

## **The complaint**

Mr A complained about the actions of Oplo CF Ltd trading as '1st Stop Car Finance' ("Oplo") when it repossessed a car he was paying for under a conditional sale agreement.

## **What happened**

Oplo agreed credit of £8,390 for Mr A on 23 November 2018 via an intermediary in order for him to acquire a car. The total amount owed (including interest and fees) came to £12,822 which was to be repaid over 35 monthly instalments of £356 with a final payment of £375 (I've rounded figures to the nearest pound).

The finance was granted under a conditional sale agreement meaning Mr A would own the car once it had been repaid. Oplo was the owner until that point and Mr A was, in essence, paying for the use of it. Mr A fell into arrears and the car was repossessed in July 2019 and subsequently sold.

Mr A complained to Oplo that the agreement had been mis-sold to him. He says he was told that he could vary the payments, paying more or less than the agreed monthly instalment and that he wouldn't have entered into the agreement had this not been the case. Mr A says that Oplo should not have repossessed the car when he struggled to meet his agreed repayments as he was attempting to clear the arrears and retain the car. Mr A also says that the intermediary installed a tracking device on the car which he feels was an invasion of his privacy.

Oplo says that it is not true that Mr A was told he could increase or decrease his repayments as it doesn't provide that type of agreement. The lender says that it followed the correct process prior to and during the repossession of the vehicle. Oplo hasn't commented on the presence of a tracking device in the car except to say that while it underwrote the finance agreement it didn't provide the car.

One of our investigators looked into Mr A's complaint and, in addition to the above complaint points, also looked into whether or not it was fair of Oplo to have entered into the agreement with Mr A in the first place, given his apparent requirement for flexibility in his monthly repayments. Having reviewed everything, the investigator didn't recommend that any aspect of Mr A's complaint be upheld. Mr A wasn't happy with this outcome and asked for his complaint to come to an ombudsman to review and resolve.

I issued a provisional decision on the 11 March 2021 explaining why I thought Mr A's complaint should be upheld in part. Mr A agreed with my decision, Oplo did not and said that:

- it had confirmed Mr A's hourly pay with his employer as £10.50 for 38 hours a week. It also confirmed that he'd been there six months and calculated a take-home monthly wage of £1,457 based on these figures using an online salary calculator.

- it had considered the defaults on the credit report as well as the fraud marker. The marker was applied in 2015 for an account taken in 2013. The defaults were a credit card (defaulted in 2014), advance against income (also defaulted in 2014 and showing a zero balance as of January 2017) and a hire purchase (which had no default applied and the account was in query).
- the Financial Conduct Authority (FCA) completed a review of its lending criteria in December 2017 and concluded that its lending assessments were robust and fit for purpose.
- regarding comments relating to Mr A making underpayments, as previously stated, it has never offered the facility to make underpayments at the outset of the agreement; these are only offered as temporary forbearance options when customers require additional support. The comments made in relation to this aspect of the complaint are based on interpretation as its documentation was clear in terms of the minimum payments required each month. The comment made in February 2019 relating to underpayments was merely confirming – based on the nature of the complaint – that this was not something Oplo could offer and during this exchange the correct advice was given.

### **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.

As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. I have carefully considered what Oplo has said in its response to my provisional decision, including the information and additional call recordings it provided.

Having done so, I am continuing to uphold Mr A's complaint. I know this will be very disappointing for Oplo and I am sorry that this isn't the outcome it wanted. For completeness, I will include my provisional conclusions here as these form part of my final decision, and I will then address the specific points Oplo raised in its response. As before, where information is conflicting or incomplete, I need to make my decision on the balance of probabilities, which is what I've done here.

As I'd set out in my provisional decision, the FCA was the regulator when Mr A took out the agreement. The relevant rules and guidance at the time as set out in its Consumer Credit Sourcebook (CONC) said that before entering into a credit agreement Oplo needed to check that Mr A could afford to meet his repayments as they fell due over the term, while meeting his other commitments and without having to borrow further or experience significant adverse consequences. Specifically it needed to take reasonable steps to determine the amount, or make a reasonable estimate, of Mr A's income and current nondiscretionary expenditure, which would also include expenditure for others.

