

## **Complaint**

Mrs N complains that Volkswagen Financial Services UK Limited (trading as “Audi” Finance) 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. She also says that she failed to receive appropriate forbearance once she fell into financial difficulty.

## **Background**

Mrs N complained about the possible effect of the commission arrangements that may have been in place between Audi and the motor dealer the car was purchased from, at the time of the sale. However, we’ve explained that we will be looking at Mrs N’s complaint about commission separately. Therefore, this decision is solely looking into the complaint Mrs N has made about the affordability of hire-purchase agreement and Audi’s actions when she fell into financial difficulty.

In July 2019, Audi provided Mrs N with finance for a brand-new car. The cash price of the vehicle was £50,085.00. Mrs N made an Advance Payment of £4,500.00 (of which £4,000.00 was made up from a deposit contribution and Mrs N paid a cash payment of £500) and entered into a 49-month hire-purchase agreement with Audi to cover the remaining £45,585.00.

The loan had interest, fees and total charges of £6,433.76 (made up of interest of £6,423.76 and an option to purchase fee of £10). So the balance to be repaid of £52,028.76 (which does not include Mrs N’s advance payment) was due to be repaid in 48 monthly instalments of £666.12 followed by an optional final monthly payment of £20,055.00.

In July 2022, Mrs N complained saying that the agreement was unaffordable for her and that she struggled to make her payments. Audi didn’t uphold Mrs N’s complaint. As Mrs N remained dissatisfied she referred her complaint to our service.

Mrs N’s complaint was considered by one of our investigators. He didn’t think that Audi had done anything wrong or treated Mrs N unfairly. So he didn’t recommend that Mrs N’s complaint should be upheld. Mrs N 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.

### *Preliminary matters*

I note that Mrs N has referred to Audi having been fined by the regulator in support of her complaint. I appreciate that the Financial Conduct Authority (“FCA”) issued a Final Notice, on 21 October 2024, where it fined Audi for failing to treat some of its customers unfairly when they were experiencing financial difficulty and failed to identify some instances of complaints

and treat them as such. Given Mrs N's complaint, I can also understand why she considers that the findings in the Final Notice support her case.

However, I'm mindful that the Final Notice does not state that all customers in arrears were treated unfairly. It also states that the affected customers have already been identified and the vast majority of these customers have already been compensated. So if Mrs N was an affected customer, she would have been contacted. Equally, it's also worth noting that Audi has treated Mrs N's concerns as a formal complaint. So the fact that some, but not all, customers in arrears were treated unfairly, doesn't automatically mean that Mrs N's complaint should be upheld because she has had arrears on her agreement.

Furthermore, when determining a complaint, my role is to look at the facts of that complaint and decide whether a customer was treated unfairly and if I decide that they were compensating that customer for any loss they may have experienced. Therefore, while I can understand why Mrs N believes the Final Notice to be determinative in her case, I've kept my consideration to Audi's actions in its dealing with her, rather than what may or may not have happened in its dealing with other customers.

I also want to reassure Mrs N that I've read and considered everything she's said. Where I haven't commented on a specific issue he has referred to, or a comment that she may have made, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I'm satisfied that I don't need to do so in order to reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

*Did Audi act fairly and reasonably in its dealing with Mrs N?*

I've started my consideration of Mrs N's complaint by looking at whether Audi acted fairly and reasonably towards Mrs N when deciding whether to lend to her.

*Our general approach to complaints about irresponsible and 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 Mrs N's complaint.

Bearing in mind Mrs N's response to our investigator's assessment and her reference to published guidance, I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to a finance agreement were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make any repayments. Furthermore, if we don't think that the lender did enough to establish whether the repayments to any credit were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

*Application to Mrs N's complaint - Did Audi carry out reasonable and proportionate checks to satisfy itself that Mrs N would be able to repay the monthly payments to this agreement before lending to her?*

Audi says it agreed to this application after it completed an income and expenditure assessment on Mrs N. During this assessment, Mrs N confirmed that she was self-employed. Audi says that it was aware Mrs N was a homeowner with no mortgage. It says that it also carried out credit searches on Mrs N which showed that she didn't have any significant adverse information – such as defaulted accounts or county court judgements (“CCJ”) – recorded against her.

