

The complaint

Miss B complains that Creation Consumer Finance Ltd lent to her irresponsibly.

What happened

On 4 August 2021, a hire purchase agreement for a car was set up in Miss B's name. She says she was unaware of the agreement and only found out about it when her then partner arrived in the new car. She says he told her the agreement was in her name for now and he'd give her the money to repay it. He did so for a while but has since stopped paying and is now uncontactable.

Miss B says she had no contact with the car dealer or Creation and says it must have failed to carry out proper checks on the application it received. She says she worked part time earning around £600 per month, so could never have afforded the monthly repayments of £514. She complained to Creation on 29 June 2023 when she was unable to make the required payment as her ex-partner and failed to send the money.

Creation looked into Miss B's complaint and rejected it. It said it had relied on information contained in the application form for its affordability checks, paired with information from the credit reference agencies. Creation didn't uphold Miss B's complaint, but it did pass her concerns to its fraud team.

Miss B didn't accept Creation's response, so she referred her complaint to our service. One of our investigators looked into it. He said that given the size and length of the agreement (a total amount payable of £35,037.41 over 48 months) Creation should have undertaken detailed checks to verify Miss B's income and expenditure to ensure she could afford to repay the debt on a sustainable basis. Our investigator felt that if it had done sufficient checks, Creation would have identified that Miss B earned around £600 a month and would therefore be unable to afford the repayments.

Our investigator said that Creation failed to properly engage with Miss B's comments about the agreement having been set up by her ex-partner. He explained that the complaint was more about the affordability and mis-sale of the agreement than fraud, and there was no need to refer the matter to its fraud department. Our investigator felt that introduced an unnecessary process which was of no benefit to Miss B but caused her distress and inconvenience.

Overall, our investigator felt Creation acted unfairly by providing an unaffordable hire purchase agreement to Miss B and didn't respond appropriately to her complaint. He recommended that it should cancel the agreement with nothing further to pay, remove any entries from Miss B's credit file and pay her £500 for the distress and inconvenience caused.

Miss B accepted what our investigator said, but Creation didn't. It said, in summary:

- The agreement had been "wet signed" by Miss B and a driving licence had been taken as identification, so she couldn't reasonably deny awareness of the agreement.

- It offered to waive interest on the account and accept the remaining cash price of the vehicle (just over £16,100). Miss B rejected this offer.

As there was no agreement, the complaint has been passed to me for a 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.

In my view the crux of this complaint is that Miss B says Creation should not have agreed this finance for her. She's told us that she wasn't present at the point of sale and only became aware of the finance agreement after her ex-partner turned up with the car. While the evidence suggests in fact she may have been present at the point of sale, I don't think it alters my thoughts on the case. I say this because Creation had a duty to conduct a creditworthiness assessment before agreeing to the lending, and had it done so in the detail I'd expect for such an agreement, I think it ought to have refused to lend. Let me explain.

We've set out our approach to complaints about irresponsible and unaffordable lending on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Creation needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Miss B irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Creation carry out reasonable and proportionate checks to satisfy itself that Miss B was in a position to sustainably repay the finance?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Creation make a fair lending decision?
- Did Creation act unfairly or unreasonably towards Miss B in some other way?

The checks are not for Creation to assess the likelihood of it being repaid, but it had to consider the impact of the repayments on Miss B. There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the agreement, the amount of the monthly repayments and the overall circumstances of the borrower.

Taking all that into account, I think a reasonable and proportionate check ought generally to have been more thorough where:

- a customer has a low income (because it may make it more difficult to make repayments of a set amount from a low level of income);
- the higher the amount due to be repaid (because it may be more difficult to meet a higher repayment for a particular level of income); and
- the longer the term of the agreement (because the total cost of the credit is likely to be higher, and the customer is obliged to make payments for a longer period).

In this case, the total payable under the credit agreement was £35,037.41 with monthly repayments of £514 or so for 48 months, and a final payment of £9,868. So in my view, this is a significant credit agreement which I think would require a detailed assessment of the borrower's circumstances.

