

The complaint

Miss H complains about a car FCA Automotive Services UK Ltd supplied to her under a hire-purchase agreement. She has also expressed concerns about the finance arrangements, which she believes should never have been approved.

What happened

In late 2018 Miss H and her partner Mr W decided to get a new car. Mr W had recently received a lump sum payment as a result of being unfairly dismissed due to illness, and they used a substantial portion of this as a deposit. The remaining cost was funded by a hire-purchase agreement. The agreement was set up in Miss H's name. She describes that this was done because of Mr W's credit history; however they were both intending to use the car as she was learning to drive.

Miss H says that while the finance company advertised 0% interest this was never offered. Instead she has been charged a rate of 17.5%. She adds that she and Mr W were confused by the sales process, leading to a significantly higher deposit than first thought, as well as added extras such as paintwork and alloy wheel insurance being applied to the sale.

A few months after taking delivery of the car, Miss H says they discovered while having a tow-bar fitted that the car had previously been damaged and resprayed, despite being described as "in immaculate condition" by the dealer. She has also cited an incident when jet-washing the car resulted in paint coming off the front bumper and alloys.

Miss H has also identified several discrepancies in the hire-purchase paperwork. She says it shows she held a full driving licence, that she was single, and that she worked full-time rather than part-time and on a higher salary than she actually earned. Miss H contends that this amounts to an unlawful 'accommodation deal'.

In response, FCA Automotive says the paint problems with the car were identified and rectified by the dealer not long after Miss H took delivery, and that she accepted the car back following those repairs. Its position on the finance arrangements being made in Miss H's name is that this was known and agreed by the parties at the time of entry into the hire-purchase agreement. It has taken the same line on the interest rate applied.

With regard to Miss H's concerns over discrepancies in the paperwork, FCA Automotive says that she signed documents containing the information she has questioned, confirming they were correct. It also said the dealer had supplied a supplementary invoice showing Miss H and Mr W paid cash for the paintwork and alloy wheel insurance.

FCA Automotive didn't accept Miss H's complaint. However, it offered her £300 as a gesture of goodwill, which it said could either be paid directly to her or used in reduction of the finance settlement figure.

The complaint was considered by one of our investigators. She found that Miss H had signed to confirm the personal information given to the dealer, and that FCA Automotive had undertaken credit checks. But she thought that FCA Automotive ought to have done more to

verify what Miss H had told it. The investigator reviewed Miss H's financial circumstances at the time to establish whether they indicated FCA Automotive might have made a different decision if it had carried out further checks.

After doing so, the investigator wasn't persuaded that the additional checks suggested the hire-purchase arrangement would have been unaffordable. She was satisfied Miss H would have been able to meet the payments as well as her existing monthly expenditure.

The investigator was further satisfied that the repairs carried out and accepted by Miss H were sufficient to address Miss H's concerns over the quality of the car. And the investigator didn't think the dealer or FCA Automotive had misled Miss H over the hire-purchase terms, interest rate or the optional extras added. She further concluded that it wasn't unreasonable for the finance to have been set up in Miss H's name in light of Mr W being unable to obtain credit himself.

Miss H didn't accept the investigator's conclusions. She provided a detailed response setting out the aspects she considered to be wrong. In addition to the previous points she'd made, she said (in summary):

- FCA Automotive hadn't carried out checks to see if she could afford the payments if she was living on her own. This was effectively the situation she faced with Mr W being out of work. She had been told by third party advice organisations that the lender should have taken into account her ability to meet the payments if she and Mr W split up
- Her true earnings were less than the figures the investigator had based her assessment on. They had originally intended to pay for the car in full and had instead been persuaded by the dealer to take out finance based on Mr W's earnings rather than her own. She felt they had been preyed upon by the dealer
- The car was never repaired and when they'd sought to raise this with the dealer, it hadn't been interested

so the matter has been passed to me for review and determination.

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.

I do not doubt that Miss H feels very strongly that she and Mr W have been the victims of some questionable activity by the car dealer and in relation to the finance arrangements. Her response to the investigator's assessment demonstrates that strength of feeling.

My role here, however, is to look at matters objectively and dispassionately, and to say whether I think FCA Automotive needs to take any steps to resolve the dispute. I hope Miss H will understand that I do so not with any intention of understating her concerns, Mr W's illness or the distress she feels, but because I must act impartially.

FCA Automotive's creditworthiness assessment

The investigator's assessment noted there are regulatory standards in place to say the sort of assessment a lender should carry out when considering whether to approve a finance application. Those standards are set out by the Financial Conduct Authority (FCA) and are included in its Consumer Credit Sourcebook (CONC). In light of the circumstances of this

complaint and some of the points Miss H has made, I think it would be useful to look at those provisions.

In simple terms, when carrying out an assessment a lender needs to consider two risks. The credit risk (the risk to the lender that the customer won't make payments when they fall due) and the affordability risk (the risk to the customer that they won't be able to make the payments).

The credit risk is generally assessed by reference to the customer's past and current record of taking on and servicing credit arrangements. There doesn't appear to be any question here that the dealer assessed this risk on FCA Automotive's behalf. Mr W was declined for this reason, and I've seen a copy of the credit check carried out on Miss H. There's nothing there that suggests to me FCA Automotive ought to have had cause for concern over her payment history.

