

The complaint

Mrs M has complained that FCA Automotive Services UK Ltd trading as Fiat Financial Services ("FCA" or "the lender") was irresponsible to have agreed car finance for her in July 2017. Mrs M also says it didn't treat her fairly when she had problems making her repayments.

What happened

FCA agreed a hire-purchase agreement for Mrs M in July 2017, through an intermediary, in order for her to acquire a car. Under the agreement FCA would own the car unless Mrs M opted to purchase it at the end of the agreement. In the meantime, until the finance was repaid, Mrs M was, in essence, paying for the use of it.

The cash price of the car (as per the finance agreement) was £19,562 and Mrs M paid a deposit of £1,000. She borrowed the balance of £18,562 which, plus £6,444 interest and charges, brought the total owing under the agreement to £26,006. This was to be repaid by an initial instalment of £397, followed by 47 instalments of the same. The optional final purchase amount was £5,945. (I've rounded all figures to the nearest pound.)

Mrs M also had the option of voluntarily terminating the agreement at any point and returning the car. This option would limit her total liability to half the amount owing, in other words £13,003 if she'd taken reasonable care of the car.

Mrs M says she offered two vehicles in part-exchange to the selling dealership – her existing car and her son's. She's provided a sales order which shows a cash price of £19,562 including £4,388 of negative equity in total, so it seems both vehicles had outstanding finance owing. Mrs M's existing car finance was with FCA.

Mrs M missed payments from July 2018 and fell into arrears. She made an arrangement to repay these alongside her usual monthly payment but didn't manage to maintain this. Mrs M cleared the arrears in early 2019 with a repayment of £1,900 but has since fallen into arrears again.

Mrs M said that FCA didn't carry out sufficient checks before lending to her. It didn't ask for evidence of her income or expenses and, she says, her credit record showed missed payments. Mrs M also complains that FCA didn't treat her fairly when she told it she was having difficulty meeting her monthly repayments. She asked to extend the agreement and pay a lower amount, but this wasn't accepted and she ended up trying to pay more than her original repayment each month to clear her arrears.

The agreement hasn't yet been fully repaid. FCA said that Mrs M had repaid a total of £8,794 as of February this year. I don't know if she's paid anything since.

One of our investigators looked into Mrs M's complaint and recommended that it be upheld because they concluded FCA had lent irresponsibly. They recommended FCA terminate the agreement with nothing further for Mrs M to pay, and that she returns the car. They also recommended that FCA retain the payments Mrs M made in return for

having had the use of the car.

FCA disagreed that it was irresponsible to lend. It said Mrs M owes over £16,000 under the agreement and that the car is worth considerably less. Mrs M agreed with our investigator's conclusions but not with their recommendation about how to put things right for her. Mrs M disputes that there was an outstanding balance to pay on her existing car (which she part-exchanged to begin this agreement) and feels that putting things right for her shouldn't result in her being left with neither a car nor a refund of some of her payments.

The case came to me, as an ombudsman, to review and resolve. I issued a provisional decision on the 27 May 2021 upholding Mrs M's complaint because I found FCA had been irresponsible when it agreed finance for her. I thought the fairest way to resolve the complaint was along the lines our investigator had set out. Both parties agreed with my provisional conclusion but not with my proposed redress.

FCA said in response "*We will agree with part of the ruling and we will pick up the negative equity from the agreement Mrs [M] held with us, however, not the other amount of negative equity from her son's vehicle which had nothing to do with us.*" I understand that this would result in Mrs M returning the car and remaining in debt to FCA for several thousand pounds.

Mrs M says that it is not true that there was negative equity in the car she part-exchanged but that it had a guaranteed value of £3,450. She understood that this equity would reduce the amount of money she was borrowing, not add to it and, as mentioned, feels that any redress should either allow her to keep her current car or be refunded this money.

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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time. I've included an extract from my provisional decision as an appendix to this decision as it sets out my reasons for upholding Mrs M's complaint. Both parties have accepted this provisional conclusion and I am continuing to uphold Mrs M's complaint because I've found that FCA was irresponsible to have entered into the agreement with her.

