

The complaint

Mr H complains that Volvo shouldn't have, on the grounds of affordability, lent to him, that the agreement was mis-sold to him and that the car supplied to him, under the agreement, was of unsatisfactory quality.

What happened

In January 2022 Mr H entered into a conditional sale agreement regulated by the Consumer Credit Act 1974 and a sales agency agreement with Volvo for a three year old car costing £24,000.00.

Under the terms of the conditional sale agreement, everything else being equal, Mr H was required to make an advance payment of £1,599.00 followed by 48 monthly payments of £328.18 and one payment of £11,311.50 making a total repayable of £28,663.14 at an APR of 6.9%.

The conditional sale agreement requires Mr H to make all of the above payments. However, it also allows Mr H to 'escape' liability for the final payment of £11,311.50 by appointing Volvo to sell the car on his behalf under the terms of a signed sales agency agreement.

Under the terms of the sales agency agreement Mr H agreed, amongst other things, to pay Volvo 14.9 pence plus VAT for each mile added to the odometer between 54,543 and 59,543 miles and 29.8 pence plus VAT for each mile added to the odometer in excess of 59,543 miles.

In March 2024 Mr H complained to our service that Volvo had lent to him irresponsibly, the agreement had been mis-sold to him and that the car supplied to him was of unsatisfactory quality.

Mr H's complaint was considered by one of our investigators who came to the view that it shouldn't be upheld. In summary he said:

- Volvo should have carried out further affordability checks before it lent to Mr H, but such checks wouldn't have, nor should they have, caused Volvo to conclude it shouldn't lend to Mr H
- he wasn't persuaded the agreement had been mis-sold to Mr H
- he was satisfied that all faults with the car that might have made it of unsatisfactory quality when first supplied to Mr H had been successfully repaired at no cost to Mr H
- the two most recent faults requiring repair were Mr H's responsibly and didn't make the car of unsatisfactory quality when first supplied to Mr H

Mr H didn't agree with the investigator's view so his complaint was passed to me for review and decision.

In January 2025 I issued a provisional decision on this case. In summary 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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

For ease I will address each complaint point Mr H has raised in turn.

unaffordable lending

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide this aspect of Mr H's complaint.

Volvo needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Volvo needed to carry out proportionate checks to be able to understand whether Mr H could make his payments in a sustainable manner before agreeing to lend to him. And if the checks Volvo carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Like the investigator I think Volvo ought to have done further checks into Mr H's financial position and personal circumstances to establish whether the lending it subsequently provided was affordable for him or not. It could have, for example, asked to see copies of Mr H's bank statements or asked him further questions about his expenditure. It wasn't required to ask for either of those things specifically, but they're nonetheless examples of things it could've done as part of a reasonable and proportionate checks.

I've reviewed Mr H's bank statements for the period October to December 2021. And having done so I'm satisfied that these show that a monthly payment of £328.18 was, in the light of Mr H's average income and average non-discretionary expenditure, affordable.

I would also add, and I appreciate Mr H disagrees, that I'm not persuaded that because he was (between October and December 2021) always overdrawn (between £100 and £1,950) wouldn't have been grounds in itself for Volvo not to lend to him.

In summary, and for all of the reasons explained above, I find that if Volvo had completed further and proportionate checks into whether or not this agreement was affordable for Mr H, it likely would have reached the same lending decision and the agreement would've gone ahead. I therefore don't find that the lending Volvo gave Mr H was unaffordable.

In reaching my conclusions, I've also considered whether the lending relationship between Volvo and Mr H might have been unfair to Mr H under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Volvo irresponsibly lent to Mr H or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that s140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this aspect of Mr H's complaint.

mis-sold agreement

Mr H says that it wasn't clearly explained to him that if, at the end of the agreement, he wanted to escape liability for the final payment of £11,311.50 selecting an allowable annual mileage of 9,000 (rather than say an annual mileage of 11,000) would incur a cost.

