

Complaint

Mrs C 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.

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

Background

In June 2017, Audi provided Mrs C with finance for a brand-new car. The cash price of the vehicle was £41,503.00. Mrs C paid a deposit of £3,270.00 (£1,750.00 of which was made up by a part exchange credit) and entered into a 48-month hire-purchase agreement with Audi to cover the remaining £38,233.00.

The loan had interest, fees and total charges of £4,033.03 (made up of interest of £4,023.03 and an option to purchase fee of £10). So the balance to be repaid of £45,336.03 (not including Mrs C’s deposit) was due to be repaid in 47 monthly instalments of £503.24 followed by an optional final monthly payment of £21,873.75 which Mrs C needed to repay if she wished to keep the car.

Mrs C’s complaint was considered by one of our investigators. She eventually reached the conclusion that Audi hadn’t done anything wrong or treated Mrs C unfairly. So she didn’t recommend that Mrs C’s complaint should be upheld. The CMC, on Mrs C’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 Mrs C’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mrs C’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 Mrs C 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 Mrs C's application after it completed an income and expenditure assessment on her. During this assessment, Mrs C provided details of her employer and how long she had been employed for. Audi says it also carried out credit searches on Mrs C which showed some well-maintained existing credit accounts with outstanding balances.

In its view when the amount reasonable repayments to the amount Mrs C already owed, plus a reasonable amount for Mrs C's living expenses were deducted from what it believed her monthly income to be, the monthly repayments for this agreement were affordable.

On the other hand, Mrs C and the CMC say that Audi included her then partner's (now her husband) income in its assessment and the payments were never affordable on her income alone. The CMC has also said that as Mrs C was not yet married to her husband and so Audi had no reason to believe that the car was a joint expense. 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 Mrs C had some existing credit commitments but that these were relatively well maintained. Nonetheless, given the amount of the monthly payments and the length of the agreement, I would have expected Audi to have had some idea of Mrs C's normal monthly living expenses and combined this with what it knew about her credit commitments, before agreeing to lend to her.

As I can't see that Audi had this information, I'm not persuaded that the checks it carried out before agreeing to lend to Mrs C were proportionate. As Audi didn't carry out sufficient checks, I've gone on to decide what I think it is more likely than not to have seen had it obtained further information from Mrs C.

While I've looked at the bank statements Mrs C has provided in order to do this, I've done this because I'm having to retrospectively determine what a proportionate check is likely to have looked like a number of years after this should have been done. And bank statements have all the information I now need to do this. However, I wish to make it clear that Audi was not required to review Mrs C's bank statements.

In any event, the bank statements provided do appear to show that when Mrs C's committed regular living expenses and existing credit commitments are deducted from the funds going into her account, there were sufficient funds left over, at the time at least, for her to sustainably make the repayments due under this agreement.

I appreciate what Mrs C and the CMC has said about bank account receiving and Audi's assessment also including her now husband's income. The CMC and Mrs C both say that this was a sole application and therefore should have been calculated on her sole income. However, this was a hire-purchase agreement for a car, rather than a fixed-sum agreement for cash funds. I think that it is important to note that cars are often sold as purchases for the household and agreements are typically, but not always, in sole names as there can only be one registered keeper of a car.

Having considered everything, I think it was always the intention for this car to be for Mrs C's household to use and I don't think that it is unreasonable to factor in her now husband's income as a result. I say this for a number of reasons. In the first instance, I think that Mrs C

must have known that this her now husband's income was going to be used in this way at the time, as she must have been asked about her now husband's income for Audi to have known what it was.

The CMC says that as Mrs C hadn't yet married her now husband there was no intention for this to be a joint asset. However, I've seen a record of the contact notes Audi has regarding Mrs C's finance agreement. And these notes show that it received a call from someone it believed to be Mrs C's husband, asking for the hire purchase agreement to be transferred to him. This would suggest that Mrs C's husband was using the car too. I also don't rule out the possibility that the intention from the outset was for the finance to be transferred at some point not long afterwards.

Furthermore, I don't think the fact the fact that Mrs C had not as yet married her husband means that there was never any intention of both Mrs C and her husband using the car. Indeed, I find the CMC's argument on this somewhat bizarre as there wasn't a need for Mrs C to have been married to her husband for this to be the car – especially as their joint finances appear to have been intertwined at this stage already.

In any event, as I've explained, I'm satisfied that Mrs C was being provided with an asset that was likely to benefit her household, rather than just her. In these circumstances, even if Mrs C's now husband's income shouldn't have directly been included as her income, it's not unreasonable to conclude that his contribution to the family expenditure could flex up and down where necessary to take into account the payments she would now be responsible for as a result of this agreement. This is particularly as the income for the whole household as well as the household expenditure appear to have been going out of Mrs C's sole bank account.

I also have to keep in mind that Mrs C's most recent submissions are being made in support of a claim for compensation. And, at the time at least, Mrs C wanted the car that she had chosen. I therefore think that any explanations Mrs C would have provided at the time are more likely to have been with a view to persuading Audi to lend, rather than highlighting any unaffordability. Although I do accept that Mrs C may well have felt differently about this matter when she was told about the impact the amount she owed was having on her ability to obtain a new mortgage.

I accept that Mrs C's circumstances changed significantly at the onset of the pandemic and that as her husband was self-employed, he wasn't able to work. However, the pandemic was not only unexpected it was an unprecedented event. While I sympathise with any difficulties that Mrs C and her family may have gone on to have as a result of the pandemic, I don't think that Audi could reasonably be expected to have anticipated this or the impact it would have on her household finances.

For the sake of completeness, I would also add that I've noted that Mrs C has referred to being unhappy with what she was offered for the car at the time she attempted to trade it in. However, it is Mrs C's motor dealer that would have offered her a trade in price for the car, not Audi. And if this is a matter that Mrs C remains dissatisfied with, it is something that she'll need to take up with the motor dealer, rather than Audi.

In reaching my conclusions, I've also considered whether the lending relationship between Audi and Mrs C might have been unfair to Mrs C 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 Mrs C 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 Mrs C didn't go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented Audi from providing these funds, or entering into this agreement with her.

I appreciate that this will be disappointing for Mrs C. 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 Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 18 April 2025.

Jeshen Narayanan
Ombudsman