I have carefully considered what both parties have said about how things should be put right for Mrs M. Having done so, I remain of the view that the fairest thing to do here is for FCA to collect the car with nothing further for Mrs M to pay and for it to retain her payments to date.

Mrs M said in response to my provisional decision "*I was told there was a guaranteed value of £3,450 in my Peugeot P*****T and there was £1,290 approx outstanding on my finance, I was paying £258 approx each month. And was due for final payment in November 2017. I had different options at the end of my finance agreement and could hand the car back, pay the balance or use the guaranteed value for another car.*

*£4,752.98 was the finance of my son's car Y*****W this was added to the outstanding finance of mine £4,752.98 plus £1,290 which gives the figure of £6,044.57 as indicated on the HP agreement and is at the bottom of the order form agreement in pen from [the dealership]. I was told the value of my car (£3,450) was coming off the agreement and the reason it was written on the bottom of the order form was because they forgot to include it. I was told over £15,000 had gone to finance.*"

Mrs M had provided the order form for her current car which shows one car (her son's) listed as being part-exchanged. A hand-written addendum shows that her car was also being part-exchanged, with a value of £3,450 and a settlement figure of £4,752.98. She feels the omission of her car as part-exchange in the digitally produced form is evidence that she was misinformed about the agreement. I'd considered this in my provisional decision, however, and noted that "*The sales order Mrs M has from the dealership shows the cash price of the car as £15,173 plus a combined total negative equity from two vehicles of £4,388.*"

Mrs M says she was shocked when she understood that the total agreement was for £26,006, following her subject access request to FCA. But the hire purchase agreement which she signed clearly shows that she was agreeing to borrow an amount of £18,562, pay a deposit of £1,000 with a total repayable of £26,006. If Mrs M wasn't expecting to pay this then I think she would have raised a query at the time.

I've set out the relevant figures as I understand them in a table below for clarity. Car 1 refers to Mrs M's existing car and Car 2 refers to her that of her son.

| | Car 1 | Car 2 | Total |
|---|--------|--------|---------|
| Outstanding finance owed | £4,753 | £6,385 | £11,138 |
| Amount offered by the dealership in part-exchange | £3,450 | £3,300 | £6,750 |
| Amount left owing | £1,303 | £3,085 | £4,388 |

Mrs M is correct in that she was offered £3,450 for her car, in otherwords this was the value the dealership was happy to pay for it. However, she still owed more than this to settle her existing finance agreement, which she needed to do in full to own the car. Altogether, Mrs M was offered £6,750 in part exchange for the two vehicles, resulting in the additional amount owing of £4,388 being included in this agreement.

So, as I explained in my provisional decision, I don't consider Mrs M suffered a loss here in terms of surrendering an asset she owned which had a positive net value. In fact, I found that rolling over her existing finance agreement instead of allowing her to voluntarily terminate it wasn't fair to her as it increased the amount she borrowed.

I'd said in my provisional decision that Mrs M hadn't managed to meet her repayments under the agreement and isn't up to date. I understand that she's paid £8,794 in total and so hasn't reached the point at which she can voluntarily terminate the agreement, which is just over £13,000. I noted that this half-way point would have been lower had the agreement not included negative equity.

FCA says it now accepts that it wasn't fair to include Mrs M's negative equity in this agreement when it could have allowed her to voluntarily terminate her existing agreement with nothing further to pay. It says it would be happy to write-off this amount of the debt but no more, which would leave Mrs M without a car and also still in debt to FCA.

Having carefully reconsidered everything, I think FCA should end the agreement now, with nothing more for Mrs M to pay. I remain of the view that this is as close as possible to putting Mrs M back into the position she was in before the agreement was taken out. At that point Mrs M was paying for a car on finance but, as mentioned, still had several thousand pounds to pay on it and could have ended that agreement voluntarily with nothing left to pay on return of the car. Mrs M was also not in the position of paying someone else's debt. Irrespective of whether FCA knew the true extent of the negative equity included in the agreement, it was happy to agree that level of credit for Mrs M at

that time and I think it would be perverse now to consider this as a separate debt that Mrs M needs to satisfy.