Did Creation carry out reasonable and proportionate checks?

Creation has said Miss B declared she was a single tenant; she earned a monthly gross income of £2,416 (it calculated £1,946 net) and her partner paid the rent. It checked her credit report and found another hire purchase agreement for £111 per month with around 8 months left to run. So Creation calculated this left a disposable income of around £1,300 per month. Creation has told us its credit search confirmed Miss B's income at the level quoted and her credit files "*were of a good standard*".

I've already said, I'd expect detailed checks to be carried out given the nature of the agreement. I don't think the checks set out above were reasonable and proportionate in the circumstances here. I would have expected it to ask further questions to understand her income and expenditure. In my experience, it would be rare for someone living in rented accommodation with this level of income to have £1,300 'disposable' each month. There would after all likely to be energy bills, food bills, as well as running costs for the car being financed.

Creation says a "*bureau data search confirmed*" Miss B's income at the level quoted on the application form, but it hasn't provided evidence of that. It told us that when the application was made, her "*bureau files were of a good standard...*" which I take to mean her records at the credit reference agencies were good.

But it has provided an extract from one of the major credit reference agencies which shows Miss B as having a "*score*" of 413. The agency's website says that score sits in the lowest bracket of "*very poor*" – some way short of the "*good standard*" Creation referred to. I would have expected this to trigger very thorough checks indeed. In my view, the checks carried out by Creation were not reasonable and proportionate in this instance.

What would reasonable and proportionate checks have shown at the time, and did Creation make a fair lending decision?

I've outlined above some of the reasons why I think Creation ought to have carried out further checks on Miss B's finances. I think it would have been reasonable for it to get a detailed understanding of her income and expenditure, for example by asking to see some of her payslips and bank statements to ensure she could afford to repay the finance.

Miss B has provided payslips and bank statements which evidence her monthly income at being just under £596 per month. So I don't think it's likely she'd have been able to demonstrate an income in the region of that quoted on the application.

Given the level of income she has demonstrated, I can't see how Creation could reasonably have reached a fair decision to agree finance of this level for Miss B. After repayment of this hire purchase alone (not including her credit elsewhere which Creation was aware of), she'd have been left in the region of just £80 for her other expenditure – not least running costs of the car being financed. I don't think it reached a fair decision to lend to her.

Did Creation act unfairly or unreasonably towards Miss B in some other way?

I agree with our investigator on this point. When Miss B raised her complaint about the finance agreement, it received enough information to consider it without the need for the extra layer of referral to its fraud department. While, clearly, it is for Creation to decide if that was necessary from a procedural point of view, I don't think it was necessary to do so for Miss B. Her main concern wasn't that she didn't know about the finance being in her name (at least shortly after the event) but that it was never affordable for her. Had it reacted more

quickly to that point, it could have avoided her suffering further distress and inconvenience.

Putting things right

Ordinarily where we decide a credit facility has been given irresponsibly, we say its fair and reasonable that the consumer should repay the amount borrowed but without the interest and charges. The reason for that is that we think they will have benefitted from the goods or services purchased with the money lent.

But in this instance, Miss B has explained she has never driven the car or been insured on it. In the circumstances she's described, I find her testimony to be persuasive. So I don't think I can reasonably conclude that Miss B has had the full benefit of the car acquired under the agreement. From what she's told us, it is her ex-partner rather than her that has paid the repayments to date (albeit via her account). So I don't think she is entitled to any refund of what has been paid so far. But I don't think it would be reasonable to ask her to pay anything further towards it.

For the reasons set out above, I think Creation should:

- cancel any liability Miss B has under the hire purchase agreement;
- stop pursuing Miss B for any funds due under the agreement;
- remove all entries relating to this agreement from Miss B's credit file; and
- pay Miss B £500 for the distress and inconvenience caused to her.

My final decision

My final decision is that I uphold this complaint. Creation Consumer Finance Ltd should put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 14 November 2024.

Richard Hale
Ombudsman