

The complaint

Mr B says Volkswagen Financial Services (UK) Limited ('VWFS'), irresponsibly lent to him. He says it didn't take reasonable steps to ensure he could afford the repayments towards a hire purchase agreement to purchase a car.

Mr B's complaint has been brought by a representative, although I can see that Mr B has been actively corresponding about this complaint himself as well. I've referred to Mr B and the representatives' comments as being from Mr B for ease of reading.

What happened

This complaint is about a personal contract purchase agreement that Mr B took out to purchase a car in April 2017. The vehicle and accessories had a retail price of £65,957. Mr B paid a £2,000 deposit meaning £63,957 was financed. The agreement was to be repaid through 48 monthly instalments, there were 47 monthly repayments of £1,074.36 and then a final instalment of £27,740. If Mr B made the repayments in line with the credit agreement, he would need to repay a total of £78,234.92. Mr B settled the agreement in November 2020.

Mr B complained to VWFS saying he was mis-sold the agreement as it was unaffordable. He says the checks were not proportionate to the amount of lending and this put him at a significant disadvantage.

Mr B has also complained about the amount of commission that was payable to the broker as part of the agreement. This part of his complaint will be considered separately and I'm not looking at this here.

VWFS considered this complaint, and it didn't uphold it. It thought there was no evidence to suggest that adequate checks were not completed. The checks that were made showed that Mr B could afford the lending. Mr B didn't agree with this and brought his complaint to the Financial Ombudsman Service.

Our Investigator upheld Mr B's complaint. He thought the loan shouldn't have been approved as VWFS didn't do proportionate checks. And if it had made proportionate checks it would have seen that the loan wasn't affordable. This was because Mr B already had a significant amount of debt, and he wasn't likely to be able to afford the new lending.

VWFS didn't agree with the Investigator. It said that:

- Mr B confirmed he was employed as a director at the time of sale and not retired. He received income from his pension and payments from his directorship.
- It didn't think it would have been proportionate to have investigated Mr B's expenditure, even considering the amount lent.
- It took account of his mortgage payment and used statistical methods for the remainder of his expenditures.
- It lent within the FCA's guidance and rules at the time. It based its creditworthiness assessment on sufficient information.

- It's lending policies and systems were robust and have been shown to be effective.

Because VWFS didn't agree, this matter has been passed to me to make a final decision.

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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider when deciding what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did VWFS complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the credit in a sustainable way?
 - a. if so, did VWFS make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Mr B could sustainably repay the borrowing?
2. Did VWFS act unfairly or unreasonably in some other way?

And, if I determine that VWFS didn't act fairly and reasonably when considering Mr B's application, I'll also consider what I think is a fair way to put things right.

Did VWFS complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration, and payments of the finance being applied for, as well as the borrowers' personal circumstances at the time of each application.

VWFS have explained that they looked at some information Mr B had provided, and it also looked at what was on his credit file. It has said that this showed it that Mr B:

- Was a homeowner with a mortgage amount of £361 per month.
- Had an existing car finance agreement with VWFS to which he was paying £356 per month. He had not missed any payments or had affordability issues with this account.
- He had 13 settled accounts with only one missed payment in the last six years.
- There were no defaults, or more serious indicators of credit problems.

It's not clear if VWFS asked Mr B what his income was, but it said that the credit reference agency had estimated his net monthly income was £5,145 per month. Mr B indicated that he was a director of a company when he applied for the loan.

VWFS then went on to check Mr B's credit file and said it applied a series of calculations to ensure Mr B could afford the lending. VWFS said that it also took into account the debts that he had. These were his mortgage repayments and an existing finance agreement. And what he would pay to his other creditors which was mainly credit card, or similar, borrowing.

VWFS then used statistical data from the Office of National Statistics ('ONS') to estimate his other expenditures. After it had done this it thought that the lending was affordable for him. It said that Mr B passed all these assessments and was approved for the loan without further underwriting or investigation.

But Mr B was borrowing a significant amount, and he was committing to make payments over four years. And Mr B was either at, or very close to, retirement. And he did have a significant amount of other debt above his mortgage. So, I think it would have been important for VWFS to ensure that he could afford the repayments to the new loan.

So, I think it would have been proportionate to have asked more questions about Mr B's income and expenditure rather than, in the main, relying on information obtained from the credit reference agencies and statistical information. Even though this can be appropriate in some circumstances, and is allowed under the regulator's rules and guidance, I think VWFS should have done more here.

So, I'm not persuaded that the checks VWFS did were reasonable and proportionate. I think VWFS could have checked in more detail that this further lending wasn't likely to cause Mr B a problem going forward.