The credit searches also show that Mrs N had three active credit accounts, one of which was an existing Audi agreement that was going to be settled as part of taking this agreement, and six settled agreements. All of these accounts had been well maintained and Audi's view when the amount Mrs N already owed plus a reasonable amount for Mrs N'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 N says there was no attempt to verify her income, Audi failed to account for the risks of her being self-employed and it failed to assess her actual expenditure.

I've carefully considered what the parties have said.

The first thing for me to say is that I'm satisfied that this isn't a case where a lender took no steps at all to assess whether a customer was able to make the repayments to a credit agreement. Audi clearly asked Mrs N for some information on her circumstances and it has provided a record of the results of its credit searches. Furthermore, by understanding that Mrs N was a homeowner with no mortgage as well, I don't agree that it took no steps at all to understand her expenditure.

Nonetheless, while I can see that Audi took steps to establish Mrs N's employment, I can't see that it took steps to understand what she received each month. In reaching my conclusions, I note that many lenders took steps to establish a customer's income electronically. Therefore, the fact that Audi didn't ask Mrs N for payslips or other proof of income, does not in itself mean that it didn't take steps to establish the funds that Mrs N received each month.

However, Audi hasn't said and neither has it provided anything to support it having done this. And in circumstances where Mrs N was being lent over £45,000.00, I'm simply not in a position to agree that Audi carried out proportionate checks in circumstances where it can't show me that it knew how much Mrs N received each month. As this is the case, I've not been satisfied that Audi did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mrs N.

Mrs N believes that as Audi cannot evidence having carried out proportionate checks this should be the end of the matter and her complaint should be upheld. However, while I can to some extent understand why Mrs N may believe this, it is not sufficient for me to uphold Mrs N's complaint simply because Audi should have done more. I need to consider whether carrying out such checks would have made a difference to its decision. And it is only fair and reasonable for me to uphold the complaint should I be satisfied that Audi doing more would have resulted in it taking a different course of action – in this case, declining Mrs N's application for finance.

I've therefore considered the information Mrs N has provided with a view to determining this.

*Would reasonable and proportionate checks have resulted in Audi reaching a different decision on lending to Mrs N?*

In order to do assess whether Audi carrying out proportionate checks would have made a difference to its decision to lend, I've looked at the bank statements Mrs N has provided us with. To be clear, I've not considered these bank statements on the basis that Audi should have obtained them from Mrs N before lending to her.

Indeed, there was and still remains no requirement for a lender to obtain bank statements from a customer, prior to lending. It is up to a lender to determine how it assesses income and expenditure. The reason I've considered the bank statements Mrs N has provided is because they provide the simplest access to the information I now need to be able to determine what proportionate checks are likely to have shown, at this stage.

As I've explained, the main thing that Audi needed to find out about Mrs N was how much she received in funds each month. Having looked through the statements, I can see that Mrs N has provided us with statements for the account that her income was being paid into and which she was receiving other regular credits.

These bank statements also appear to show that when Mrs N's committed regular living expenses are combined with her payments to her credit commitments and then deducted from the total amount she was receiving, she did have sufficient funds left over to make the payments to this agreement.

I note that Mrs N has said that Audi failed to account for the risks of her being self-employed. But there isn't a prohibition on lending to self-employed individuals, where the credit provided appears affordable. Furthermore, I also have to consider Mrs N's current submissions in the context that they are being made in support of a claim for compensation. Whereas at the time of sale, at least, Mrs N considered that it was an appropriate time to purchase a vehicle and she clearly wanted the car she had chosen.

In these circumstances, it's fair to say that any explanations she would have provided, in relation to the prospect of her employment status changing, would have been with a view to persuading Audi to lend to her, rather than highlighting the monthly payments to this agreement unaffordable. Equally, Mrs N did tell Audi that she'd been in the role she declared for three years too. I've also noted that Mrs N has previously told us that she had over 96 shows booked for the year that the pandemic started.

Bearing in mind all of this and Mrs N appears to have maintained payments to two previous Audi agreements, I don't see why Audi would have had reason to consider that Mrs N's employment may have presented a problem to her being able to make her repayments. At the time of the application, at least, there was an expectation that Mrs N's employment would allow her to make the payments to this agreement. While I sympathise with the fact

that the onset of the pandemic had a huge impact on Mrs N's employment, I don't think that Audi could have anticipated this when it agreed to lend in July 2019.

