

complaint

Mr K has complained Volkswagen Financial Services (UK) Limited, trading as Audi Finance, didn't assess whether he could afford to take out a hire purchase agreement with them in 2015.

background

In December 2015 Mr K took out a hire purchase agreement for a one-year old car. He agreed to repay £364.15 a month for four years. At the time of taking out the agreement, Mr K had just passed his 18th birthday. Mr K was in employment. Audi Finance approved the finance without carrying out any checks into Mr K's income or expenditure. Their process did not require this. Mr K had a limited credit history at the time.

Early in 2016 Mr K lost his job and the repayments for his car became unaffordable. Two initial repayments were made but over the next few months direct debits were returned unpaid and payments were made late. No further successful payment was made after 20 September 2016. Mr K's parents both contacted Audi Finance to explain their son's personal circumstances. He was suffering from depression and was unable to work. Mr K's parents regularly sought costs for terminating the agreement early: in March and October 2016, and January and February 2017. Audi Finance also granted a 30-day breathing space period whilst Mr K was considering his options. At this stage, however, Mr K was seriously unwell. His parents were worried about him as well as trying to sort out his hire purchase agreement.

On 14 February 2017 Mr K rang Audi Finance. He wanted to terminate the agreement. Audi Finance sent him the necessary forms. Mr K wanted the car to be collected as quickly as possible but this didn't happen so he left the car at the dealership. Mr K refused to sign the forms agreeing to voluntary termination so Audi Finance had to wait until the default notice for the arrears expired on 17 March until they could pick up the car. According to Audi Finance's statements the car was then sold for £11,700 on 7 April 2017. In June Audi Finance confirmed Mr K owed them £6,980.

Mr K remained unemployed but offered to repay £100 a month towards the debt. His income and expenditure report at the time showed he could afford only about £10 a month.

Audi Finance passed this to their solicitors to recover the debt. They applied for a County Court Judgement (CCJ). Payment of £100 a month was offered by Mr K and this was accepted. A CCJ was obtained in October 2017. No payments have been made towards the debt.

At this time Mr K complained he should never have been given the agreement as it was always unaffordable. He brought his complaint to our service.

Our investigator reviewed all the detailed evidence. This included Audi Finance's customer records, calls between themselves, Mr K and his parents and the checks carried out when Mr K applied for the finance. She didn't think Audi Finance had carried out sufficient checks when Mr K applied for his finance. However she didn't believe additional checks would have found Mr K couldn't afford the finance as his bank statements around this time showed he was earning £1,000 a month or thereabouts.

Mr K didn't agree with this outcome and asked an ombudsman to consider his complaint. I completed a provisional decision on 29 April. I upheld the complaint as I believed the evidence showed Audi Finance didn't carry out sufficient checks and the finance agreement was unsustainable. I asked Audi Finance to write off the debt and arrange for the CCJ to be set aside.

Mr K accepted this outcome. Audi Finance provided some further comments as they didn't believe the agreement was unaffordable at the time Mr K took it out. I now have everything I need to complete my 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. I've considered Audi Finance's response to the provisional decision, including their comments about how Mr K's debt was managed. I've not seen anything which has made me change my decision.

I've split consideration of this case into two parts: whether the finance agreement was affordable and how Audi Finance managed Mr K's debt.

was the finance agreement affordable?

To help me reach a conclusion, I've considered Audi Finance's obligations under CONC 5 Responsible Lending from the Financial Conduct Authority's Consumer Credit Sourcebook. This makes it clear that a lender should consider whether the borrowing is sustainable over the length of any agreement.

I've also looked at the information Audi Finance considered when they "*auto approved*" Mr K's application for finance. They feel Mr K met their eligibility criteria so had no reason to turn down his application. Their only note of concern was that Mr K had no credit history but that's not surprising as he was just 18. They knew his age, he was living rent-free with his parents and was in employment.

