

The complaint

Mr D complains that Oplo CF Ltd, trading as 1st Stop Car Finance (“1st Stop”), irresponsibly granted him a hire purchase agreement he couldn’t afford to repay.

What happened

In August 2018, Mr D acquired a used car. He financed the deal through a hire purchase agreement with 1st Stop. The cash price of the car was £13,899 and Mr D paid a deposit of £1,899. The total repayable under the agreement was £23,219.40 and monthly repayments of £355.01 were to be made over a five-year period. After all payments were made Mr D would own the car.

Mr D says that 1st Stop didn’t complete adequate affordability checks and if it had, it would have seen the agreement wasn’t affordable. 1st Stop didn’t agree. It said that it completed creditworthiness and affordability checks and that it had looked at Mr D’s credit file when making its lending decision. It explained that the process was automatic but that amongst other considerations it would have reviewed Mr D’s income, credit history, debt collection searches and any County Court judgments against him. It said the automated system didn’t identify any concerns and the credit was therefore approved.

Our adjudicator recommended the complaint be upheld. She thought 1st Stop ought to have realised the agreement wasn’t affordable for Mr D.

1st stop didn’t agree, they said that Mr D had confirmed the agreement would be affordable and had subsequently made all payments on time. They reviewed the information available in his bank statements and thought there was evidence that monthly payments were affordable, and that Mr D had sufficient disposable income to meet any emergency spending needs.

The case has been passed to me for 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.

1st Stop will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don’t consider it necessary to set all of this out in this decision.

1st Stop say they didn’t review Mr D’s bank statements but that they completed a credit check and verified Mr D’s income. Mr D’s credit file showed he had an outstanding balance of £17,543 for loans and that he had other outstanding credit of £725. He was regularly only making minimum payments to his debts and there was a monthly payment of £465 towards a loan he’d recently taken out. The income information 1st Stop had, suggested Mr D’s salary was £1,950 per month and given the amount of debt and the recent credit applications noted

in his credit file, I think 1st Stop should have made further enquiries to check Mr D's outgoings. So, I don't think 1st stop completed reasonable and proportionate checks.

I think it would have been proportionate for 1st Stop to have found out more about Mr D's committed expenditure, such as his living costs. I can't be sure exactly what 1st Stop would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr D's bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision. They show direct debits for Mr D's mobile phone, TV cable supplier, TV license, credit cards and personal loans of £640 per month and payments towards food and transport of around £350. There were cash withdrawals of about £400 per month and as the statements don't show council tax, utility spend and rent it would seem reasonable to suggest these withdrawals were to fund those payments: Mr D has since confirmed that was the case. In total the expenditure shown on the statements is about £1,400 per month. Statements also show the salary 1st Stop were considering was a little overstated and should have been about £1,900. So, it's fair to say a reasonable and proportionate check of Mr D's financial circumstances would have most likely revealed he had about £500 of disposable income from which to make payments towards his £355 per month agreement with 1st Stop.

I don't think that suggests the agreement was affordable for Mr D as there was very little left from which Mr D could afford petrol, car tax, car insurance and emergency spending. It would be unlikely that Mr D would be able to afford to sustainably make payments towards his agreement and I therefore don't think 1st Stop acted fairly by approving the finance.

Putting things right

As I don't think 1st Stop ought to have approved the lending, it should therefore refund all the payments Mr D has made, including any deposit. However, Mr D did have use of the car since the agreement started in August 2018, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of over £355 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

1st Stop Finance have said that Mr D has already paid more than the cash price of the car and Mr D still has the car and has continued to make the payments under the agreement. If that's the case, I think it's fair to allow 1st Stop to retain the payments up to the cash value of £13,899 in respect of the fair use Mr D has had from the car. Mr D should be allowed to keep the vehicle and anything he's paid beyond the cash value should be returned to him with interest.

My final decision

For the reasons I've given above I uphold this complaint and tell Oplo CF Ltd to:

- cancel the agreement with nothing further to pay;
- calculate exactly how much Mr D has paid to date and if he has paid the cash price of the car the business can keep this amount and Mr D can keep the car with the ownership transferred to him;
- If Mr D has paid over the cash price of the car, then any overpayments should be refunded back to him with 8% simple interest per year* from date of payments to the date of settlement;
- remove any negative information they may have reported to Mr D's credit file in relation to this agreement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 December 2021.

Phillip McMahon
Ombudsman