The key issue here is of course the affordability risk. This requires that FCA Automotive consider Miss H's ability to make payments as they fall due over the life of the agreement. The CONC regulations say that it can do so using the customer's income and (among other things) *"income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement"*.

This is important, as it clearly shows that it is acceptable for a lender to consider overall household income rather than solely income received by the borrower. Miss H and Mr W were seeking to acquire the car for their joint use (Miss H describes how she intended to use it as a learner driver) and I see no reason to conclude they were unwilling to proceed based on income they both received.

I accept there were discrepancies between the information submitted in the finance application and Miss H's own personal situation. But it seems to me that this was with the knowledge and agreement of Miss H, Mr W, the dealer and – by extension – FCA Automotive. I don't consider this to be a scenario in which any of the parties were being misled as to the true nature of the arrangements such that it might be considered unlawful.

But this income assessment isn't the only consideration. The regulations also require that payments can be met without failing to make any other payment the customer has a contractual or statutory obligation to make; and without the payments having a significant adverse impact on their financial situation. That requires that the lender has regard for the customer's (and where appropriate, the household) income and expenditure.

There is nothing in the regulations that would have required FCA Automotive to consider the possibility of Miss H and Mr W splitting up, or that she would need to be able to demonstrate she could afford the payments alone in such circumstances. It would only need to do so where this is a reasonably foreseeable situation that would be likely to lead to a reduction in the income used for that assessment.

There's no suggestion that Miss H and Mr W told FCA Automotive this was something that might well arise during the finance term, and it certainly wouldn't be an assumption I'd expect a lender to make. Similarly, while Mr W subsequently suffered a reduction in income because he was unable to work, there's no reason for me to think any of the parties ought to have foreseen that this would happen when entering into the arrangements.

The regulations do say that it isn't generally enough for a lender to rely only on a statement of current income made by a customer. It should usually obtain supporting independent evidence, such as through a credit reference agency, or via payslips or accounts. Like the investigator, I don't think FCA Automotive did enough in this respect, or to establish Miss H

and Mr W's outgoings. Although the degree of checks should be proportionate to aspects such as the level of borrowing and the repayments, there was a limited amount that FCA Automotive actually did to ensure Miss H and Mr W could meet the payments without them having a significant adverse impact on their financial situation.

That isn't in itself enough to say the payments weren't affordable. It simply changes the question to whether proportionate checks would have shown they weren't affordable. Having reviewed the bank statements and other information we've been able to obtain for the material time, I'm not persuaded that this was the case. The hire-purchase monthly payments were £289. Based on the income and expenditure we've been able to view for Miss H and Mr W, that level of payment should have been sustainable.

In the course of the complaint Miss H has expressed concern at her ability to sustain payments due to her part-time wage and changes to the household finances due to Mr W's employment status. I recognise the stress Miss H has been under and the worry she's described at the possibility of the car being repossessed. But I don't find this indicative of an inappropriate lending decision by FCA Automotive.

While there might have been some shortcomings in the checks FCA Automotive carried out, the proposal Miss H and Mr W put forward appeared affordable and sustainable based on what was known at the time. An unforeseen change in circumstances such as Mr W losing his job is most unfortunate and undoubtedly affects his and Miss H's ability to meet the payments. But there's nothing to suggest that FCA Automotive ought to have known that this was likely to happen, and it would be unreasonable for me to say that a lender should never provide credit to someone because they might, during the term of the finance, lose their job. That is a risk we all face.

I do empathise with Miss H and her financial situation. As the investigator said, there are organisations that can help people experiencing financial difficulty to deal with their creditors. If Miss H is still experiencing difficulty, I would urge her to seek assistance from one of these organisations, details of which have already been provided.

Was the car supplied of satisfactory quality?

Miss H has said there were problems with the paintwork and has provided a letter from the third party that fitted the tow-bar that said the rear bumper had at some point been removed, noting missing and non-standard clips used. She disputes FCA Automotive's assertion that the dealer carried out work on the car to deal with the paintwork issue.

I've seen the invoice for the repairs carried out to the vehicle. It is dated 7 December 2018, shortly after Miss H entered into the hire-purchase agreement. The invoice shows a repair and paint carried out on the front bumper and lower splitter, and renewal of the rear bumper. None of this information is inconsistent with the comments of the tow-bar fitter. Nor is it indicative of the car being of unsatisfactory quality. Rather, it points to defects identified with the car and repairs carried out to bring it up to a satisfactory standard, in line with the relevant legislation (the Consumer Rights Act 2015).

The interest rate applied to the hire-purchase agreement

I do not consider the fact that the dealer advertised 0% interest meant this would be the rate Miss H would be entitled to have applied to her finance arrangements. The rate offered to a customer is generally based on various factors relating to the individual borrower. In this case the interest rate at which FCA Automotive was willing to offer credit to Miss H was 17.5%. This was clearly shown on the agreement, which Miss H was able to accept or reject as she saw fit. Given that her evidence is that she and Mr W had originally intended to pay in full for the car, I have to conclude that the fact she proceeded with the hire-purchase agreement indicates she was happy to go ahead at the rate shown.

My final decision

For the reasons I've set out here, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 28 April 2022.

Niall Taylor
Ombudsman