But at no time was Mr K's income and expenditure considered. Audi Finance has told us "*we do not ask for the customer's income at the point of sale. Instead the retailers ask the customer's whether based on their income is the agreement affordable – it is then up to the customer's to check whether they can afford the repayments.*" In their response to the provisional decision, they further stated "*it is reasonable for VWFS to rely on confirmation of employment, good/strong credit check information and pre-contractual transparency of repayment obligations to assess affordability and allow automatic approval*".

I think this ignores the obligations placed on lenders to carry out a sufficient assessment of affordability. Instead it appears to place the onus on the customer. In this case an 18 year-old who I suspect after getting a new job was looking forward to buying an almost-new car. I don't believe, taking Mr K's personal situation into account, this meets CONC's criteria. In any case conducting an incomplete assessment of Mr K's credit worthiness increased the risk for Audi Finance that the finance agreement would turn out to be unaffordable and unsustainable. This is what I think happened here.

I would also add that obviously Audi Finance weren't able to obtain "*good/strong credit check information*". As Mr K was just 18, he had no information on his credit record. That may translate as neutral at best but I'd dispute it could be considered as strong.

So if Audi Finance had carried out further checks in December 2015 what would they have discovered? They'd have seen Mr K's net salary income for October, November and December 2015. He received £865, £1,375 and £1,080 from his employment in those three months. Audi Finance would have realised Mr K – only just 18 years of age – was more than likely on a zero hours contract in his new job.

Whilst Mr K didn't appear to be paying rent or making any contribution towards expenses to his parents, Audi Finance would also have seen from his bank statements that he had very little excess money at the end of each month. That's without having to pay £365 a month for a car, or pay any money to tax, insure and run it. It seems to me that Mr K, as a young driver, would have to pay at least £200 to insure his car, and perhaps substantially more. This means an additional expenditure of £565. On a month when Mr K was earning around £1,000 or less, I can't see that he was being left with a significant amount of disposable income. And, of course, his debt would amount to about a third of his total income.

And if Mr K encountered financial bumps in the road, he had limited capacity to help him cope with this. Within two months of having taken out the agreement, Mr K's employment was terminated. His salary in February and March 2016 was £445 and £500. That's when Mr K first had problems paying his finance agreement with Audi Finance. It appears from the evidence his parents were then helping him with payments. They were hoping this would be a temporary situation. But within six months it was clear that this finance agreement was completely unaffordable and unsustainable.

Audi Finance has disputed that Mr K's agreement was unaffordable at the time he took it out. I would re-state what I've made clear earlier in this decision; any credit agreement must prove to be sustainable. I would say, based on Mr K's financial situation at the time he took out the agreement, it was always likely to be a high risk that this wouldn't prove to be the case.

how Audi Finance managed Mr K's debt?

Before I review this issue in detail, I should confirm I am aware a CCJ was lodged against Mr K in October 2017. Audi Finance feels our service is not in a position to get the CCJ overturned.

We certainly can dismiss issues that have been the subject of court proceedings. But that's a discretionary power we may choose not to exercise. Importantly here I'm not considering the subject of the court order – whether Mr K owed the amount Audi Finance were trying to recoup – but another aspect of the finance agreement. Essentially whether the original lending was unaffordable. As I'm deciding it was, I do have the power to direct Audi Finance to apply to have the judgement set aside if I believe that is the right outcome.

I would add I have been careful to avoid deciding upon issues which may have been part of the court order. I've seen nothing which indicates this covered the unaffordability of the finance agreement when Mr K took it out.

Like our investigator I have reviewed Audi Finance's customer contact notes, phone records and Mr K's mother's verbal evidence.

As is clear from the background facts, Audi Finance were aware early on that Mr K was having difficulty repaying his agreement and was suffering from health issues. These became more serious over the year until the car was repossessed.

I can also see Mr K's parents regularly enquired about the costs of terminating the agreement. Twice in 2016 and twice in 2017. Audi Finance's contact notes show two different costs being generated each time. One was the cost of voluntary surrender which is when the goods are returned to the finance provider and sold. After that the finance provider calculates what's still owing after early termination of the agreement and the value of the car are taken into account. The customer will then be asked to pay the remainder.

