

The complaint

Ms K complains about FCE Bank Plc trading as Ford Credit's ("FCE") decision to lend her and its actions after she told it she could no longer make payments towards a hire purchase agreement.

What happened

Ms K entered into a hire purchase agreement with FCE in April 2018 to acquire a brand new car. The car cost £34,002.64. A deduction of £11,750 was made for a car that was part exchanged and so the amount of credit provided by FCE was £22,254.64. The hire purchase agreement was an interest free agreement and Ms K was required to make 48 monthly payments of £323.43, followed by a final payment of £6,730 if she wanted to keep the car.

In June 2020, Ms K wrote to FCE to let it know she wasn't the registered keeper of the car, a third party was in possession of it and that the third party was refusing to pay for it. She said it was a dispute in which legal parties were involved and she said given two years had passed, she was no longer willing to pay for the car. She asked FCE to recover the car. FCE attempted to do this, but it says it wasn't able to recover the car and after Ms K missed payments, it issued her with a default notice.

Ms K emailed FCE in March 2021 to complain, following receipt of the default notice. She said she discussed the circumstances with FCE during a call after she sent the letter in June 2020. She says it was suggested she should voluntarily terminate the agreement. But she said she wasn't told she needed to be in possession of the car to be able to voluntarily terminate the agreement. She said FCE wasn't able to locate the car and her credit file was impacted to say she had missed payments. She says she offered to reinstate payments but as a default notice was issued, she wasn't able to do this. She mentioned the third party had told her about details of action against them and queried how the third party would know these details when she had explicitly asked FCE not to contact them. She said she would reinstate payments by standing order from April 2021.

FCE issued its response to Ms K's complaint. It said it was told by the third party that the car had been taken abroad as it had been purchased from Ms K. FCE confirmed it hadn't received evidence of this though. It said it didn't allow Ms K to voluntarily terminate the agreement, as she wasn't in possession of the car. So it issued a notice of default.

Unhappy with this, Ms K referred her complaint to this service. She said:

- the third party couldn't obtain credit, so she applied for finance with FCE.
- in November 2018, she had a breakdown in her relationship with the third party. She said the third party continued to make the payments, but in January 2019, they stopped making payments. And so, she started making payments on their behalf, in an attempt to resolve things with them.
- she wrote to FCE to let it know she was stopping the payments, but it didn't respond to her letter and she had to resend this.

- in July 2020, she said FCE told her she could voluntarily terminate the agreement as she had made enough payments. She agreed to this. She says FCE then told her it couldn't locate the car and so, Ms K couldn't voluntarily terminate the agreement. She said she wasn't told she couldn't voluntarily terminate the agreement if the car wasn't in her possession and so, FCE had provided her with incorrect information.
- FCE reported to credit reference agencies that she had missed payments from November 2020, but she had started missing payments in May 2020.

Our investigator looked into the complaint and she thought FCE had made a fair lending decision when lending to Ms K. But she thought that it should have been clear to FCE that Ms K would always have been in breach of the agreement, given she wasn't listed as the registered keeper of it. The investigator said that she wasn't persuaded that Ms K would have been aware of the implications of the agreement when she signed it. And that the onus was on FCE to ensure it was right for Ms K. So she didn't think FCE had acted fairly when it allowed Ms K to enter into the agreement. She said FCE should end the agreement and without Ms K making any further payments and it should continue to attempt to locate the car and repossess it from the third party. She also said it should delete the account, including the default, from Ms K's credit file.

Ms K agreed. But FCE disagreed. It said Ms K went to the dealership to obtain the car and she had existing finance with another lender, which suggested she would have likely been aware of the finance process. It says when it reviewed Ms K's application, it queried the deposit payment of £11,750. It says it wasn't made aware that a third party was part exchanging their car to fund the deposit payment. It says in September 2019, it was notified by Ms K that the car had been taken from her without her permission. And she let her insurer know. It said the registration of the car took place after FCE had approved the finance, so it was unaware of any arrangement and as Ms K allowed this, she breached the agreement.

Our investigator said that she was persuaded by Ms K's testimony and that the dealership was aware the car wasn't for Ms K's use. She also said Ms K had told her she had seen the car being driven in the UK recently and so, FCE should be able to recover the car if it decided to do this.

As FCE remains unhappy, the case was passed to me to decide.

I issued a provisional decision on 28 November 2022 in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Ms K's complaint.

