

The complaint

Mr S says Greenlight Credit Ltd (trading as Varooma) lent to him irresponsibly and treated him unfairly when he couldn't repay the loan.

What happened

Mr S took out a 36-month loan for £4000 on 25 April 2019. The monthly repayment was £394.44 and the total repayable was £14,199.84. The loan was a log book loan. It was given on the basis that Mr S provided Varooma with a bill of sale for his car. This meant that if Mr S didn't make his loan repayments, Varooma could potentially recover its losses through the sale of the car. As Mr S was unable to make his repayments his car was repossessed and sold at auction. There remains an outstanding balance on the loan.

Mr S says Varooma didn't carry out proper checks to make sure the loan was affordable for him; it didn't correctly register the bill of sale; and it didn't follow the correct process when it repossessed the car. Its refusal to fairly consider his payment plan offer after the recovery of the car caused him a lot of stress when he was already struggling with ill health.

The adjudicator largely upheld Mr S's complaint. He said the checks Varooma carried out were not proportionate, and had it carried out better checks it would have seen Mr S was having problems managing his money. A number of his credit accounts had recently defaulted and a CCJ was registered against him in the prior month. So as a responsible lender Varooma would have realised it was unlikely Mr S would be able to sustainably repay this loan. However he didn't find Varooma had acted unfairly or unreasonable in any other way. He felt it had fairly managed the loan account once it went into arrears and repossessed the car in line with industry guidelines.

Mr S responded saying Varooma had taken his car with £1,500 worth of possessions inside, without knocking on his door, so this must be considered in the compensation, and it had ignored his requests to see the correctly registered bill of sale. The adjudicator said Mr S had been informed about the date of the repossession so he could have removed his possessions, and he was also given details of how to recover his property after the car was taken. So he disagreed Varooma should compensate Mr S for them.

Varooma responded saying it disagreed with the trade value of the car the adjudicator used in the redress, but it anyway didn't agree to refund the value of the car to Mr S. It argues he is due no refund due to non-payment and Varooma has already suffered a significant financial loss. It said it would remove the loan from his credit file and write off the outstanding balance, but it must be taken into account Mr S signed a contract he then breached and didn't even pay back 1% of the money he borrowed. It also provided evidence showing the bill of sale was properly registered within five days of the execution of the loan agreement on 30 April 2019.

As agreement could not be reached between the parties the case was passed to me to reach 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The first part of Mr S's complaint relates to the affordability of the loan. Varooma did not respond to, or challenge, the adjudicator's finding that it should not have lent to Mr S. It has agreed to remove the loan from his credit file and write off the outstanding balance. So as this area is no longer in dispute and it seems Varooma accepts it should not have lent to Mr S, I will focus on what remains in dispute. This is whether or not the calculation of redress should include refunding the market value of Mr S's car, and if so what should that value be.

When we uphold complaints about irresponsible lending our approach to redress is to ensure the lender puts the customer back in the position they would be in had it not made an irresponsible lending decision. This means Mr S should have repaid no more than the capital he borrowed - and should still have his car. Unfortunately Varooma can't simply return it as it has sold the car.

I don't think it's reasonable not to consider the fact Mr S lost his car as a consequence of being given a loan that Varooma ought to have realised wasn't sustainably affordable for him. He no longer has the asset he secured the loan against. Whilst this could be an acceptable outcome if he breached the terms of a loan that was lent responsibly, that is not the case here. So Varooma needs to ensure Mr S doesn't lose out because of the repossession and sale of the car.

As I have found Varooma was at fault in its lending decision, fair redress must consider all of Mr S's financial loss. Had Varooma not approved the loan he would not have been in the position that led to the repossession of his car. Mr S argues he has incurred additional losses to a value of £1,500 as he left possessions in the car. However, I agree with the adjudicator that Mr S could have mitigated against this loss by removing the items prior to the repossession date that he was notified of, or by recovering them afterwards. So I can't fairly hold Varooma liable for the cost of these goods.

Varooma has confirmed that the sale price of the car at auction was £3850. But as I don't think Varooma should have given Mr S this loan, it follows that I don't think he should lose out because of Varooma's decision to sell the car at that price.

To work out the fair way to put things right I need to understand the market value of the car. To do this I have reviewed three standard industry price guides that are used for valuing vehicles (CAP, Carzana and Glass's) and assumed the car was in below average condition. I've done this as Varooma has provided its inspection report and photos of the car on collection which show it had a significant amount of damage to the bodywork (nine instances of dents, scratches or cracks are listed). Only CAP provides a trade value adjusted for a vehicle in below average condition, so I have reduced the Carzana and Glass's valuation by 7.5% to mirror the reduction in value in the CAP guide.

On this basis I am estimating the market value to have been the average of the trade price valuations from the sources listed above (£5377, £6150 and £6050) - so £5846.

In response to the adjudicator Varooma explained its reserving policy and why it sells at auction. But these are commercial decisions it has made and the price it accepted doesn't necessarily reflect the value of the car to Mr S at the time or the price he might have received on selling it himself. It also pointed out it has made a loss on this loan. But the

calculation of the redress would not be affected by either the level of profit or the size of the loss a lender has made on a loan that we have concluded should not have been given.

It follows I find the market value of the car must be considered in the calculation of redress.

Did Varooma treat Mr S unfairly or unreasonably in some other way?

I don't think it did. I acknowledge and I am sorry that Mr S was experiencing difficult circumstances at the time. But, like the adjudicator, I can't see that Varooma acted unfairly when Mr S was unable to make payment, and nor was its decision not to accept the proposed payment plan unreasonable given the supporting evidence Mr S provided. I have also haven't found any evidence of failings in its default or repossession process.

Putting things right

Varooma must put Mr S back in the position he would be in had it not made an irresponsible lending decision. This means Mr S should have repaid no more than the capital he borrowed, and he should not have lost his vehicle.

So Varooma should:

- refund an amount of £5846 to Mr S to reflect the loss of his car
- it can deduct from this amount the original capital amount of £4000 Mr S borrowed
- write off the outstanding balance which I understand includes, for example, interest, late fees and repossession charges
- remove any adverse information recorded on Mr S's credit file in respect of the loan

My final decision

My decision is I am upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 June 2021.

Rebecca Connelley
Ombudsman