Now I can't say for certain what was discussed with Mr H, but equally I can't ignore the fact that he signed both agreements (conditional sale and sales agency). And having considered these agreements very carefully I'm satisfied that they make clear to Mr H the cost and potential cost of proceeding on an agreed annual mileage of 9,000. I also think it's worth pointing out that on signing the conditional sale agreement Mr H confirmed he had received a verbal explanation of what he was agreeing to including the features that might make the credit unsuitable for him.

So taking everything into account I'm simply not persuaded that the effect of selecting an annual allowable mileage of 9,000 was misrepresented to Mr H. So I'm not upholding this aspect of Mr H's complaint.

I note that following the investigator's view Mr H said that it was also not made clear to him that the conditional sale agreement APR was 6.9%. But I'm not persuaded by this submission given that the conditional sale agreement Mr H signed details 6.9% as the APR on page 1 under the heading 'costs information'. So I'm not upholding this aspect of Mr H's complaint.

quality

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should have been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Volvo is responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history.

The conditional sale agreement entered into by Mr H is a regulated one and this service is able to consider complaints relating to it. Volvo is also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

I can see that the car needed repairs in 2022. But given that that these were satisfactorily completed by the original supplying dealership at no cost to Mr H I'm satisfied that Volvo need do nothing further in respect of these repairs. So I'm not upholding this aspect of Mr H's complaint.

I note that in June 2024 the car required a new seat belt buckle to be supplied and fitted (due to the driver's seat buckle wire having snapped) at a cost to Mr H of £545.52.

Notwithstanding the above cost was incurred by Mr H after he had been in possession of the car for two and half years and after he had added 24,000 miles to the odometer I don't think that a seat belt, something which is critical to a car's safety, should fail after only five and half years and 41,793 miles. So with this in mind, given that it appears a number of cars manufactured by Volvo appear to have been subject to a safety recall due to problems with the front seat belt fastenings and given that a new seat belt was successfully supplied and fitted to the car I think that it's only fair that Volvo refund to Mr H the sum he paid of £545.52 for the supply and fit of a new driver's seat belt buckle together with interest.

Mr H submits that it has just been identified that a front shock absorber on the car needs replacing. I accept this might be frustrating for Mr H but given the car's current age and mileage and the life expectancy of shock absorbers I'm satisfied that this need is as a result of wear and tear, rather than as a result of the car being of unsatisfactory quality at the time of supply. So I'm satisfied that Volvo need do nothing further in respect of this repair. So I'm not upholding this aspect of Mr H's complaint.

Volvo responded to my provisional findings to say it accepted them.

Mr H responded to my provisional findings to repeat why he believed Volvo had acted irresponsibly in agreeing to lend to him and to reiterate it hadn't been clearly explained to him the consequences of opting for an allowable mileage of 9,000 rather than a higher one.

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 don't underestimate Mr H's strength of feeling but he has submitted nothing in response to my provisional findings that would lead me to conclude that I should depart from them.

I accept that Mr H may have only been overdrawn as little as £100 for very short periods of time and more often than not he was overdrawn in excess of £1,000. But I took this fact into account when concluding that Volvo had not lent to him irresponsibly.

I would like to reiterate that I accept I can't say for certain what was discussed with Mr H about the consequences of selecting an allowable annual mileage of 9,000 rather than a higher one. But given what Mr H signed and agreed to I'm afraid that on the balance of probabilities I can't fairly and reasonably conclude that the effect of selecting an annual allowable mileage of 9,000 was misrepresented to Mr H.

So given what I say above and given that Volvo has accepted my provisional findings I can confirm I see no reason to depart from those findings and I now confirm them as final.

My final decision

My final decision is that Volvo Car Financial Services UK Limited must:

- refund to Mr H the sum he paid of £545.52 for the supply and fit of a new driver's seat belt buckle
- pay Mr H interest on the above refund of £545.52 at 8% a year simple from the date of payment to the date of settlement*

**HMRC requires Volvo Car Financial Services UK Limited Services to take off tax from this interest. If Mr H asks for a certificate showing how much tax has been taken off this should be provided.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 February 2025.

Peter Cook
Ombudsman