The checks undertaken needed to be proportionate to the circumstances and sufficient to assess the risk to Mr A of not meeting the repayments, not just the risk to Oplo of recouping its money. In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit without difficulty. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks the greater the risk to the consumer, for example if their income was low relative to the loan repayment or they needed to meet the repayment for several years.

In addition, CONC 5.2A.35R states that *“A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment.”*

CONC 3.3.1R states that communications from firms must be clear, fair and not misleading. And, as Section 56 of the Consumer Credit Act set out, as the creditor Oplo was responsible not only for the quality of the car but also for any negotiations that took place between the intermediary (effectively its agent) and Mr A about the car prior to the agreement's inception.

Oplo also needed to take a proportionate and considered approach to a borrower's arrears difficulties. So when Mr A fell into arrears, Oplo should have given him the opportunity to repay the arrears, potentially deferring payment or accepting token payments for a time. And it needed to clearly communicate what was happening with regard to setting up a repayment plan.

CONC 7.3.4R states that a firm must treat customers in default or in arrears difficulties with forbearance and due consideration. And 7.3.5G explains that examples of forbearance could include deferment of payment of arrears or accepting token payments for a reasonable period of time in order to allow a customer to recover.

CONC 7.3.6G states that where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt. And CONC 7.3.14R states that a firm must not take disproportionate action against a customer in arrears or default.

The overarching requirement as set out in the FCA's principles for business is that Oplo needed to pay due regard to Mr A's interests and treat him fairly.

Bearing all of this in mind, in coming to a decision on Mr A's case, I have considered the following questions:

- did Oplo complete reasonable and proportionate checks when assessing Mr A's application to satisfy itself that he would be able to repay the credit in a sustainable way? if not, what would reasonable and proportionate checks have shown?
- overall, was it fair of Oplo to enter into the agreement with Mr A?
- did Oplo act unfairly or unreasonably in some other way, for example when Mr A fell into arrears?

#### Agreeing credit for Mr A

Oplo says it didn't carry out an income and expenditure analysis before agreeing credit for Mr A. His application for credit was 'auto approved' based on his income and the lack of adverse information on his credit file. It provided a copy of Mr A's application information along with a copy of the credit report produced at the time.

Mr A's payslip for October 2018 showed a net monthly income of £1,273. Assuming he'd been employed for five months would mean his monthly repayments would take up about 28% of his net income, potentially for three years. Contact with his employer put his length of service at six months, reducing his average monthly wage to closer to about £1,060. I can see from the payslip that his leave was unpaid though he could earn commission.

I've looked through the credit report Oplo provided and I'm afraid I can't agree that it shows no adverse information. Mr A had a credit card in default that it seems he wasn't making payments on, a defaulted short term loan (showing as paid) and sustained arrears on a hire purchase agreement. The latter had a balance of about £1,900 and with a delinquency date in December 2017 was less than a year old when the agreement started. There was also a fraud marker on the file.

I can't see that Oplo discussed Mr A's credit record with him or took steps to understand his regular expenditure in order to reasonably assess his level of disposable income. But, given the information it did have, I think Oplo ought to have had serious concerns about Mr A's ability to meet his repayments without getting into difficulty.

Other information Oplo could have accessed were the calls between Mr A and the intermediary. Oplo has provided four call recordings which I've listened to.

In the earliest call Mr A said that he had seen a car advertised at £4,750. He was advised by the intermediary's representative that not only was the car on sale privately and therefore unfinanceable, it was classed as a Category D i.e. an insurance write-off. Mr A said on the call that his budget was £5,000. He asked about overpayments, saying that he'd like to repay at least £500 a month but could pay £1,000 as his pay was about £2,000. Mr A was told that the monthly payments would be about £260 to £270 over two years. The representative said "That's going to be the case if you make the minimum repayments every month for the whole term. You make overpayments, you settle it off quicker, you don't have to worry about that too much".

Later that day in a second call Mr A said he'd seen a car costing £8,390 and was advised that the repayments would be £355 a month over three years. Again he asked about overpayments and was reassured that he would be able to overpay. The next call was from a different representative to organise the agreement documents and present the terms and conditions. Mr A again sought, and was given, reassurance that he could overpay.

