

The complaint

Miss J complains that Volkswagen Financial Services (UK) Limited ('VWFS') irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

What happened

In May 2017 Miss J acquired a used car financed by a hire purchase agreement from VWFS. Miss J was required to make 48 monthly repayments of £147.26. She paid a deposit of £550 - £450 of that being the part-exchange value on her previous car. The total repayable under the agreement was £11,430.58.

Miss J says she struggled to meet the repayments from soon after the agreement started. This led to her taking on more borrowing and she had to get help from a debt management charity. Her debt worries also had an impact on her health. In May 2021 Miss J was turned down when she applied to refinance the final balloon payment payable under the agreement. She had to obtain finance to do this elsewhere.

In January 2024, Miss J complained to VWFS that it agreed to provide her with finance under the terms of the agreement without carrying out reasonable and proportionate checks to ensure the finance would be affordable. As a result, she says it worsened her overall financial situation.

VWFS doesn't agree, saying that it carried out checks that included credit and affordability checks before agreeing to provide the finance by way of its auto-approval process. Miss J therefore brought her complaint to this service.

The investigator handling the complaint at the time agreed that, looking purely at the complaint as being about the lending decisions, it would be out of time under the time limit rules we must apply. But she thought Miss J's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140) which is in time under the rules. But having considered the merits of the complaint, there was enough to make an uphold finding.

As Miss J doesn't agree, her complaint has therefore been passed to me for a final decision.

For the avoidance of doubt, in this decision I am looking only at the question of whether or not VWFS made a fair lending decision when it agreed to her application for finance. I am not considering any other elements, such as commission miss-selling.

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.

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

There are time limits for referring a complaint to the Financial Ombudsman Service, and our investigator thinks part of this complaint was referred to us too late because the decision to provide finance took place more than six years ago and Miss J had sought debt help in late 2017, so was reasonably aware of being able to complain. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Miss J's complaint and given the reasons for this (which I'll go on to explain), whether Miss J referred her complaint about the decision to agree credit happened more than six years ago in time or not has no impact on that outcome. Like the investigator, I think Miss J's complaint should be considered more broadly than just the decision to provide the finance, given that she has complained not just about the decision to lend but also the impact this had on her over the course of her relationship with VWFS. Miss J's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with VWFS.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Miss J's complaint can be reasonably interpreted as being about the fairness of her relationship with VWFS, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (VWFS) and the debtor (Miss J), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of their rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Miss J has complained about, I therefore need to think about whether VWFS's decision to lend to Miss J or its later actions created unfairness in the relationship between her and VWFS, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss J's relationship with VWFS is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I will therefore first look at the checks VWFS carried out. I'll then move on to look at what reasonable and proportionate checks would have shown.

Did VWFS carry out reasonable and proportionate checks to satisfy itself that Miss J was in a position to sustainably meet the repayments that were due under the agreement?

When assessing affordability, there isn't a set list of checks that VWFS needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and the period of time over which Miss J would need to make repayments.

When applying for the finance, Miss J gave details of her occupation and residential status – although the way the information was recorded suggested that Miss J had been living rent-free for 9 years, which seems unlikely. VWFS also checked her income through a credit reference service and found this to be around £1,750. VWFS also completed a credit check in order to find out more about any other debt she had at the time. This showed she had seven active credit accounts with no record of missed payments or other adverse recent markings on her credit file.

VWFS didn't ask Miss J about her expenditure, which would've helped to gain a better idea of what her regular living expenses were. Without knowing what Miss J's regular committed expenditure each month was, VWFS wouldn't have got a wider understanding of whether the agreement was affordable or not. I think that's a particular concern given that VWFS used a credit reference check to check her monthly income. I've also kept in mind that Miss J was taking on a significant financial commitment for the next four years. So VWFS needed to be assured that she could repay it sustainably.

I therefore think it would have been proportionate for VWFS to have got a more thorough understanding of Miss J's financial circumstances before lending to her. That means it should have done more than it did.

What would reasonable and proportionate checks have shown at the time? Did VWFS reach a fair decision to lend?

So I next need to consider what better checks would likely have shown.

I can't be certain what Miss J would have told VWFS had it asked about her regular expenditure. To help, I've reviewed some bank statements Miss J sent us from the period before she made the application. These are not as comprehensive as I would have liked as they do not represent three complete months of banking transactions. But I can see that in February 2017 Miss J earned net income of around £1,800 but in March 2017 this was much lower, at just over £1,100. Miss J says VWFS was wrong to based its offer on an income of around £1,750. I am not disputing that the exact figures may vary, but the evidence of the two months of income I've seen suggests at the very least that Miss J's regular earned income was variable.

I've also seen that Miss J was making constant use of her overdraft facility. I think that's an area of concern, given that she was using it to its full extent and her monthly pay alone wouldn't be enough to clear that. But I don't consider that alone means VWFS would have had reason to reconsider lending to her.

From what I've seen, Miss J was also paying rent of £290 each month, utilities of around £70, car insurance of around £103 and payments to other credit of around £310. That suggests, that with a variable level of income Miss J may in some months possibly have found herself financially stretched and having to exercise care in allocating her spending. But I have to weigh that up against the fact that Miss J regarded having a car as a necessity for work purposes. And the level of monthly repayment suggests that Miss J was likely to be able to afford it alongside her committed monthly expenditure and was able to continue repaying it sustainably going forwards.

Did VWFS act unfairly or unreasonably in any other way?

Miss J told us she had to take out further borrowing to ensure she'd be able to meet the monthly repayments. She also found it necessary to set up a debt management plan in late 2017. Miss J had emphasised that it was important for her to keep the car as she needed it to get to and from work. But I agree with our investigator that there's insufficient evidence of her taking steps to make VWFS aware of any payment issues she was having. On that basis I am unable to make a finding that VWFS ought to have done more to support her when she was having payment difficulties.

So, taking everything into consideration, I'm broadly in agreement with our investigator. I'm therefore not persuaded that VWFS acted unfairly in approving the finance. I can't say with enough certainty that had VWFS carried out better checks, it's likely it would have been persuaded that Miss J was in financial difficulty or that there was a real risk that her financial welfare would deteriorate.

To summarise, taking all the information and evidence I've seen into account, I don't consider there is enough to show that the agreement may have been unaffordable for Miss J. It's not clear enough to me that VWFS created unfairness in its relationship with Miss J by lending to her irresponsibly. And I don't find VWFS treated Miss J unfairly in any other way either based on what I've seen.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 24 April 2025.

Michael Goldberg
Ombudsman