

Complaint

Miss G complains that Volkswagen Financial Services UK Limited (trading as “Audi” Financial Services) unfairly entered into a hire-purchase agreement with her. She’s said the agreement was unaffordable and so she shouldn’t have been accepted for it.

Miss G is being represented by a Claims Management Company (“CMC”) in her complaint.

Background

In August 2019, Audi provided Miss G with finance for a brand-new car. The cash price of the vehicle was £44,438.15. Miss G made an advance payment of £1,513.59 and entered into a 48-month hire-purchase agreement with Audi to cover the remaining £42,924.56.

The loan had interest, fees and total charges of £8,494.40 (made up of interest of £8,484.40 and an option to purchase fee of £10). So the balance to be repaid of £51,418.96 (which does not include Miss G’s advance payment) was due to be repaid in 48 monthly instalments of £643.52 followed by an optional final payment of £20,530.00 which Miss G needed to pay if she wanted to keep the car.

Miss G’s complaint was considered by one of our investigators. He didn’t think that Audi had done anything wrong or treated Miss G unfairly. So he didn’t recommend that Miss G’s complaint should be upheld. The representative, on Miss G’s behalf, disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

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 irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss G’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss G’s complaint. I’d like to explain why in a little more detail.

Audi needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Audi needed to carry out proportionate checks to be able to understand whether Miss G could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Audi 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.

Audi says it agreed to this application after it completed an income and expenditure assessment on Miss G. During this assessment, Miss G provided details of her employer and how long she'd been employed for. Audi says it also carried out credit searches on Miss G which showed some well-maintained existing credit accounts with limited outstanding balances. In its view when the amount reasonable repayments to the amount Miss G already owed, plus a reasonable amount for Miss G's living expenses were deducted from her monthly income the monthly repayments for this agreement were affordable.

On the other hand, the CMC says that Miss G couldn't afford the payments on this agreement. I've carefully considered what the parties have said.

The first thing for me to say is that Audi has provided a record of the results of its credit searches. Audi searches appear to show that Miss G didn't have any adverse credit information recorded against her and while she had some active credit commitments these had been well maintained. Furthermore, what Miss G owed was low.

However, I do think that it would have been prudent for Audi to have considered what Miss G's actual income was, rather than simply relying on an indicative amount based on her employment details. That said, having looked at the information provided on Miss G's income, it appears as though she was earning roughly around the amount Audi believed. So it seems to me that Audi taking further steps to ascertain Miss G's actual income won't have resulted in it making a different decision in this instance.

The CMC has said that it has reviewed Miss G's bank statements and as she was using an overdraft it is therefore clear that she couldn't sustainably make her payments. I've thought about what the CMC has said. The first thing for me to say is that Audi wasn't required to review Miss G's bank statements. So while the CMC has chosen to this, it doesn't mean that Audi was aware of what it has referred to, or even that it ought to have been aware of this.

Equally, while Miss G might have been using his overdraft there isn't an automatic prohibition to lending to a prospective borrower who has used (or is using an overdraft) in the way that the CMC's arguments suggest it believes to be the case. If Miss G is unhappy at the way that she was allowed to use her overdraft, then this is a matter she needs to take up with her bank rather than Audi.

Indeed, I need to consider the CMC's (and Miss G's) comments now in the context that they are being made in support of a claim for compensation, rather than an attempt to persuade a lender to provide funds for a vehicle, which Miss G's submissions at the time would have been concerned with. In these circumstances, I think it unlikely and less likely than not that Miss G would have said the monthly payments were unaffordable.

I accept that it's possible Miss G's circumstances may not be fully reflected in either the information she provided to Audi or the information it obtained. However, at the absolute most it could be argued that Audi ought to have found out more about Miss G's living costs (as well as her income) rather than relying on what Miss G said about living at home with parents. But I can't see that Miss G's living expenses made the monthly payments unaffordable either.

I have thought about what Miss G has said about the monthly repayments being significantly higher than indicated during the sales process. I don't know what Miss G was told about the

monthly payments by the dealer at the time of the sale. However, the information regarding the monthly payments that I set in the background section of this final decision is taken directly from the credit agreement Miss G signed.

The funds were only released to Miss G's motor dealer after she signed the agreement and agreed to be bound by its terms. So I think that Miss G was notified of the monthly payments before she entered into the agreement. And it while she might now consider the cost to be high, I can only presume that Miss G found these terms acceptable and that is why she chose to proceed with the agreement.

I see that Miss G did have difficulty making her payments once the pandemic started. And bearing in mind Miss G's employment, I can understand how significantly she was likely to be affected. But I don't think that Audi could have anticipated that this would happen and it also looks as though Miss G was given time to make up the arrears that had accrued on the agreement.

In reaching my conclusions, I've also considered whether the lending relationship between Audi and Miss G might have been unfair to Miss G under section 140A of the Consumer Credit Act 1974 ("CCA"). However, for the reasons I've explained, I don't think Audi irresponsibly lent to Miss G or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So overall and having carefully considered everything, while there is an argument for saying that Audi's checks before entering into this hire-purchase agreement with Miss G didn't go far enough, I've not been persuaded that doing more would have prevented Audi from providing these funds, or entering into this agreement with her. I'm therefore not upholding this complaint.

I appreciate that this will be disappointing for Miss G. But I hope she'll understand the reasons for my decision and at least consider that her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 21 April 2025.

Jeshen Narayanan
Ombudsman