

Complaint

Mr M complains that Volkswagen Financial Services (UK) Limited (trading as “Audi” Financial Services) unfairly entered into a hire-purchase agreement with him. He’s said that the monthly payments to this agreement were unaffordable and he therefore shouldn’t have been lent to.

Mr M is being assisted with his complaint by a Claims Management Company (“CMC”).

Background

In January 2019, Audi provided Mr M with finance for a new car. The purchase price of the vehicle was £39,314.80. Mr M paid a deposit of £6,001.00 and took out a 49-month hire-purchase agreement with Audi for the remaining £31,313.80.

The loan had interest charges of £4,802.62 and a £10 option to purchase fee. This meant that the total amount to be repaid of £38,126.42 (not including the £6,001.00 deposit) was due to be repaid in 48 monthly instalments of £466.54 and one optional final repayment, of £14,732.50, which included the £10 option to purchase fee.

Mr M, via his CMC, complained that the agreement was unaffordable and so should never have been provided to him. Audi didn’t uphold the complaint. As far as it is concerned, its checks confirmed that the finance was affordable and so it was reasonable to lend.

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

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 any lending was sustainable for Mr M before providing it.

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.

Having carefully thought about everything I've been provided with, I'm not upholding Mr M's complaint. I'd like to explain why in a little more detail.

Audi says it agreed to this application after Mr M provided details of his monthly income. It says it also carried out credit searches on Mr M which had shown Mr M limited existing credit. And when payments to the amount owing plus a reasonable amount for Mr M's living expenses were deducted from his monthly income, the monthly payments for this agreement were affordable.

On the other hand, Mr M says that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr M and Audi have said.

The first thing for me to say is that much like our investigator, I don't think that the checks Audi carried out did go far enough. I don't think it was reasonable not to take steps to verify what Mr M had said about his living costs (he said he was living at home with parents) given the amount of the monthly payments and how long Mr M was expected to make them for.

As Audi didn't carry out sufficient checks, I've gone on to decide what I think Audi is more likely than not to have found out had it obtained further information from Mr M. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected Audi to have had a reasonable understanding about Mr M's regular living expenses as well as his income and existing credit commitments.

The information Mr M has provided does appear to show that when his committed regular living expenses and the credit commitments on any credit search carried out were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

Mr M's CMC says that this ignores Mr M was repaying a loan to a family member which should be included as his committed expenditure. It further goes on to argue that it noticed these payments by reviewing Mr M's bank statements so Audi would have seen this if it had asked for copies of Mr M's bank statements, as it ought to have. It finally says that it isn't a consumer's obligation to ensure that the regulator's guidance in CONC 5.3A is followed.

I've considered what the CMC has said. However, in my view, its arguments here demonstrate a clear misunderstanding of the rules and our approach when considering unaffordable and irresponsible lending cases. In the first instance, it is CONC 5.2A which concerns the requirements regarding creditworthiness and affordability checks. And this section of CONC contains rules as well as guidance.

In any event and more importantly, there isn't anything within CONC 5.2A that requires a prospective lender to obtain copies of bank statements from a customer. We sometimes request and consider bank statements from complainants in order to get any idea of the amount they were spending where that might be missing from a lender's check on expenditure, or which might not have even been covered, should we determine a lender's checks before lending weren't reasonable or proportionate. But we don't look at bank statements because we say a lender ought to have obtained them and consider them when determining whether to lend to a prospective borrower.

In this case, what I need to think about here is what did Audi need to do in order to answer the questions its initial checks left unanswered – in other words, what were Mr M's actual regular living expenses. I don't need to consider what Mr M may have been paying towards credit repayments bearing in his credit commitments were already validated by the credit search.

A lender is entitled to rely on the results of a credit search when determining a prospective borrower's credit commitments. And as most customers won't owe money to family or friends in this way, I wouldn't expect a lender to ask about this.

For the sake of completeness, I'd also add that I find the CMC's argument that if he'd been asked, Mr M would have declared the payments he was making to a family member implausible. I say this because Mr M was looking for Audi to approve his finance application here as he clearly wanted the purchase the vehicle that he had chosen and I've not seen anything to indicate that he had access to another source of funding.

Furthermore, at the time of sale, Mr M confirmed a declaration that the loan payments were affordable to him and that he didn't expect changes to his income or expenditure for the duration of the agreement. Given Mr M answered yes to this, presumably knowing about his ability, or inability, to make his payments, it's difficult for me to accept that he would have declared loan payments to a family member, which the lender couldn't have found about and might have made the loan appear unaffordable, if asked about this.

Bearing in mind all of this and Mr M's family loan would not have shown on any credit search carried out, I'm satisfied that it would not be fair and reasonable (or in keeping with our approach to determining complaints about irresponsible and unaffordable lending) for me to now include these payments when determining what a proportionate check is more likely than not to have shown Audi.

As the rest of the information provided suggests that Mr M's overall living expenses were low, because he was living at home with parents and not paying rent or other associated costs, I'm satisfied that further checks are unlikely – and certainly less likely than not – to have dissuaded Audi from lending. In my view, further checks to validate what Mr M had declared about his living situation (and by reasonable extension his living costs) would merely have verified what he'd said. And Mr M's low living costs are likely to have made these monthly repayments appear affordable.

I accept Mr M's actual circumstances at the time might have been worse than he let on. For example, he was making the payments to a family member to repay money he'd borrowed. I also know that Mr M's debts elsewhere increased and that he did get into difficulty with his credit commitments later in 2020 and had accounts which defaulted in 2021.

But the key here is that it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. And I don't think that Audi could possibly be expected to have known that this would happen – especially bearing in mind the unprecedented events and the ongoing effects of that year. It could only have made a decision based on what it knew, or it was likely to find out if it had carried out proportionate checks.

And having carefully considered everything, while I don't think that Audi's checks before entering into this hire purchase agreement with Mr M did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Audi from providing these funds, or entering into this agreement with him. So I'm satisfied that Audi didn't act unfairly towards Mr M when it agreed to provide the funds.

Overall and having carefully considered everything Mr M has said, I don't think that Audi acted unfairly or unreasonably towards him. So I'm not upholding this complaint. I appreciate that this will be disappointing for Mr M. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 December 2023.

Jeshen Narayanan
Ombudsman