

complaint

Ms G complains that a hire purchase agreement with Volkswagen Financial Services (UK) Limited wasn't affordable for her. She's being helped with her complaint by a representative.

background

A new car was supplied to Ms G under a hire purchase agreement with VW Financial Services that she signed in April 2016. Ms G was involved in a collision in the car. She says that she didn't feel capable of dealing with the collision and her insurer because of her health issues so the car was recovered by the police but Ms G didn't collect it. VW terminated Ms G's credit agreement, collected the car and sold it at auction. But that left an outstanding balance of £7,398.96 on Ms G's account. She complained to VW Financial Services that the agreement wasn't affordable for her. She wasn't satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. He didn't consider that VW Financial Services had shown that the arrangement was affordable for Ms G at the outset. So he recommended that it should write off the outstanding debt, refund the deposit if it had been paid by Ms G (with interest) and remove any adverse information from her credit file. He said that VW Financial Services was entitled to retain the payment made by Ms G to cover her use of the car.

VW Financial Services has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- there's no legal requirement for it to perform an income and expenditure review when a customer applies for finance;
- the customer signs the application to confirm they have given factual information and that the agreement is affordable to them;
- it makes a credit search to ensure that the customer has no ongoing financial difficulties;
- Ms G informed the dealer that she was employed full time and signed to confirm that the agreement was affordable and its searches returned nothing to suggest that the agreement wouldn't be affordable – so it was correct to approve the application for finance.
- Ms G signed the pre-contractual explanation checklist to confirmation, that, amongst other things, she'd had an explanation of the consequences of failing to make the payments required under the agreement;
- since the termination of the agreement, its collection support team which deals with vulnerable customers has worked with Ms G, her mother and her representative; and
- an income and expenditure review in December 2017 showed that Ms G would've been able to afford a monthly payment in excess of £160 towards the arrears on her account and it gave her six months "breathing space" prior to initiating further talks regarding an arrangement to pay – but by then she complained to this service.

And Ms G's representative has provided a further response in support of Ms G's complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

A new car was supplied to Ms G under a hire purchase credit agreement with VW Financial Services that she signed in April 2016. The amount of credit provided to her was £12,192.50 and she agreed to make 41 monthly payments of £194.29 and there was a final payment of £6,390.

A credit provider should make proportionate checks about the affordability of the credit before it makes credit available to a customer. What is proportionate will depend on the circumstances of the credit. VW Financial Services says that the dealer asked Ms G for information about her employment and that she said that she was employed full-time. So it says that, even on the minimum wage, she'd be able to afford the monthly repayment of £194.29. And it says that it also made a credit check on Ms G which gave it no reason to think that she couldn't afford the monthly payment.

But I consider that it would've been proportionate in these circumstances for VW Financial Services to have asked Ms G for information about her monthly income. I can't see that it did so and I'm not persuaded that it properly assessed whether the credit was affordable for Ms G.

Had it obtained such proportionate information from Ms G, I consider it to be more likely than not that it would've seen that she wasn't working full time but had two part-time jobs and that her monthly income had averaged less than £650 between December 2015 and March 2016.

It's clear from the evidence that has been provided by the dealer that Ms G was in a relationship with its employee who was dealing with the sale of the car to her. And I consider it to be more likely than not that the dealer would also have been aware that Ms G ended one of her jobs in March 2016 so her monthly income reduced to less than £200 in April 2016 and that he would also have been aware of Ms G's health issues. So I'm not persuaded that there's enough evidence to show that the agreement was affordable for Ms G in April 2016 – and I consider that VW Financial Services shouldn't have provided the credit to her.

Ms G made one payment under the agreement but continued to use the car until it was involved in a collision in September 2016. The car was recovered by the police but Ms G didn't collect the car or notify her insurers about the collision. She says that was because of her health issues. VW Financial Services ended the agreement, collected the car and sold it at auction – leaving a balance of £7,398.96 outstanding on her account.

But I find that it would be fair and reasonable in these circumstances for VW Financial Services to write-off the outstanding balance on the account. VW Financial Services can retain the monthly payment that it received from Ms G for the use that she made of the car. VW Financial Services has provided evidence to show that Ms G didn't pay a deposit for the car (and that the advance payment shown on the agreement was a discount from the dealer and a deposit contribution from VW Financial Services) – so I'm not persuaded that it should make any further refund to her.

my final decision

For these reasons, my decision is that I uphold Ms G's complaint. And I order Volkswagen Financial Services (UK) Limited to write-off the outstanding balance on Ms G's account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 13 April 2019.

Jarrold Hastings
ombudsman