Mrs M feels it's unfair to be left with no car, having had her complaint upheld. I can understand her strength of feeling on the matter but I don't consider it would be fair in this case to direct the lender to waive all the outstanding sums and, in addition, to leave the car to her. I think the amount she's paid so far is a fair reflection of her use of the car to date but not enough that it would be fair for her to keep the car, given it had a cash price of over £15,000.

This is my final decision on the matter, which will be legally binding if Mrs M accepts it. If Mrs M wishes to retain her current car and can come to a mutually agreed settlement figure with FCA, she can of course choose not to accept this final decision.

Putting things right

In summary, FCA should:

- End the agreement at no further cost to Mrs M; and
- Collect the car at its expense; and
- Remove any negative information about the agreement recorded on her credit file.

My final decision

For the reasons set out above and in my provisional decision, I am upholding Mrs M's complaint about FCA Automotive Services UK Ltd trading as Fiat Financial Services and it needs to put things right as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 14 August 2021.



Michelle Boundy
Ombudsman

PROVISIONAL DECISION EXTRACT

FCA needed to check that Mrs M could afford to meet her repayments sustainably before agreeing credit for her. In other words, it needed to check she could repay the credit out of her usual means without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit and Mrs M's circumstances, and FCA needed to take proper account of the information it gathered.

FCA also needed to take a proportionate and considered approach to borrowers' arrears difficulties. So when Mrs M fell into arrears, FCA should have given her the opportunity to repay the arrears, potentially deferring payment or accepting token payments for a time. The overarching requirement for FCA is that it needed to pay due regard to Mrs M's interests and treat her fairly.

With this in mind, my main considerations are:

- did FCA complete reasonable and proportionate checks when assessing Mrs M's application to satisfy itself that she would be able to make her repayments in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- did FCA treat Mrs M unfairly in any other way?

Did FCA complete reasonable and proportionate checks? If not, what would reasonable and proportionate checks have shown?

FCA says that Mrs M was an existing customer who had a good payment history with it. It says the selling dealership quoted her salary as £28,000, which it checked using a credit reference agency (CRA) tool. It estimated Mrs M's expenditure using statistical information from a national database and checked her credit file. It said the defaults it could see on her record were insignificant and had been paid in full. Finally, FCA says that it didn't know someone else's negative equity had been included in her agreement.

I can understand why FCA might have had a positive view of another application for credit from Mrs M, given what it's said about their relationship history. However, this doesn't mean to say that it fulfilled its obligation to take reasonable and proportionate steps to check Mrs M could sustainably meet her repayments for this agreement over the term. I note the monthly repayments on her existing agreement were less than two thirds the planned repayments on this one and this agreement was for four years.

As I mentioned above, the rules and guidance stipulated that FCA needed to check Mrs M could meet her repayments sustainably and its checks needed to be proportionate. So I've thought about whether its checks were sufficient in Mrs M's circumstances, and I've concluded that there were indications in the information FCA had gathered that its estimation of Mrs M's available income was likely to fall short.

FCA says that Mrs M gave false information in her application but hasn't provided any income or expenditure figures apart from Mrs M's gross annual income of £28,000. It says it wouldn't have agreed to lend to Mrs M if she hadn't said her income was at this level. Mrs M says she was completely honest with the sales person about her circumstances. Clearly, without any record of what was said at the time, it's difficult to decide this point one way or the other.

FCA also says it checked Mrs M's income using a Credit Reference Agency (CRA) tool. It hasn't explained what this tool took into consideration, for example, bank account turnover or

a sense-check on salary in relation to job description. Nevertheless, it seems FCA was happy to rely on this at the time.

The lender says it used statistical information to estimate what Mrs M spent monthly on living costs (though I can't see that it took steps to understand her housing costs). FCA's credit file check shows that Mrs M had over £9,000 of revolving credit so her estimated expenses might not be typical. Furthermore, this level of debt seems to be at odds with its estimated disposable income figure of almost £800 a month.

Given these circumstances and that Mrs M was taking on significant credit, including refinancing an existing agreement, I think a reasonable and proportionate response would have been to look into her finances in more detail to understand whether she could afford to sustainably meet a repayment of almost £400 a month over the term of the agreement. This amounted to over 20% of her declared net monthly income (I estimate this to be about £1,850 assuming no salary deductions).