The next day, in another call, the representative starts by saying that he was surprised to receive a message from Mr A saying that the amount would be *"a bit of a commitment"* given he'd said he wanted to pay the credit off as soon as possible. Mr A explained that his wife wanted him to buy a car that was about half the price of the one he'd seen. Mr A then asked *'Is there anything for about £4,000?'*

In response Mr A was told that the pay-out for the finance was already underway and that he needed to say immediately if he wanted the process to be stopped. The representative said *"I can stop it but you need to tell me immediately and you need to be dead sure"*. To which Mr A replied that he wanted to run it past his wife and would call back straight away. The representative said that Mr A could tell his wife that he didn't have to make overpayments every month saying *"Remember... you don't have to put overpayments down every single month, you can take a month of paying just the standard payment."* The conversation then turned to delivery costs.

I can see how Mr A came to the understanding that he would be able to vary the amount set out in the agreement if he needed to, though it wasn't explicitly stated in the calls I've listened to that he would be able to pay *less* than the agreed repayment. I've also noted that Mr A wasn't required to pay a deposit or an advance payment.

Mr A's first repayment was due on the 31 December 2018. A few days beforehand he emailed Oplo to ask if he could reduce his monthly payments to £250. He said *"I'm due to be paying £350 a month back but want to change that of a monthly payment to £250 if*

*that's possible it was discussed when taking out the finance that I would be able to change it or up payments if I wanted too. Can it be changed for £250 every 31st as arranged please." When he was told that wasn't possible he said "... when I took out the loan I was told I can pay more or less if I wanted to so why has this changed? I was told more if I wanted it to be less than three year period and if I couldn't manage it that month I could reduce it."*

The customer notes provided by Oplo record the following in February 2019 "[C] from [dealership] called today as he is investigating a complaint and wanted to know if the customer is able to make over payments and underpayments. Explained that he can make overpayments but he can't make underpayments unless he is in credit." This suggests to me that the intermediary wasn't sure of its information and that there were circumstances under which Mr A could have paid less than the agreed amount other than by arranging a repayment plan to manage financial difficulties.

Leaving aside the question of whether or not Mr A received clear, fair and not misleading information about the credit agreement, I think these calls raise concern about the affordability of the agreement for him. Mr A originally chose a car costing less than £5,000. When this wasn't proceedable, he chose a more expensive car of the same make despite having said his budget was £5,000. He seemed unsure enough about proceeding with the credit agreement that he asked about the availability of a cheaper car of any make and wanted to discuss the matter again with his wife.

I think it's debateable whether Oplo treated Mr A unfairly by entering into a conditional sale agreement with him based on the information it had available. It knew Mr A had recent problems managing credit, that the agreement would take up a significant proportion of his declared income, and Mr A had raised concerns about the cost of the car. At the least, I think Oplo ought to have inquired further into Mr A's circumstances before agreeing credit for him.

Our investigator found that further checks would not have led to Oplo to decline credit however, I disagree. I don't think further information or documentation would have provided any assurance to Oplo that Mr A would be able to meet his repayments on time and without being significantly adversely impacted.

Mr A has provided his bank statements from the time and information about his circumstances and expenses. (I've noted that the account statements are for a basic bank account only open to people who'd been made bankrupt or who weren't eligible to open any other account with that particular bank. It didn't include an overdraft or a direct debit facility.) Our investigator reviewed the bank statements Mr A provided as a proxy for what Oplo would likely have found out had it looked into his expenditure in more detail. They found that it was difficult to work out exactly what Mr A's expenses were and that Oplo would not have been able to conclude that the credit would be unaffordable.

I appreciate that some of the available information is conflicting and let me say at this point that I don't feel I fully understand Mr A's circumstances. For example, Mr A had said in his application that he was single with no dependents, but it becomes clear on the call recordings and in the customer records that he was married. He's told this Service that he has three dependent children and I can see payments to childcare on his bank statements. Mr A said he was working for a claims management company, though Oplo's customer records shows he's also mentioned working for a restaurant.

Regarding income - Mr A said on a call to Oplo that he was earning £2,000 though his payslip shows £1,273 net a month. His bank statements show transfers in from another account, which came to over £400 in September 2018 and £640 in November. I've asked

Mr A about these but he hasn't explained what they were. I've assumed therefore that this is income, either from another job or from state benefits.

