

The complaint

Ms J complains that PSA Finance UK Limited irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

What happened

In November 2018, Ms J acquired a used car financed by a hire purchase agreement from PSA Finance. Ms J also entered into an insurance loan at the same time. Ms J was required to make monthly repayments of £331 for the vehicle and £20 for the insurance, with a final payment of £9,702 for the vehicle and £593 for the insurance if she wanted to own the car at the end of the agreement. The total repayable under the agreement was £27,646 for the vehicle and £1,542 for the insurance.

Ms J says that PSA Finance didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable. Ms J also says that she was coerced into entering the agreement. PSA Finance didn't agree. It said that it carried out a thorough assessment which included affordability and credit checks. It said Ms J was working full time and that she had low indebtedness. It also noted that Ms J paid a deposit of around 10% of the cost of the car and was able to maintain her payments for the first 15 months. Ms J paid for the deposit on her credit card.

Our investigator recommended the complaint be upheld. He thought PSA Finance ought to have realised the agreement wasn't affordable to Ms J.

PSA Finance didn't agree and said it was unaware of Ms J's personal circumstances at the point of supply and that she didn't declare these during the life of the agreement. Our investigator clarified that he thought this complaint should be upheld on affordability grounds as had proportionate checks taken place PSA Finance would have realised the agreement wasn't affordable for Ms J. PSA Finance said the process and checks it initially carried out were reasonable.

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.

PSA Finance 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.

Before the agreement was provided, PSA Finance has said it carried out a credit check which didn't raise any concerns and showed Ms J had a low level of indebtedness. It said it asked about her employment and she was recorded as being in full time employment and it also noted she was living with parents.

While I note the checks undertaken suggested that Ms J had low indebtedness and didn't have arrears in the previous six months or defaults or county court judgements, I note that Ms J's credit file showed she did have some other debt and I have nothing to show that PSA Finance asked Ms J about her income prior to lending. PSA Finance noted that Ms J was living with parents, but it didn't ask her about her expenditure. Without knowing what Ms J's income and regular committed expenditure was PSA Finance wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

I think it would have been proportionate for PSA Finance to have asked for Ms J's income in some way. I note at the time of the agreement, Ms J has said she was on maternity leave and while she was intending to return to her job she only worked part time, not full time. I have looked through the information provided and can see that Ms J was receiving income from employment, benefits and some money for child maintenance from a former partner. Taking this into account gave an average monthly income of just over £2,000.

As well asking about income, I think it would have been proportionate for PSA Finance to have found out more about Ms J's committed expenditure, such as her living costs. I can't be sure exactly what PSA Finance 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 Ms J's bank statements as to what would most likely have been disclosed.

I've reviewed the bank statements for the months leading up to the lending decision. These show that Ms J was living in her overdraft for most of September and already had two other loans. Ms J was paying a total of over £2,000 towards her committed living expenditure including ground rent, credit commitments, insurance, bills, food and fuel. This demonstrates that Ms J didn't have enough disposable income to afford the additional borrowing. PSA Finance therefore didn't act fairly by approving the finance.

I understand that the time since entering the agreement has been particularly hard for Ms J and I am sorry to hear of the abuse she has suffered. While I note the comments about her being coerced into the agreement, I do not find that I have enough to show that PSA Finance would have been reasonably aware of her situation at the point of providing the agreement or subsequently. I am instead upholding this complaint on the grounds of the agreement not being affordable and that this would have been identified had adequate checks taken.

Putting things right

As I don't think PSA Finance ought to have approved the lending, it should therefore refund all the payments Ms J has made, including any deposit. However, Ms J did have use of the car until September 2020 when the car was collected, that was around 21.5 months, so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of over £350 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Ms J's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I think a fair amount Ms J should pay is £275 for each month she had use of the car. This means PSA Finance can only ask her to repay a total of £5,912.50. Anything Ms J has paid in excess of this amount should be treated as an overpayment.

As the car has been voluntarily surrendered and collected by PSA Finance, to settle Ms J's complaint PSA Finance should do the following:

- End the agreement with nothing further to pay.
- Refund all the payments Ms J has made, less £5,912.50 for fair usage.
 - If Ms J has paid more than the fair usage figure, PSA Finance should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Ms J has paid less than the fair usage figure, PSA Finance should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once PSA Finance has received the fair usage amount, it should remove any adverse information recorded on Ms J's credit file regarding the agreement.

*HM Revenue & Customs requires PSA Finance to take off tax from this interest. PSA Finance must give Ms J a certificate showing how much tax it's taken off if Ms J asks for one.

My final decision

I uphold this complaint and direct PSA Finance UK Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 24 May 2022.

Jane Archer
Ombudsman