FCA says that Mrs M signed a legal binding agreement confirming that she was happy with the monthly payments and by signing the agreement she agreed to the terms and conditions. While I can understand FCA's perspective, I'm afraid I can't agree this discharges its obligation to Mrs M to assess the risk to her of not being able to sustainably meet the repayments.

Concluding that FCA ought to have done more before lending to Mrs M doesn't automatically mean her complaint succeeds. To determine this, I've considered what information a proportionate check would likely have yielded. I've looked through the income slips and bank statements Mrs M provided and considered what she's said about the matter. I can see from the bank statements that Mrs M's monthly income comprised wages and benefits and was, on average, less than £1,700 in the months leading up to the agreement. With a minimum of about £1,450 of regular monthly expenses, it's clear that Mrs M would not be able to afford the repayments. I appreciate that she managed to meet her repayments for about a year before letting FCA know that she was having difficulty, but I don't think successfully meeting repayments automatically means she was managing to do so in a sustainable way.

Altogether, I've concluded, as our investigator did, that had FCA enquired further into Mrs M's finances, it was likely to have learnt that she wasn't in a position to repay further credit sustainably and so it was irresponsible to have agreed to lend to her.

Did FCA treat Mrs M unfairly in any other way?

As mentioned, this agreement included negative equity from two existing car finance agreements: one between Mrs M and FCA and the other was Mrs M's son's. She's explained that he couldn't afford his repayments though he'd recently taken on his car and they had gone together to the dealership to discuss his options. Mrs M says that she felt obliged to take out this agreement to help her son.

FCA says that Mrs M could have voluntarily terminated her existing agreement and returned her car with nothing further to pay but it says that this option wasn't discussed at the time. The lender also says that it didn't know a second car had been included in the part exchange which increased the level of negative equity in the agreement.

FCA provided its invoice from the dealership which shows the cash price of the car as just over £19,500 including total negative equity of £1,453 due to an existing financial agreement (Mrs M's car with FCA). The sales order Mrs M has from the dealership shows the cash price of the car as £15,173 plus a combined total negative equity from two vehicles of £4,388. FCA's customer notes record that the loan to value ratio for the agreement was

initially 'over limit' and also that the CAP valuation for the car was less than £15,000. Having reviewed all the available information, I think FCA should have reasonably suspected that there was more negative equity in the agreement than rolled over from its existing agreement with Mrs M.

To be clear, I'm not making a finding that FCA got something wrong when it accepted an application with negative equity. However, in this case I don't think it paid due regard to Mrs M's best interests when it rolled over its current agreement with her when she had the option to voluntarily terminate it. Furthermore, it consolidated someone else's debt into the agreement which meant that altogether Mrs M ended up owing over £26,000 on a vehicle valued at less than £15,000. The customer notes show that about a year into the agreement Mrs M enquired about exchanging the car for a cheaper model with lower repayments. FCA declined this request because of the level of negative equity involved. So I think this level of negative equity limited Mrs M's options and prolonged her indebtedness to FCA.

Mrs M says that FCA didn't treat her fairly when she struggled with repayments. She says she asked to reduce her payments to a more affordable monthly amount but it only allowed her to do this for two months and she then needed to make up the arrears over six months.

FCA has provided its customer records and I can see from these that Mrs M told it in August 2018 that she'd recently had a change of circumstances and couldn't keep up her payments. FCA said then that there was too much negative equity in the agreement to allow a part-exchange for a cheaper car. It accepted reduced payments for two months, Mrs M made a large payment (£1,900) in January 2019 and started a six month repayment plan of just over £500 a month in March. According to the customer records, this level of repayment was at Mrs M's request. Mrs M made three payments through this arrangement and then her direct debit was returned in June 2019. There is a hiatus in the customer contact records and no further payments were recorded. It seems contact resumed in late 2019 and early 2020, around the time Mrs M complained about irresponsible lending.

Mrs M has provided copies of emails to FCA from early 2020 in which she's offered to pay £250 a month and said that she'd offered this previously. However, from the information I have, it doesn't seem to me that either party was taking active steps to put an affordable repayment plan in place. I can't see that FCA asked Mrs M at any point for income and expenditure information to assess what she could afford to repay. But the information I have from Mrs M isn't enough to persuade me that her lack of payments were solely because FCA were refusing to work with her to agree an affordable repayment plan. Altogether, I don't think FCA treated Mrs M unfairly when she fell into difficulty with her repayments.

