

The complaint

Ms G complains that RCI Financial Services Limited ("RCI") irresponsibly granted her a loan she couldn't afford to repay.

What happened

In September 2018, Ms G acquired a car and financed the deal through a hire purchase agreement with RCI. Ms G was required to make 36 monthly repayments of £506.35, with a final optional payment of £10,837.50 if she wanted to own the car at the end of the agreement. The total repayable under the agreement was £29,665.94 towards which Ms G paid a £600 deposit that RCI have explained consisted of a £200 payment by Ms G and a £400 deposit contribution.

Ms G says that RCI didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable. RCI didn't agree. It said that it carried out a thorough assessment which included reviewing Ms G's credit file and asking her about her income.

Our adjudicator recommended the complaint be upheld. He thought RCI ought to have realised the agreement wasn't affordable for Ms G.

RCI agreed to settle the complaint on the terms the adjudicator suggested but Ms G was disappointed. She explained that she needed to keep the car and would still have had her old one had RCI not approved the finance. She said she needed the car to transport her children and she explained that she wouldn't be able to get credit to acquire a new one.

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.

RCI 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.

Ms G initially declared her income to be £6,500 and later amended that to £26,514. I understand that meant that the loan was automatically approved but I think the variation in the income reported should have raised concerns for RCI. Given the overall size of the borrowing, the monthly repayments, and the term of the agreement, I think it would have been proportionate for RCI to have verified Ms G's income to ensure the agreement was affordable.

One way RCI could have done this was by requesting copies of Ms G's bank statements. I've reviewed two months of bank statements leading up to the lending decision.

The statements show that Ms G was earning about £1,422 per month and that her committed expenditure for bills, travel, food, and credit commitments was £1,521. This demonstrates that Ms G didn't have enough disposable income to afford the additional borrowing. I think it's likely proportionate checks would have revealed this to RCI, it therefore didn't act fairly by approving the finance.

Putting things right

As I don't think RCI ought to have approved the lending, it should therefore refund all the payments Ms G has made, including any deposit. However, Ms G has had use of the car throughout the term of the agreement (36 months), so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of over £506 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 G'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 G should pay is £350 for each month she had use of the car. This means RCI can only ask her to repay a total of £12,600 (the duration of the agreement). Anything Ms G has paid in excess of this amount should be treated as an overpayment.

I've thought about whether it would be fair to tell RCI to allow Ms G to keep the car and approve a repayment plan for the outstanding final payment. We'd usually try to put the consumer back in the position they would have been in had the unaffordable loan not been approved. I think this decision does so and whilst I understand Ms G's reason for wanting to keep the car I don't think it would be reasonable to insist that RCI allow that. It wouldn't be putting Ms G back in the position she would have been in, it would be enhancing that position.

To settle Ms G's complaint RCI should do the following:

- End the agreement and collect the car.
- Refund all the payments Ms G has made, less £12,600 for fair usage.
 - If Ms G has paid more than the fair usage figure, RCI should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Ms G has paid less than the fair usage figure, RCI should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once RCI has received the fair usage amount, it should remove any adverse information recorded on Ms G's credit file regarding the agreement.

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

My final decision

I uphold this complaint and direct RCI Financial Services 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 G to accept or reject my decision before 26 May 2022.

Phillip McMahon
Ombudsman