FCE needed to make sure that it didn't lend irresponsibly. In practice, what this means is that FCE needed to carry out proportionate checks to be able to understand whether any lending was affordable for Ms K before providing it.

In this case, I think there are two overarching questions that I need to answer in order to fairly and reasonably decide Ms K's complaint. These two questions are:

1. *Did FCE complete reasonable and proportionate checks to satisfy itself that Ms K*

would be able to repay her loan sustainably?

- If so, did it make a fair lending decision?
- If not, would those checks have shown that Ms K would've been able to do so?

2. Did FCE act unfairly or unreasonably in some other way?

Did FCE complete reasonable and proportionate checks to satisfy itself that Ms K would be able to repay her loan sustainably?

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship. But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay. I've carefully thought about what this means for Ms K's case.

In this case, FCE has said it carried out a credit check at the time of lending to Ms K which didn't show any adverse information. It also noted that Ms K's credit file stated she had a mortgage and another hire purchase agreement which she had maintained well. FCE hasn't provided us with a copy of Ms K's credit file, but Ms K has provided this service with a copy. I've relied on this to reconstruct what FCE likely saw at the time. The credit file Ms K has provided shows all of Ms K's agreements were up to date at the time the lending was approved and that she didn't have any recent adverse information reporting.

Ms K's application also confirmed she was a homeowner, noted her employer and that she had been in full time employment for 23 years.

Having carefully considered this, given that the agreement FCE was providing finance for was for four years, I think FCE should have obtained further information from Ms K before deciding to lend to her. I say this because FCE wasn't aware of Ms K's income or what her likely outgoings were at the time of lending to her. I appreciate that FCE obtained information from Ms K's credit file which suggested she was maintaining her existing agreements, but I don't think this went far enough. So I don't think FCE carried out proportionate checks to satisfy itself that Ms K would be able to repay her loan sustainably.

I've thought about what a proportionate check could look like considering the terms of the agreement. In this case, the repayments were due to last over four years, the purpose of the lending was for an asset and the repayments were £323.43. Given the amount of the monthly payments and that the payments were due to last for four years, I think FCE should have asked for information about Ms K's income and expenditure.

We've obtained bank statements which demonstrate Ms K's circumstances at the time she applied for the lending. To be clear, I'm not saying that FCE was required to obtain these before lending to Ms K, I'm simply saying I think it would have been reasonable for FCE to ask Ms K about her income and expenditure at the time of lending. Given the amount of time that has now passed since the lending was approved, I've reviewed Ms K's bank statements because I think the information they contain is what is needed to reconstruct what a proportionate check may have looked like and to confirm what Ms K's income and expenditure likely was at the time.

I also accept that if FCE had obtained information from Ms K about her expenditure at the time the agreement was taken out, this may have shown something different. However, in the absence of anything else from FCE to demonstrate what any other checks would have shown, I think it's reasonable to place considerable weight on the bank statements as an indication as to what Ms K's circumstances likely were at the time.

I've also reviewed the bank statements Ms K has provided this service. Having done so, I'm satisfied that Ms K had enough disposable income to sustainably make the repayments under the hire purchase agreement. Ms K's bank statements show a number of contractual loan payments being made and they show a number of transfers to other accounts and payments in from sources other than her employer. One of the sources of the payments into the account at the time appear to be from the third party the car was supplied to and one of the monthly payments from this third party is labelled as "mortgage payment".

So whilst I'm satisfied Ms K had a number of contractual obligations, I don't think she was liable for them all at the time of taking this agreement out. And so, after the third party's contributions are considered, Ms K had a substantial amount of disposable income remaining each month after any contractual repayments were made. And even if I discount the income from the third party, Ms K still has a disposable income to be able to make the repayments owed under the agreement.

In addition, Ms K has confirmed the third party paid the agreement directly from their own account. And so having considered this, I'm satisfied at the time Ms K entered into the agreement, she didn't expect to pay the repayments owed under the agreement from her own income. This is because she had agreed with the third party that they would be responsible for making the repayments towards the agreement, not her.

So, having carefully considered everything, I'm satisfied that whilst I don't think FCE carried out reasonable and proportionate checks when lending to Ms K, I think if it had asked further questions about Ms K's income and expenditure at the time, this would have likely shown that Ms K would have been able to sustainably afford the repayments owed under the hire purchase agreement. So it follows that I think FCE made a fair lending decision.