What FCA should do to put things right

Our investigator recommended that FCA keeps all the payments Mrs M made over the years and takes back the car. I understand that as of February 2021 Mrs M has paid £8,794 to FCA in total, including her deposit. I am not aware that she has made any further payments.

FCA disagreed with the redress our investigator recommended and said that Mrs M still owes it an amount of over £16,000 secured on a car which is now worth about £5,000. I can understand the lender's perspective on this however, I've explained above, I think this outcome was foreseeable when it entered into an agreement with this level of negative equity and the likelihood that Mrs M would not be able to meet her repayments sustainably.

Notwithstanding this, in coming to a decision on the fairest way to put things right for Mrs M, any calculation of redress would not be affected by either the level of profit or the size of the loss FCA has made on a loan that we have concluded should not have been given.

Mrs M also disagrees with the recommended redress. She says that in order to put things right for her and put her back into the position she was in before the finance was agreed, she ought to be refunded the money she's paid so far or be allowed to keep the car. She feels it's unfair if FCA retains the payments she's made and she's left without a car. Mrs M also says that she understood that she owed about £1,000 on her existing car at the time as it was coming to the end of the finance term and so thought that there was some positive net value in it. So she feels any redress proposed should reflect this loss to her also.

Let me start by saying that I've seen a copy of Mrs M's existing agreement with FCA which shows she not only owed about six monthly instalments (of £238) but also needed to make a final large payment of £3,708 in order to own the car. She'd need to do this in order to be able to offer it as part-exchange. Mrs M's credit report around the time shows an outstanding balance of £5,137 for this account. I know this will be disappointing for Mrs M but from the information I've seen there wasn't any value in her car and she still owed about £5,000 for it. I understand the balance to pay on her son's car was over £6,000. Altogether she was offered £6,750 in part exchange for the two vehicles, resulting in the additional amount of £4,388 being included in this agreement. So I don't consider she's suffered a loss here in terms of surrendering an asset she owned which had a positive net value.

I've found that FCA was irresponsible to have agreed to lend to Mrs M, so she shouldn't lose out because of this by, for example, paying interest and charges on the money she borrowed. If Mrs M was up-to-date with her repayments, it wouldn't be fair for FCA to keep everything she's paid because the monthly repayments would include interest and charges. On the other hand, if Mrs M was up-to-date with her repayments it wouldn't be fair to simply refund everything she'd paid under the agreement because she used that money to hire the car for almost four years.

This Service's general approach to redress in these sorts of cases is for the lender to retain a portion of the payments made to essentially cover the usage of the car and to refund the rest. There isn't an exact formula for working out what a fair usage charge might be. Considerations might include the amount of interest charged on the agreement, how it's structured, the borrower's overall usage of the car and that they would have incurred costs to stay mobile if they hadn't entered into this agreement.

In this case, Mrs M hasn't managed to meet her repayments under the agreement and isn't up to date – as mentioned she's paid £8,794 in total and so hasn't reached the point at which she can voluntarily terminate the agreement as it stands, which is just over £13,000. I note that this half-way point would have been lower had the agreement not included negative equity.

Mrs M's had the use of the car since July 2017, almost 46 months to date, which equates to a cost of at least £190 a month. Altogether, I think this is a fair cost to her to have had the use of the car.

In order to put Mrs M back in to the position she was in before the agreement was taken out, I think FCA should end the agreement now, with nothing more for Mrs M to pay. I appreciate this means she's left without a vehicle but she would no longer be in debt to FCA. I think this a close as possible to putting her back into the position she was in before the agreement was taken out. She was paying for a car then on finance, but as mentioned still had several thousand pounds to pay on it and could have ended that agreement with nothing left to pay.

In summary, FCA should:

- End the agreement with at no further cost to Mrs M; and
- Collect the car at its expense; and

- Remove any negative information about the agreement recorded on her credit file.

Michelle Boundy
Ombudsman