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 N didn't go far enough because Audi has not shown me that it knew what Mrs N's income was and how much she received each month, 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.

*Has Audi acted fairly and reasonably towards Mrs N since being notified she is experiencing financial difficulty?*

I now turn to Mrs N's comments regarding Audi's actions once she notified it of the fact that she was experiencing difficulty making her payments. It is clear that Mrs N has got into contact with Audi on a number of occasions, since March 2020, to explain that as a result of financial difficulty, she was having difficulty making payments. I've considered whether Audi acted fairly and reasonably in response to this.

In the first instance it's worth me saying that Mrs N previously referred a complaint about Audi's failing to offer her sufficient help since she's been in arrears on the agreement, in early 2022. Mrs N has also already received an answer from us regarding Audi's actions up to May 2022, in May 2022. As we've already considered Audi's actions up until this point, I'm not in a position to offer any comment on Audi's actions up to May 2022 and I've limited my consideration to Audi's actions from June 2022 onwards.

I now turn to my thoughts on Audi's actions from June 2022 onwards.

As I've explained, there is no dispute that Audi was aware that Mrs N was having difficulty making her payments. When a lender becomes aware, or it ought reasonably to be aware, that a borrower is experiencing difficulty making their payments, I think that it is fair and reasonable to expect it to exercise forbearance and due consideration, in line with its regulatory obligations. There are a number of ways that a lender could exercise such forbearance and there is no one size fits all approach.

In this case, I can see that Audi has changed payment dates, applied pandemic breaks and has made numerous attempts to try and assist Mrs N in bring her agreement up to date. Unfortunately, notwithstanding Audi's attempts to assist Mrs N, she has not been able to clear the arrears.

I realise that Mrs N has been unhappy with the options she was provided with and the length of time she was given to bring her arrears up to date. However, I can see that by June 2022, Mrs N had been offered the option to voluntarily terminate the agreement, the option to sell the car to the dealer or privately and then reduce the balance and also the option to part exchange the car and getting finance for a cheaper vehicle. So while I accept that Mrs N might not have taken any of them, it's clear that Mrs N had been presented with a variety of options by June 2022 and it simply wouldn't be far and reasonable for me to reach the conclusion that Mrs N wasn't offered any help by Audi.

Most importantly of all, given the significant amount of arrears on the agreement and the low prospect of Mrs N being able to bring the account back up to date, I don't think it would be fair and reasonable and reasonable for me to say that Audi acted unfairly in terminating the agreement and attempting to take steps to recover the vehicle in June 2022.

This is especially given the agreement was always secured on the car and it is a depreciating asset. Indeed, the longer it is before the car is recovered, the greater the risk of Mrs N owing a larger amount even after the car has been recovered as depreciation will see any value recovered being less. So while I have given careful thought to Mrs N's arguments, I've not been persuaded that Audi failed to exercise forbearance and due consideration in line with its obligations and expectations.

This means I've not been persuaded that Audi acted unfairly towards Mrs N when it lent to her or in exercising forbearance when she ran into difficulty making her.

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

However, for the reasons I've explained, I've not been persuaded that Audi irresponsibly lent to Mrs N or otherwise treated her unfairly in relation to her payment difficulties. 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 overall and having considered everything while I'm sorry that Mrs N did have difficulty repaying, I don't think that Audi treated Mrs N unfairly or unreasonably either when entering the hire-purchase agreement with her, or when she had difficulty making her payments. And I'm not upholding this complaint. I appreciate that this will be very disappointing for Mrs N as she clearly feels strongly about matters. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

Although I'm not upholding this complaint, I'd like to remind Audi of its ongoing obligation to exercise forbearance and due consideration in relation to any outstanding balance on Mrs N's account, should the car be collected from Mrs N, a balance remains payable and it be the case that she is experiencing financial difficulty if and when it seeks to collect payment. I'd also add that Mrs N may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with any other actions in relation to exercising forbearance going forward.

### **My final decision**

My final decision is that I'm not upholding Mrs N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 13 June 2025.

Jeshen Narayanan  
**Ombudsman**