

Complaint

Miss T complains that N.I.I.B Group Limited (trading as “Northridge Finance”) unfairly entered into a hire-purchase agreement with her.

She’s said the agreement was unaffordable, as she struggled to make her repayments, and so she shouldn’t have been provided with it.

Background

In March 2019, Northridge Finance provided Miss T with finance for a used car. The cash price of the vehicle was £12,032.00. Miss T paid a cash deposit of £50, received a part exchange value of £300 for her existing vehicle and entered into a 60-month hire-purchase agreement with Northridge Finance to cover the remaining £11,682.00.

The loan had interest, fees and total charges of £2,104.00 (comprised of interest of £2,103.00 and a £1 end administration fee). So the total amount to be repaid of £13,786.00 (not including Miss T’s deposit) was due to be repaid in 59 monthly instalments of £229.75 followed by a final monthly payment of £230.75.

Miss T’s complaint was considered by one of our investigators. She thought that Northridge Finance hadn’t completed reasonable and proportionate checks before entering into this hire-purchase agreement with Miss T and if it had carried out such checks, it would have seen that the repayments were unaffordable for her.

So she thought that Northridge Finance hadn’t acted fairly and reasonably and towards Miss T and recommended that this complaint should be upheld.

Northridge Finance disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

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

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss T’s complaint.

Having carefully thought about everything I’ve been provided with, I’ve decided to uphold Miss T’s complaint. I’d like to explain why in a little more detail.

Northridge Finance needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Northridge Finance needed to carry out proportionate checks to be able to understand whether Miss T could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Northridge Finance carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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.

Northridge Finance's checks – were they reasonable and proportionate?

In this case, Northridge Finance has said that it checked Miss T's income and carried out a credit search on her before deciding to lend to her. Despite being chased for this information on a number of occasions Northridge Finance provided the output of what its checks showed. It appears to believe that I should accept that its checks were proportionate simply because it says its systems approved the agreement.

This is despite the fact that there are discrepancies in its submissions through the course of this complaint. In its final response, Northridge Finance said that Miss T confirmed that she was employed as a travel agent with the same employer for 30 years and that she had an income of £19,500.00 a year. Given Miss T isn't yet 30, it is difficult for me to see how she could have been employed for 30 years in 2019, or have any degree of confidence of what Northridge Finance stated about its income checks at this time.

When the complaint was referred to us, our investigator asked Northridge Finance to provide evidence of the income checks and credit checks and what they showed. Northridge Finance did not provide this information prior to the investigator's assessment. And in response to our investigator's assessment it stated that Miss T was employed as a care support worker with an annual income of £16,200.00 at the time of this application. But yet again it did not provide the evidence to support this, despite having ignored all requests prior to the assessment, or the credit checks either.

Rather disappointingly, it instead decided to refer to things such as application fraud, the fact that current affordability checks were being applied to this application and Miss T having received benefit from the vehicle and not complained for four years, in its response.

To be clear, the regulator's rules in relation to a creditworthiness assessment are contained in CONC 5.2A. This version of CONC 5.2A has been in place since November 2018. So the requirements in relation to the level of checks necessary are the same now as they have been since 2018 and I cannot see how current rules have unfairly been applied retrospectively.

Furthermore, I also think that it is worth me pointing out that CONC 5.2A.16G (3) states:

"For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer)".

In these circumstances, where it has been unwilling or unable to provide evidence that it did take steps to check Miss T's income, in accordance with its requirements, I consider Northridge Finance's use of inflammatory language such as CIFAS application fraud to be particularly unhelpful here. I say this particularly in light of the inconsistent submissions it has

made it relation to what it gathered about Miss T's income during the course of this complaint and its inability to submit any evidence to corroborate what it has said.

As Northridge Finance has not provided evidence demonstrating what any income check it may have carried out showed and bearing in mind the amount of credit being advanced as well as the monthly repayments required, I'm not prepared to accept the checks Northridge Finance carried out before entering into this hire-agreement with Miss T were reasonable and proportionate. I'm not persuaded that reasonable and proportionate checks were carried out before Miss T was provided with her agreement, simply because Northridge Finance's systems approved the application.