Regarding expenditure - Mr A told this Service that he spent about £400 on food, £200 on transport, £120 on insurance and £160 on utilities and other bills each month. He said he had other debts including a local authority fine, arrears on his water charges, and short term loan(s). Mr A also said he was paying weekly for homewares, for example carpets and furniture. I can identify some of these amounts on Mr A's bank statements and it's clear that he has underestimated his food and homeware spend. Altogether, including cash withdrawals, Mr A was spending about £1,600 a month on average around that time.

In his own words “ ... with the funds coming in at the time and prior to getting the vehicle my outgoings were more or less greater than my income, whatever was being brought in was already being accounted for with everyday life. Even with this I tried to always keep up with my payments as well as my insurance but always feel behind as I only ever came out with my wage £1,000. Which is why I rang and asked to lower the payment to £200/£250 which I would've been more confident paying.”

I don't know what Mr A would have told Oplo about his expenditure, had it asked about it. I don't know how it might have sought to verify any of the figures. I've looked at Mr A's bank statements as this is the information available to me. And, even without understanding everything about Mr A's finances, I can see that he spent everything he had, mostly it seems on living costs. I can't see that Oplo would have been reassured that Mr A would have been able to meet his repayments as they fell due over the term of the loan had it sought to understand his expenditure in any detail.

Mr A didn't manage to keep to the terms of the agreement and fell into arrears. On balance, I think this was foreseeable and Oplo was irresponsible to have entered into the agreement with Mr A.

#### When Mr A fell into arrears

Mr A needed to pay £356 a month under the terms of the agreement. My summary of his account statement shows the following (payments highlighted):

Instalment	Date	Transaction	Amount (£)
1	31/12/2018	Instalment due	£350.76
	31/12/2018	Returned DD	-£350.76
	17/01/2019	Arrears fee	-£24.00
2	31/01/2019	Instalment due	£350.76
	31/01/2019	Returned DD	-£350.76
	01/02/2019	Payment	£350.76
	05/02/2019	Payment	£49.32
3	07/02/2019	Instalment due	-£350.76
	28/02/2019	Payment	£350.76
4	07/03/2019	Instalment due	-£350.76
	15/03/2019	Visit fee	-£66.00
	27/03/2019	Visit fee	-£90.00
5	05/04/2019	Instalment due	-£350.76

	13/04/2019	Arrears fee	-£24.00
6	07/05/2019	Instalment due	-£350.76
	17/05/2019	Arrears fee	-£24.00
	31/05/2019	Payment	£789.06
7	07/06/2019	Instalment due	-£350.76
	13/06/2019	Payment	£98.64
	05/07/2019	Instalment due	-£350.76
9	07/08/2019	Instalment due	-£350.76
	30/08/2019	Collection fee	-£42.00
	30/08/2019	Collection fee	-£294.00
	30/08/2019	Sale	£4,000.00
	30/08/2019	Commission	-£180.00
10	06/09/2019	Instalment due	-£350.76

As mentioned, Mr A called before the first payment was due to ask if he could pay a lower amount. From then, Oplo was in frequent contact with Mr A by email and telephone. The lender explained that Mr A couldn't make reduced payments and provided telephone and banking details so Mr A could make payments having cancelled his direct debit arrangement. Mr A eventually made a payment in early February and paid again at the end of that month. However, he didn't make another payment until May, which meant that by then he owed over £1,000 consisting of three regular payments plus charges.

Mr A gave a number of reasons for non-payment: that he was working reduced hours due to health reasons and was being paid less than usual; he'd recently changed jobs resulting in a gap in income, and he was out of the country on family matters for a time. I understand that although Mr A said he wanted to retain the car he didn't complete an income and expenditure form in order to set up a repayment plan. The customer notes record that Mr A offered to make ad-hoc payments several times but didn't manage to make them.

Oplo issued a default notice in late May 2019 and explained to Mr A that unless he paid his arrears in full by 11 June it would terminate the agreement. This prompted a large payment from Mr A but he didn't manage to clear the balance or meet his June payment. The agreement was terminated by Oplo on or around the 17 June and the car repossessed a month later.