Under voluntary termination, the car is returned and the customer's liability is limited to half of the total amount payable under the agreement.

As it turns out, because Mr K's car was relatively new, I believe it was always financially beneficial to him to surrender the car. The finance provider was able to get £11,700 for the car which limited Mr K's remaining debt to £6,980. In March 2017, Mr K would have been required to pay Audi Finance £6,750 plus his arrears of £2,185 if he'd wanted to voluntarily terminate the agreement.

What is concerning is the time it took to sort all this out. Mrs K told Audi Finance her son wanted to get rid of the car in March 2016 but it wasn't until April 2017 that the car was sold. I appreciate that as far as Audi Finance was concerned, payments – in part and often late – were being made towards the agreement until September 2016. I can see some evidence that Audi Finance realised the impact of Mr K's health on him and the affordability issues this was leaving him with. They did grant Mr K breathing space in January 2017 for Mr K and his parents to consider their options.

In the end though the only overall solution to the fact the repayments were unaffordable was for the car to be returned to Audi Finance under one arrangement or another.

At the time the car was returned and Mr K's debt was calculated, I can't see Mr K ever disputed that he'd have to repay what was owed. I believe his mother's concern is about why the CCJ was ever taken out in this case. I do think this seemed unnecessarily punitive when in the end Audi Finance's legal representatives were willing to accept the offer of £100 a month towards the debt. I'd just add all parties knew this figure was completely unaffordable for Mr K. At this stage he was on benefits and his disposable income was extremely limited. And of course, no payments have been made towards the debt as Mr K felt he'd been sold the car when the agreement was unaffordable. He didn't think this had been considered.

Overall I don't think it would be fair to say Audi Finance managed Mr K's debt badly. There were certainly individual aspects which could have been managed better – for example they realised late on they'd never issued a default notice. Audi Finance disputes this but at the time it could potentially have delayed things further. Having reviewed the phone calls, I can see Audi Finance were clear with Mr K's parents what their son's various options were.

In the end however this isn't the main aspect that's led to my decision as I'd already concluded Audi Finance didn't carry out enough checks and Mr K's agreement was unaffordable. So I've gone on to consider what Audi Finance should do to put things right.

what's fair redress?

I've concluded that Audi Finance should never have given Mr K the original finance agreement as it was unaffordable when he took it out, and proved to be so within two months. Therefore it's fair Audi Finance put Mr K back into the position he would have been in if he'd not taken out this agreement, although Mr K should pay for his use of the car. We normally calculate this to be the monthly cost under the agreement. Mr K made eight monthly payments.

I have limited evidence what use Mr K was making of the car after September 2016, if any at all. I suspect not very much. I know there were no insurance payments being made after the first year and the car was to all intents and purposes off road. The mileage of the car was 6,172 when Mr K got it in December 2015 and Audi Finance said the mileage was over 19,000 when they recovered it. But overall I don't think this shows use of the car was massively more than to be expected. On balance I think it's most likely there was limited use of the car after September 2016.

Taking all this into account, I'll be asking Audi Finance to cancel the agreement and therefore the debt, apply to have Mr K's CCJ set aside and repay the deposit (which shows on the agreement as an advance payment of £402) and accept the eight monthly payments made towards the agreement.

my final decision

For the reasons given, my final decision is to instruct Volkswagen Financial Services (UK) Limited, trading as Audi Finance, to do the following to put things right:

- cancel the hire purchase agreement in Mr K's name;
- amend Mr K's credit file so this agreement is not on his record;
- stop pursuing Mr K for any outstanding debt;
- arrange for the County Court Judgement against Mr K to be set aside;
- refund Mr K the advance payment of £402 made under the credit agreement;
and
- add 8% simple interest to this amount from the time it was paid in 2015 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 July 2019.

Sandra Quinn
ombudsman