DRN-4228493

The complaint

Mrs S is complaining about Premium Plan Limited's (PPL) decision to lend to her – she says the loan was unaffordable. She's represented in the complaint by a claims management company (CMC).

What happened

In August 2017, Mrs S took out a hire purchase agreement with PPL to finance the purchase of a car. She paid a deposit of £200 and borrowed around £4,600 over a 48-month term, with monthly repayments of £156.08. Mrs S made repayments on time until November 2018 when a direct debit failed. She explained that this was temporary and made an arrangement to cover this by paying an additional £13 each month from December 2018.

Mrs S made her repayments on time in December 2018 and January 2019 but then asked for a settlement figure as she was having problems with her car. The agreement was terminated in mid-March 2019 and the car was sold at auction for £450 as a non-runner. PPL added the difference between the average value for the car (£2,000) and the sale price to Mrs S's total liability to them.

In August 2022 Mrs S complained to PPL via a CMC, saying PPL shouldn't have lent to her. At this time, PPL were contacting her regularly about a debt of around £2,670. The CMC said that the time of the lending decision, Mrs S had accounts in default which had been passed to debt recovery companies which was a clear risk indicator that the finance wasn't affordable for her.

PPL responded, saying they'd checked Mrs S's credit file and bank statements, and discussed her circumstances with her on the phone. They'd completed an income and expenditure assessment which showed Mrs S had disposable income of around £120 with a £50 buffer built in. And everything was re-checked by their underwriting team before offering to lend to Mrs S. So they'd concluded the loan was affordable for Mrs S and didn't uphold her complaint.

The CMC brought Mrs S's complaint to our service and an investigator looked into it. Her view was that the complaint should be upheld. She said that although she could see PPL had done enough checks, she didn't think they'd made a fair lending decision based on the results of those checks. Our investigator's view was that the fact Mrs S wasn't paying some key commitments, such as council tax and water bills, should have been a clear indicator that Mrs S wasn't in a position to sustainably afford repayments against a new agreement. So, she said, PPL needed to refund to Mrs S any payments she'd made above a fair usage figure of £1,800.

PPL weren't happy with our investigator's view. They said they'd factored bills and council tax into their income and expenditure assessment even though Mrs S wasn't paying them. And they didn't think Mrs S's repeated use of her overdraft should prevent her from borrowing. PPL noted that there weren't any returned direct debits in the bank statements they reviewed, so they didn't agree that the bank statements showed the agreement was unaffordable. They added that Mrs S needed a car and had applied for finance because her previous car had broken down. They felt not having a vehicle would have a detrimental impact on Mrs S and her family's quality of life. PPL and our investigator couldn't reach an agreement so the complaint's come to me for a 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.

Having done so, I'm upholding Mrs S's complaint for broadly the same reasons as our investigator. I'll explain more below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did PPL carry out proportionate checks?

Before offering to lend to Mrs S, PPL carried out an initial check of her credit file and bank statements for late April through to late July. They then spoke to Mrs S on the phone and asked about her circumstances, establishing that she was separated with three children and lived in rented accommodation. They also checked her rental agreement to confirm the rental charge.

It's clear from PPL's notes that they carried out a detailed review of Mrs S's circumstances and that they completed an income and expenditure report based on what they found.

I'm satisfied PPL completed proportionate checks when assessing the affordability of their hire purchase agreement for Mrs S.

Did PPL make a fair lending decision?

Having done their checks, PPL concluded that Mrs S could afford an agreement with repayments of up to £160 per month over 5 years. They'd calculated her average monthly income as £2,785 and average non-discretionary expenditure as £2,666 per month (taking into account the repayments on the proposed agreement).

When doing this calculation, PPL included amounts for various bills that Mrs S wasn't generally paying – they were being paid by her mother with Mrs S occasionally contributing. And they included 2% of the total amount in default on her credit file – although they'd noted from their call with Mrs S that she wasn't aware of these defaults. The figures included in PPL's expenditure analysis don't seem unreasonable, and many appear to have been taken directly from Mrs S's bank statements. So I can understand why they thought the repayments would be affordable for Mrs S and it would be reasonable to lend to her.

However, I've thought more widely about Mrs S's circumstances. Her credit file shows that she'd defaulted on a credit card in March 2017, just a few months before the date of this agreement. And the balance on that card was well over the limit. She'd defaulted on her water bills in August 2016. And she had defaults on home credit accounts, mail order accounts, other credit cards and utilities and an advance against income account – although all of these were much older, dating back to 2014 and earlier. Mrs S's credit file didn't show any evidence that she was able to maintain regular repayments against credit – there weren't any active, well-maintained lines of credit.

Mrs S's bank statements show that she wasn't making many regular payments at all. While I note PPL said she didn't have any returned direct debits in the period they looked at, there were only six direct debits, totalling less than £100, each month. These were for TV and for some repayment of her defaulted debts. There were no regular payments of rent (which was paid erratically), council tax, energy bills or water rates.

CONC 5.3.1 G required firms at the time to assess a customer's ability to meet repayments in a sustainable manner without incurring financial difficulties or experiencing significant adverse consequences. All of the evidence PPL had at the time suggested Mrs S couldn't meet her existing financial commitments, despite what their income and expenditure assessment said. So I don't think it was reasonable to say Mrs S would have been able to meet repayments on a new loan in a sustainable manner and without significant adverse consequences. It follows I don't think PPL acted fairly in lending to Mrs S.

Putting things right

As I don't think PPL should have approved the lending, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mrs S had use of the car for around 18 months, so I think it's fair she pays for that use. There isn't an exact formula for working out what fair usage should be. However, in deciding what's fair and reasonable, I've thought about the amount of interest that was charged under the agreement, the usage Mrs S likely had of the car and what her costs to stay mobile might have been had she not entered into this agreement. In doing so, I think a fair amount Mrs S should pay is £100 for every month she had use of the car. So I think it would be fair and reasonable for PCF to retain £1,800.

To settle Mrs S's complaint, PPL need to do the following:

- End the agreement with nothing further to pay unless this has already been done.
- Refund all the payments Mrs S has made (including the deposit), less £1,800 for fair usage.
    - If Mrs S has paid more than the fair usage figure, PPL should refund any overpayments, adding 8% simple interest per year from the date of each overpayment to the date of settlement. Or;
    - If Mrs S has paid less than the fair usage figure, PPL should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once PPL has received the fair usage amount, it should remove any adverse information recorded on Mrs S's credit file regarding the agreement.

If PPL consider tax should be deducted from the interest element of my award they should provide Mrs S a certificate showing how much they've taken off so that Mrs S can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained above, I'm upholding this complaint. Premium Plan Limited must take the steps I've outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S to accept or reject my decision before 24 August 2023.

Clare King
Ombudsman