Mr A says it was unfair of Oplo to terminate the agreement when he wanted to repay his arrears and retain his car. Having reviewed the customer records however, I can't say that Oplo didn't give Mr A reasonable opportunity to discuss an arrangement for his arrears or for the monthly repayments. It also seems from the notes that Oplo were clear with Mr A about what would happen if he didn't clear his arrears and meet his June payment.

Altogether, I don't find that Oplo treated Mr A without forbearance and due consideration. I can understand why Mr A feels unfairly treated as he'd just made a large payment in May and Oplo terminated the agreement the following month. But in this case I don't think Oplo's actions were disproportionate.

Mr A has also complained about the presence of a tracking device on the car. I understand that it was used to locate the car for repossession so I can see why Mr A

would be unhappy about this. Oplo says it would have been installed by the intermediary but I don't know enough about this matter to say that the device was unfairly installed or used. I would expect that the intermediary to have told Mr A about any device. However, I don't think Mr A would have changed his mind about purchasing the car if this meant that a tracking device would be installed in it. I can see from his bank statements that his car insurance provider specialised in telematics insurance so it doesn't seem to me that providing information about the location or use of the car was an issue for Mr A when he entered into the agreement. And so I haven't found that Oplo did anything wrong in this regard that caused detriment to Mr A.

Turning to the points Oplo made in response to my provisional conclusions as set out above - firstly, regarding the regulator, it doesn't follow that a firm cannot have treated any consumer unfairly simply because it has been authorised and is regulated. This assumes that an authorised firm's regulated activities are always implemented in a way that results in fair outcomes for all consumers. This is not the case, as the experience of this Service bears out.

As set out above, in addition to the information about hourly rates Oplo says it had from Mr A's employer, it also had a copy of his payslip which showed that his take-home pay was less than its estimated amount of £1,457 and was potentially lower again in previous months given the year-to-date figures. As Mr A's payslip is reflective of the hours worked and all deductions, I think this is the more reasonable information to rely on.

Oplo said in its communication with this Service that no issues were found on the credit report it saw at the time of Mr A's application. I disagreed with this interpretation because the report did show defaults and fraud markers. Its description of these tallies with mine set out above.

These points do not change my view that, altogether and as explained above, Oplo should have looked into Mr A's circumstances in more detail before agreeing credit for him on this occasion.

Finally, I accept that Mr A's agreement wasn't for a flexible credit product where the monthly repayments could be decreased and increased as required. However, I haven't made any finding as to whether or not Mr A received clear, fair and not misleading information about the credit agreement. Having listened to the calls provided, I'd found that they raised concern about the affordability of the agreement for him irrespective of what other conclusions might be drawn from them.

In summary, I am continuing to uphold Mr A's complaint.

### **Putting things right**

Putting Mr A back into the position he would have been in, had Oplo not agreed finance for him, means that he shouldn't be liable for the whole amount under the agreement. I understand Mr A repaid about £1,640 before the car was repossessed and sold. I don't know if he has paid anything since, either to Oplo or to a third-party debt collector.

I think it's fair that Mr A pays something for the time he had the use of the car as there was likely to have been a cost to him in staying mobile without it. In this case, I understand that Mr A had the use of the car from the last week in November 2018 to mid-July 2019, about seven and a half months. Based on the above figure, Mr A's paid more than £200 a month to have the car over that time.

I think the fairest way to put things right in this case is to consider what Mr A paid under



the agreement as the cost to him of using the car and cap the amount he needs to repay at that. If he's made any payments above this amount, then they should be returned to him. And if Oplo has sold the debt then it will need to work with the current owner to put things right as I've set out below.

In summary, Oplo should:

- a) Cap the total amount Mr A needs to pay at £1,640; and
- b) If Mr A has paid anything above this amount then this needs to be refunded to him along with 8% simple interest per annum\*; and
- c) Consider the agreement as settled; and
- d) Remove all adverse information about this agreement from Mr A's credit file.

\* HM Revenue & Customs requires Oplo to take off tax from this interest. Oplo must give Mr A a certificate showing how much tax it's taken off if he asks for one

### **My final decision**

For the reasons I've set out I am upholding Mr A's complaint in part against Oplo CF Ltd trading as '1st Stop Car Finance' and require it to put things right for him as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 April 2021.

Michelle Boundy  
**Ombudsman**