Did FCE act unfairly or unreasonably in some other way?

Voluntary termination

I've considered whether FCE acted unfairly in any way when it said Ms K couldn't exercise her right to voluntary termination.

Ms K's agreement states:

"TERMINATION: YOUR RIGHTS. You have the right to end this agreement. To do so, you should write to the person you make your payments to. They will then be entitled to the return of the goods and to half the total amount payable under this agreement, that is £17,002.32 (seventeen thousand two pounds and thirty two pence). If you have already paid at least this amount plus any overdue instalments, and have taken reasonable care of the goods, you will not have to pay anymore."

This meant that Ms K could exercise her right to end the agreement early, if she returned the goods and paid a total of £17,002.32. She would only be able to exercise this right if she did both these things.

Ms K initially told FCE she didn't have the car in February 2019 and said she had reported it stolen. She provided her insurers details to FCE and it looked into this. The notes from a call at the time confirm that Ms K wanted to know what would happen if she stopped paying for

the car. FCE confirmed it would chase her for the payment or send her account to a third party to chase repayment. It also explained she could voluntarily terminate the agreement, but it would need to know where the car was. Following this, it was told the car had been recovered.

In June 2020, when Ms K wrote to FCE, she told it that she wasn't in possession of the car. She explained that the third party was in possession of the car and provided FCE with details of how to contact them. FCE attempted to recover the car and employed three different agencies to attempt this. However, it was unsuccessful. And so, because Ms K hadn't returned the car to it, FCE couldn't process the voluntary termination.

Having thought about this, I don't think FCE has provided any incorrect information or acted unfairly. I say this because Ms K's hire purchase agreement clearly explains that to end the agreement early, she needs to return the car to FCE and pay it at least £17,002.32. It had also told her this in February 2019. FCE doesn't dispute that Ms K had paid at least £17,002.32 in June 2020. But Ms K didn't return the car to FCE and so, she couldn't exercise her right to voluntarily terminate the agreement. FCE wasn't responsible for the whereabouts of the car. It was down to Ms K to ensure the car was in her possession whilst she was supplied with it under the hire purchase agreement. And so, I don't think FCE acted unfairly when it told Ms K it wouldn't allow her to end her agreement early.

I also acknowledge that Ms K says she told FCE at the time she wasn't in possession of the car. But her letter suggested the car was in this country and provided details of where it may be located. It made no suggestion that the car may be in a different country, although I appreciate she may not have known this at the time. I think FCE made reasonable attempts to recover the car and because it was unsuccessful, it couldn't allow Ms K to end the agreement early. I don't think it acted unfairly here.

Termination of the agreement

Ms K says that had she known she couldn't voluntarily terminate the agreement, she would have explored other options. However, Ms K was aware of her right to settle the agreement early, as she had requested a number of settlement quotes whilst she had the agreement. And in January 2021, FCE told Ms K that it had exhausted its attempts to recover the car and it had no other option than termination. It suggested Ms K seek legal advice and provided Ms K with a month to seek legal advice. Ms K responded and said she would carry on with the instalments and asked FCE to add the nine missed payments on to the end of her contract. However, FCE said it couldn't do this and said it would issue her with a default notice.

I've also reviewed the terms of Ms K's agreement. They say:

"5. RESTRICTIONS ON WHAT YOU CAN DO WITH THE VEHICLE... (b) You must not ... part with possession or control of the Vehicle (other than for the purpose of servicing, maintenance or repair). You must be the registered keeper. You must not give anyone any legal rights over the Vehicle".

This meant that Ms K needed to be in possession of the car and she needed to be the registered keeper. But she wasn't and so she was in breach of the agreement, which meant that FCE was entitled to terminate the agreement.

Having thought about this carefully, I'm satisfied that Ms K was afforded the opportunity to explore other options other than voluntary termination. And I think FCE was entitled to end the agreement when it did, given Ms K was in breach of the agreement. I'm also satisfied FCE correctly issued a default notice when it did because it was under the impression that it

would be able to recover the car in the months prior to this. Had it defaulted the account whilst it was attempting to locate the car, I think it would have been unfair for it to do this. This is because Ms K would have been able to exercise her right to voluntary termination if it FCE been able to locate the car, or she had reached an agreement with the third party and so it wouldn't have been fair to report a default to her credit file before FCE did.

Was FCE aware that Ms K was in breach of her agreement at the time it made its lending decision?

