the use of it for the period they had it.

So, I've considered what would be fair and reasonable for Audi to keep to account for Ms M's usage. There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Ms M's usage of the car and what sort of costs she might have incurred to stay mobile if he

didn't have this car.

In thinking about this, I've thought about the inspection report Audi has provided, which shows there was some repairs needed to the car, and the mileage when the car was returned.

Having done that, I think £750 is a fair amount Ms M should pay for each month she had the car. As Ms M had the car for about 12 months but she didn't maintain her payments throughout the period, Audi should work out the costs for that period based on Ms M paying £750 per month.

If there's still an outstanding balance, Audi should agree a suitable repayment plan with Ms M. However, if there are overpayments, these should be refunded to Ms M with 8% interest. Audi should also remove any adverse information about the agreement from Ms M's credit file.

My final decision

For the reasons given here and in my provisional decision, I uphold Ms M's complaint.

To put things right for Ms M Volkswagen Financial Services (UK) Limited trading as Audi Financial Services should do the following:

- Refund all the payments Ms M has made (including her deposit), less £750 per month for her fair use of the car.
- If there's an outstanding balance after doing above, Audi should agree a suitable repayment plan with Ms M. If there are overpayments Audi should add 8% simple interest per year to the payments from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on her credit file in relation to this agreement. If Audi considers tax should be deducted from the interest element of my award it should provide Ms M with a certificate showing how much it's taken off, so she can reclaim that amount if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 12 July 2024.

Oyetola Oduola
Ombudsman