As this this is the case, I don't think that Northridge Finance carried out reasonable and proportionate checks before deciding to lend to Miss T in March 2019.

What are reasonable and proportionate checks likely to have shown?

As Northridge Finance did not carry out (or cannot show that it carried out) reasonable and proportionate checks, I now need to recreate such checks in order to determine what they are more likely that not to have shown Northridge Finance had they been carried out.

In my view, given the amount of the monthly payments here and the length of time they needed to be made for, I would have expected Northridge Finance to have had a reasonable understanding about Miss T's regular living expenses as well as her income and existing credit commitments.

Miss T has now provided us with evidence of her financial circumstances at the time she applied for finance from Northridge Finance – in the form of her bank statements. Of course, I accept different checks might show different things. And just because something shows up in the information Miss T has provided, it doesn't mean it would've shown up in any checks Northridge Finance might have carried out.

I think it's important for me to say this because it isn't my finding that Northridge Finance needed to request bank statements from Miss T before lending to her. My finding here is that Northridge Finance needed to get an understanding of Miss T's income and her regular living costs as well as her credit commitments.

But in the absence of anything else from Northridge Finance showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on what the information Miss T has provided shows as an indication of what Miss T's financial circumstances were more likely than not to have been at the time and therefore what reasonable and proportionate checks are more likely than not to have shown.

Given what Northridge Finance has said about Miss T having made her payments, I also think it's important for me to set out that Northridge Finance was required to establish whether Miss T could sustainably make the payments to her hire-purchase agreement. This meant that Miss T had to be able to make her payments without borrowing further or suffering significant adverse consequences.

And while a borrower making their repayments is a reasonable starting for assessing whether they could afford them, it does not automatically follow that an agreement was affordable simply because a borrower made their repayments. After all they could have borrowed to do so, or suffered other adverse consequences as a result of making payments.

I've carefully considered the information Miss T has provided in this context. Having considered this information, it's clear that Miss T was earning significantly less than what

Northridge Finance has said it believed Miss T's income to be both in its final response and its response to the investigator's assessment.

Furthermore, Miss T's income was pretty much being used up to meet her living costs and commitments to existing creditors. As I've explained, Northridge Finance ought to have taken steps to validate Miss T's income and expenditure and shouldn't have simply relied on what may or may not have been said at the time, in order for its checks to have been proportionate.

So I think that proportionate checks would more likely than not have shown Northridge Finance exactly how much Miss T was earning at the time and that she was unlikely to be able to make the payments to this hire-purchase agreement without borrowing further or suffering significant adverse consequences.

Bearing this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss T would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Northridge Finance to the fact that Miss T was in no sort of position to make the payments on this agreement without suffering significant adverse consequences.

As Northridge Finance entered into this hire purchase agreement with Miss T in these circumstances, I'm satisfied that Northridge Finance failed to act fairly and reasonably towards Miss T in March 2019.

Miss T paid interest, fees and charges on a hire-purchase agreement that she shouldn't have been provided with. So I'm satisfied that she has lost out as a result of what Northridge Finance did wrong and that Northridge Finance now needs to put things right.

Fair compensation – what Northridge Finance needs to do to put things right for Miss T

Having thought about everything, I think that it would be fair and reasonable in all of the circumstances of the case for Northridge Finance to do the following:

- it is my understanding that Miss T has already sold the vehicle and settled the finance. In these circumstances, Northridge Finance should refunding all interest, fees and charges Miss T paid on her hire-purchase agreement;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Miss T to the date of settlement†
- removing any and all adverse information it may have recorded about this hire-purchase agreement from Miss T's credit file.

† HM Revenue & Customs requires Northridge Finance to take off tax from this interest. Northridge Finance must give Miss T a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Ms T's complaint. N.I.I.B Group Limited (trading as "Northridge Finance") needs to put things right in the way in the way that I have directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 26 February 2024.

Jeshen Narayanan
Ombudsman