Ms K says she only applied for the finance as the third party was declined finance. She says the dealer suggested that the finance go in her name. However, Ms K hasn't provided any supporting information to confirm this was the case. But in any event Ms K was provided with the terms and conditions of the agreement and she signed the hire purchase agreement confirming she understood it. The terms and conditions clearly set out that FCE's customer – Ms K in this case – must be in possession or control of the car. So Ms K would have been aware she was in breach of her agreement and that FCE could terminate the agreement at any time.

So overall, I'm not persuaded that FCE, or its agent, was aware that Ms K would likely be in breach of her agreement at the time it made its lending decision.

My provisional decision

My provisional decision is that I don't intend to uphold Ms K's complaint."

Responses to the provisional decision

FCE didn't respond.

Ms K responded. To summarise, she said:

- The car was never registered in her name upon the advice of the dealer ("D") and D failed to tell her she was in instant breach of her agreement. She said in doing so, she also wouldn't be able to voluntarily terminate the agreement.
- The third party couldn't obtain finance. So, D recommended the finance was put in Ms K's name. D engineered a solution to enable it to proceed with the sale of the car.
- The third party used his car as the part-exchange deposit.
- D should have investigated potential vulnerability issues as a relationship breakdown carried possible significant financial consequences.
- FCE made assumptions that because she had previous finance agreements, she would have been aware of the finance process. But her previous arrangements didn't involve third parties and were only in her name.
- FCE didn't carry out proper checks. It queried that the deposit had been paid for by way of part-exchange of a car owned by a third party. FCE should have sought confirmation that the car would be registered in Ms K's name.
- FCE say it can't locate the car. Ms K has queried whether FCE has carried out any checks with the DVLA to locate the car. FCE didn't seek evidence from the third party when it contacted him about the sale of the car.

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.

Your text here I've reviewed Ms K's comments in response to my provisional decision. Ms K has reiterated a number of points that she's previously raised as part of her complaint. I've already considered and addressed the points that I think are relevant to my consideration of Ms K's complaint in my provisional decision. The rules of this service allow me to do this. And in the absence of any arguments on these matters, I don't consider it necessary to offer any further comment on the same arguments, other than to say I've not been persuaded to depart from my previous findings on these matters.

Instead, I'll focus on any new points Ms K has raised. These are D investigating any potential vulnerability issues, the assumptions made about her previous finance agreements and the checks it carried out in relation to the deposit paid.

Ms K has said D should have investigated potential vulnerability issues as a relationship breakdown carried possible significant financial consequences. I understand Ms K's point that a relationship breakdown carries significant financial consequences. But at the time the lending decision was made, there doesn't appear to have been any suggestion by Ms K or her relationship would breakdown, or that this was something that the third party would have known either. So, in these circumstances, I don't see how FCE could be expected to know about this or take this into account when deciding whether to lend to Ms K.

And most importantly, I think that Ms K's disposable income, without contributions made by the third party, was still enough that she could afford the repayments under the agreement. So, I don't think FCE acted unfairly here and neither do I think it made an unfair lending decision.

FCE said Ms K had another finance agreement with another lender at the time which suggested she would have likely been aware of the finance process. Ms K said that she did have another finance agreement, but this was in her own name and didn't involve a third party. I've interpreted this to mean that the registered keeper was different, as this finance agreement is also in Ms K's sole name.

As I've previously said in my provisional decision, the terms and conditions of this hire purchase agreement are clearly set out and explain Ms K's obligations under the agreement. I appreciate Ms K may not have had a previous agreement where another party was recorded as the registered keeper of the vehicle. But Ms K has provided no further supporting information to suggest that D made any suggestions about how the finance should be set up or who's name the car should be registered in. And so, on balance, I'm not satisfied that FCE or its agent acted unfairly or unreasonably at the time the agreement was inception.

Ms K says FCE queried that the deposit was paid by way of a part-exchange by the third party. However, I've not seen anything to suggest that FCE was aware that the deposit was paid using a third party part-exchange. It didn't query the deposit with D, instead it simply noted that a large deposit had been paid. In light of this, as FCE didn't know that a part-exchange provided by the third party was used to fund the deposit, I don't think FCE has acted unfairly here. And so it follows that I see no reason to depart from my provisional decision set out above.

My final decision

I do not uphold Ms K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 9 February 2023.

Sonia Ahmed
Ombudsman