Would reasonable and proportionate checks have shown that Mr B would be able to repay the credit in a sustainable way?

I've gone on to consider what VWFS would likely have found had reasonable and proportionate checks been carried out.

Mr B has also provided copies of his bank statements for the period up to the lending. While I wouldn't have expected VWFS to have asked Mr B for copies of these, I'm satisfied that these statements would give a good indication of what VWFS would likely have taken into consideration had it asked Mr B to verify, or provide more information about, his income and committed expenditure during that specific period.

Mr B has also provided some other information and commentary and VWFS has provided the information it relied on to assess the lending. I'm not going to detail all of what I've seen as all parties to the complaint are aware of it. But a summary of some of the important information is that:

- Mr B was 65 at the time the finance was arranged, he lived with his wife who he says wasn't in receipt of an income.
- Mr B's income was £3,868 per month and this was from pensions in payment.
- His average monthly expenditure in the few months before the loan was agreed was over £5,000.
- Mr B was making some payments to his wife's credit agreements.
- He was overpaying his credit commitments to try and lower his overall indebtedness.
- He was overdrawn by a significant amount each month, often somewhere between £5,000 to £10,000.

Mr B was still a director of a company, but I can't see regular payments from this. Mr B did receive one payment, but he said this was a refund for money spent towards the business. But I've not seen any evidence that he earned a significant regular income from this or other sources. I think Mr B was largely retired and received an income from his pensions.

In respect of his existing credit:

- Mr B had 15 active credit accounts. He had missed three payments to these, but this was a long time in the past.
- Mr B owed around £29,000 to several credit cards, and similar revolving credit arrangements such as store cards.

- He also had other credit balances of about £213,000 which consisted of a mortgage, a communications contract and a hire purchase agreement. The combined monthly repayments for these were about £750 a month.

So, I think Mr B's situation was complex, but I think it's reasonable to say that it was precarious.

On the one hand he did have a good repayment record to his existing credit, and he clearly had a track record of managing his debt. And he was in receipt of a reasonable income. Mr B was also paying more to his credit and store cards each month than he needed to in order to bring the balances down on these. This is a positive indication of his ability to repay his credit.

But there were signs of problems. Mr B was currently spending more than he had coming in, and he was very overdrawn. It's not entirely clear, but even if Mr B was repaying his card based borrowing, this may have been at the expense of his overdraft.

Mr B's bank statements show that he received a lump sum of £5,000 and he says this was money he borrowed from a friend to repay his credit. And he had received around £7,500 from the sale of some shares. Again, he says he did this to enable him to repay his credit.

He says that some other monies that he transferred into the account were savings they had put aside for their grandchildren. I think these factors indicate to me Mr B wasn't repaying his existing lending sustainably, as he borrowing from other sources, to do this.

But I think the most important factor here is the level of indebtedness Mr B had when considered alongside his time of life. After the finance was agreed Mr B would owe over £320,000. And assuming he needed to pay 3% of his card balances each month, he would need to pay about £2,700 a month just to cover his credit repayments. His regular income was about £3,800 a month so I think this is far too high, given what I know about his other expenditures.

Added to this Mr B was aged 65 and he was in receipt of his pensions. So, his income would be fixed and his ability to earn or receive more to absorb any unforeseen expenditures would be limited.

I think these factors make it unlikely that Mr B would be able to sustainably repay the new loan. And VWFS would have seen this if it had made proportionate checks and so it now needs to put things right.

Did VWFS act unfairly or unreasonably in some other way?

I've thought about whether considering this complaint more broadly as being about an unfair relationship under Section 140A of the Consumer Credit Act 1974 would lead to a different outcome. But even if it could (and should) reasonably be interpreted in that way I'm satisfied this wouldn't affect the outcome in this particular case.

Finally, I haven't seen anything to make me think VWFS acted unfairly or unreasonably in some other way.

Putting things right

Mr B made use of the credit facility VWFS provided, and he purchased a car with this. So, it's fair that he pays the car price. However, as VWFS shouldn't have approved his loan

application. So, I don't think it's fair that he should pay any interest and charges. VWFS should refund these, with interest.

VWFS should:

- Refund anything Mr B paid above the cash price of the car of £63,957.
- Apply 8% simple yearly interest on the refund, calculated from the date Mr B made the overpayments to the date of the refund[†].
- Remove all adverse entries relating to this agreement from Mr B's credit file.

[†]If HM Revenue & Customs requires VWFS to take off tax from this interest. VWFS must give Mr B a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons I've explained, I uphold Mr B's complaint.

Volkswagen Financial Services (UK) Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 June 2025.

Andy Burlinson
Ombudsman