

## **The complaint**

Ms A complains that Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (AFS) didn't sufficiently check when they agreed to lend to her as she couldn't sustain the repayments.

In bringing her complaint Ms A is represented by a third party. For ease of reading I will only refer to Ms A in my decision.

## **What happened**

In October 2019 Ms A acquired a car when she entered into a hire purchase agreement with AFS. The cash price of the car was £21,604.26, Ms A paid a deposit of £1,585 and after interest and charges were applied the total amount repayable was £25,629.54. This was to be repaid over 48 months by £285.98 a month with a final payment of £10,307.50.

Ms A said she struggled to make the repayments and if AFS had properly checked before entering into the agreement they would have seen she was financially vulnerable. She complained to AFS.

AFS said they'd made reasonable and proportionate checks to determine the affordability of the lending for Ms A. They said Ms A had ended the agreement early after a settlement from another business.

Ms A wasn't happy with AFS' response and referred her complaint to us.

Our investigator didn't agree that AFS had checked sufficiently. But after checking Ms A's financial situation at the time of the lending she didn't agree that AFS had acted unfairly in agreeing to lend to her.

Ms A didn't agree she said that the investigator shouldn't have considered some transactions as being an income. And without this the lending was unaffordable. She asked for an ombudsman to decide.

## **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.

I appreciate Ms A will be disappointed by my decision but having done so I'm not upholding this complaint. I'll explain why.

AFS needed to ensure that they didn't lend irresponsibly as per the rules set out in the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC). In practice, what this means is that AFS needed to carry out proportionate checks to be able to understand whether any lending was affordable for Ms A before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Ms A's complaint. These two questions are:

1. Did AFS complete reasonable and proportionate checks to satisfy themselves that Ms A would be able to repay her loan without experiencing significant adverse consequences?

a. If so, did they make a fair lending decision?

b. If not, would those checks have shown that Ms A would have been able to do so?

2. Did AFS act unfairly or unreasonably in some other way?

Repaying debt in a sustainable manner means Ms A being able to meet repayments without undue difficulty - using regular income, avoiding further borrowing to meet payments and making timely repayments over the life of the agreement.

CONC doesn't give a set list of checks that should be done. But that the level of detail that should be sought was dependent on the type of credit, the amount of credit being granted and the associated risk to the borrower relative to the borrower's financial situation. We take the view that a reasonable and proportionate check would usually need to be more thorough, the lower a consumer's income, the higher the amount due to be repaid, the longer the term of the loan and the greater the number and frequency of loans.

CONC 5.2A.15(2) says:

*"The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current income."*

And CONC 5.2A.16(3) says:

*"For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer)."*

I've considered the checks AFS made when assessing Ms A's income. From Ms A's application I can see she said she was a home owner in full time employment. I can see from AFS' records they checked Ms A's income with a credit reference agency (CRA).

CONC also says that a lender must take reasonable steps to establish a borrower's outgoings, this would be their non-discretionary spending and credit commitments. I can see AFS checked Ms A's credit file and found she'd a mortgage, two mail order accounts with credit limits of £5,000 and £1,500. And a finance agreement with a balance of £547. They also saw that Ms A's four active accounts were all being managed well and up to date. And there wasn't any financial vulnerability evident in the report. But I haven't seen any evidence that AFS looked to assess Ms A's day to day living costs other than her mortgage. And given Ms A was indebted to around £26,000 over four years I think AFS should have done more to establish Ms A's non-discretionary spending.

This doesn't automatically mean AFS shouldn't have lent to Ms A, as I need to consider whether these checks would have shown that the repayments were unaffordable to Ms A. I can't be sure exactly what AFS would have found out if they'd asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Ms A's bank statements.

I've considered Ms A's bank statements for the three months leading up to the lending being agreed. I can see Ms A was paid weekly either £265.63 or £265.83 a week. So for a

calendar month Ms A's income would have been around £1,151. Ms A has said she'd also non earned income that would average at £316 a month across July, August and September 2019.

I can see Ms A received a regular payment of £200 a month from a family member for rent. Ms A has said this stopped in 2020 but in reaching my decision I'm considering the affordability of the lending at the time it was taken out. I can see AFS also asked at the time of application whether Ms A was aware of any changes to her income and expenditure during the life of the agreement, to which she said she wasn't. I can also see Ms A received on average a further £75 each month from another relative but as this was more sporadic I've not taken this into account. So, I've considered Ms A as having a regular monthly income of around £1,351, rather than her available income of £1,426 or her declared earned and non-earned income of around £1,468.

From the credit check made by AFS there is evidence Ms A had a monthly mortgage repayment of £205, but I can't see any evidence of this payment being taken from her bank statements. Ms A's non-discretionary spending for food shopping, utilities, communications, media and credit commitments is around £838 including her mortgage. So, after factoring in the new lending of around £286 Ms A had a disposable income of around £227. But as identified by our investigator Ms A's outgoings didn't show other than a single payment of £20 for petrol, any transport costs.

But from Ms A's bank statements, I haven't seen any signs of financial vulnerability, no missed direct debts or overdraft fees. Her bank statements show her monthly outgoings never exceeded her monthly income. While I can see that Ms A on occasion gambled, I haven't seen any signs that these were of a compulsive nature. And if AFS had seen this information at the time of the lending I think they would have still agreed to lend to Ms A as she was managing her credit commitments and non-discretionary spending with sufficient income to sustain the repayments.

So although I'm not satisfied AFS carried out proportionate checks, I'm satisfied that if they had, they'd have been able to fairly decide to lend to Ms A. I appreciate Ms A has struggled to make the necessary repayments, but from what I've seen that's because of unforeseeable health issues that happened after she entered into the agreement rather than because the loan wasn't affordable for her at the time of the lending.

I've also considered whether AFS acted unfairly or unreasonably in some other way given what Ms A has complained about, including whether their relationship with her might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. But for the reasons I've already given, I don't think AFS lent irresponsibly to Ms A or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 9 October 2024.

Anne Scarr  
**Ombudsman**