

The complaint

Mr V believes PSA Finance UK Limited acted irresponsibly by agreeing a hire purchase agreement he'd applied for.

What happened

In May 2017, Mr V was supplied with a new car through a hire purchase agreement with PSA. Mr V paid a £990 deposit, and the agreement was for £13,509 over 37 months, with 36 monthly repayments of £282.64 and a final payment of £4,693. Mr V fell into financial difficulties and the car was repossessed in July 2018.

Mr V has complained that PSA didn't act responsibly when approving the finance. He's said they didn't do a proper assessment of his affordability and ability to make repayments when they approved the finance. PSA didn't agree they'd acted irresponsibly, so Mr V brought his complaint to us for investigation.

PSA said they'd carried out a credit check and an income check, which showed that Mr V had a high credit score and a low indebtedness score. But they haven't been able to provide any evidence of this. So our investigator looked at a more up to date copy of Mr V's credit file, and considered the information that would most likely have been present when he applied for the finance with PSA. And she said there was nothing that showed Mr V was experiencing any financial difficulties at that time.

But the investigator didn't think that the checks PSA had carried out were proportionate as they hadn't asked about Mr V's income or other outgoings. So they hadn't established if he could afford the monthly payments, or whether this affordability was sustainable over the term of the finance agreement.

The investigator reviewed Mr V's bank statements from the time of the application to establish his income and expenditure. And she said that Mr V didn't have enough disposable monthly income to cover his food, transport costs and the £282.64 payment to PSA.

So the investigator said that, if PSA had carried out sufficient and appropriate checks, then they would most likely have seen the agreement wasn't affordable to Mr V. So she thought PSA had acted irresponsibly by agreeing the finance.

Because Mr V had use of the car while it was in his possession, the investigator thought he should pay £150 a month for his fair usage of the car. So she said PSA should repay Mr V anything he'd paid over and above this amount, plus interest. She said that PSA should also terminate the agreement with nothing more to pay and remove any adverse credit from Mr V's credit file.

PSA didn't agree. They said that Mr V signed a declaration saying the finance was affordable and that, a few months into the agreement, he assured them that the payments were still affordable. The investigator explained to PSA why she didn't think their comments changed her view and this matter has been passed to me to make a final 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did PSA complete reasonable and proportionate checks to satisfy itself that Mr V would be able to repay the credit in a sustainable way?
 - a. if so, did PSA make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Mr V could sustainably repay the borrowing?
2. Did PSA act unfairly or unreasonably in some other way?

And, if I determine that PSA didn't act fairly and reasonably when considering Mr V's application, I'll also consider what I think is a fair way to put things right.

Did PSA complete reasonable and proportionate checks to satisfy itself that Mr V would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

PSA said they did a credit check and an income check at the time of application. But they haven't been able to provide any evidence of these checks. They've also said that Mr V signed a declaration saying the monthly payments were affordable.

I've seen Mr V's credit file dated December 2020, which shows his credit commitments at the time of his application to PSA. This confirms Mr V had a monthly payment of £206 to a loan, a monthly payment of £530 a month to a mortgage, and that all of his credit commitments were up to date with no arrears, defaults or county court judgements.

But I've seen nothing to show me that PSA verified Mr V's income or his other regular outgoings. I don't consider it acceptable for PSA just to rely on Mr V's declaration that the agreement was affordable and not to do any income and expenditure checks as a result. PSA have an obligation to ensure they're lending responsibly, and I don't think that getting a customer to sign an affordability declaration is enough to discharge that obligation. So I'd expect them to carry out reasonable and proportionate checks to satisfy themselves that this was the case.

I also don't consider relying on a verbal statement made by Mr V some months into the agreement is reasonable – the finance had already been agreed at that point, regardless of what Mr V may or may not have said. PSA should be checking the affordability before the finance was approved, not some months later. And someone's ability to make the first few payments on a finance agreement doesn't mean that continuing to make payments over the remaining term of the agreement is sustainable.

Would reasonable and proportionate checks have shown that Mr V could sustainably

repay the borrowing?

The main additional check I'd expect PSA to have done is to have asked Mr V about his income, commitments and other expenditure to ensure their finance was affordable to him at the point of application; and to see that the payments were sustainable throughout the lifetime of the lending. This could've been done by a number of methods, and I wouldn't necessarily have expected PSA to have asked Mr V for copies of his bank statements.

However, Mr V has provided his bank statements for two accounts for 21 February to 19 June 2017 and 1 March to 31 July 2017 respectively. Both of these accounts were overdrawn during the periods in question, and there were also failed direct debits. Mr V signed the agreement with PSA in late May 2017 so, in the absence of anything else, I think the statements from March to May 2017 give a good indication of what PSA would likely have discovered if they'd asked about his expenditure at the time.

The bank statements show that Mr V was earning around £2,550 a month. He was paying an average of £1,247 a month for his mortgage, loans and credit cards, and an average of £141 a month for his mobile phone. Mr V's council tax and utility bills were a further £265 a month and his childcare costs were around £780 a month. This left Mr V with £117 a month disposable income from which to pay food, transport and other essential costs e.g. clothing, as well as pay PSA's payment of £282 a month.

Based on this, I'm satisfied that, had PSA carried out reasonable and proportionate checks, they would've seen that the finance wasn't affordable. So, I'm also satisfied they acted irresponsibly when approving the loan, and they need to do something to put this right.

Did PSA act unfairly or unreasonably in some other way?

I haven't seen anything to make me think PSA acted unfairly or unreasonably in some other way.

Putting things right

As I don't think the finance should've been approved, I've thought about how to put Mr V back in the position he would've been in if this hadn't happened. So I think that PSA should cancel the agreement. They should also refund the payments Mr V made, less an amount for his fair usage of the car.

There's no set formula for working out what fair usage should be. So I've considered the amount of interest charged on the agreement overall, Mr V's usage of the car, and what it would've cost him to stay mobile in a similar car had he not entered into this agreement. Having done so, I agree with the investigator that £150 for each month Mr V had the car is fair and reasonable in the circumstances.

Given this, I'm satisfied that PSA should:

- cancel the agreement at no cost to Mr V;
- refund everything Mr V has paid, minus a deduction of £150 for every month he was in possession of the car to account for his fair usage of it, plus 8% simple yearly interest on any overpayments Mr V has made, from the date of the overpayment to the date of the refund †; and
- remove all adverse information relating to the finance agreement from Mr V's credit file.

†HM Revenue & Customs requires PSA to take off tax from this interest. PSA must give Mr V a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained above I uphold Mr V's complaint. PSA Finance UK Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 6 September 2021.

Andrew Burford

Ombudsman