DRN-4379191

The complaint

Miss P complains that N.I.I.B. Group Limited trading as Northridge Finance (Northridge Finance) irresponsibly granted her a hire purchase agreement that she couldn't afford to repay.

What happened

In July 2018 Miss P acquired a vehicle financed by a hire purchase agreement from Northridge Finance. Miss P was required to make 47 monthly repayments of £205.97 and one final repayment of £5,581 if Miss P wanted to keep the vehicle at the end of the agreement. The total amount repayable under the agreement was £15,571.61. Miss P and her representative for the complaint believe Northridge Finance failed to complete adequate affordability checks. Miss P says that if it had it would've been clear that the agreement wasn't affordable.

Northridge Finance disagreed. It said it carried out an adequate affordability check including credit bureau data that it felt made a strong case for approval of the agreement. It found no existing financial commitments which would impair Miss P's ability to repay and thought that her income of £15,000 a year was enough to service the monthly payments of £205.97. It said its checks showed Miss P had no indications of financial stress or indebtedness.

Our Investigator recommended that the complaint should be upheld. They thought Northridge Finance's checks weren't proportionate and that it acted unreasonably when approving the finance.

Miss P agreed, but Northridge Finance disagreed. It stated that the Investigator's opinion didn't give enough weight to the checks it did complete, and retrospectively applied credit assessment criteria from 2023 which wasn't industry practice in 2018. It felt our Investigator was suggesting that automated scoring systems should no longer be used and that there was no onus on Miss P to provide accurate data at the point of sale. It said Miss P had clear use of the agreement – quoting the miles driven with the vehicle during the period – and that she'd signed a declaration at the time confirming the agreement was affordable to her.

On receipt of new information from Miss P our Investigator revised his suggested settlement for the complaint. Northridge Finance still disagreed, it stated that a genuine complaint would not be made four years after the fact, and that it was only the involvement of a claims management company that induced Miss P to complain. It reiterated that it felt our Investigator's opinion put no responsibility on Miss P at the point of sale.

It asked for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision 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.

Northridge Finance has suggested that our Investigator has retrospectively applied criteria from 2023 which wasn't industry practice when the agreement was taken out in 2018. So, I thought it important to highlight some of the rules and guidance in place at the time Northridge Finance lent to Miss P.

The Financial Conduct Authority (FCA) was the regulator when Miss P took out her agreement with Northridge Finance. Its rules and guidance obliged Northridge Finance to lend responsibly. Northridge Finance needed to take reasonable and proportionate steps to assess whether a borrower could afford to meet its repayments in a sustainable manner over the lifetime of the agreement. This was set out in its Consumer Credit Sourcebook (CONC).

CONC 5.3.1(G) stated that:

1. *In making the creditworthiness assessment or the assessment required by CONC 5.2.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner meant being able to meet repayments without undue difficulty - using regular income, avoiding further borrowing to meet payments and making timely repayments over the life of the agreement without having to realise security or assets (CONC 5.3.1G (6)).

The FCA didn't specify what exact level of detail was needed to carry out an appropriate assessment. But it did say that the level of detail depended on the type of credit, the amount of credit being granted and the associated risk to the borrower relative to the borrower's financial situation (CONC 5.2.4G (2)).

So, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. I'd expect a lender to seek more assurance the lower a person's income, the higher the amount of credit being applied for and the longer the term of the agreement. Any responsibility on the part of the customer would not limit or reduce these expectations.

When considering the rules and guidance in place in July 2018, Northridge Finance needed to carry out reasonable and proportionate checks to be able to assess the potential for the credit agreement to adversely impact Miss P's financial situation. It is from this standpoint and criteria that I've approached my decision.

Northridge Finance have also contended the authenticity of the complaint, on the grounds that it was brought four years after the event complained of, and in their opinion was only induced due to the involvement of a claims management company. It feels that a reasonable person would not delay concerns or contact for four years had there been a genuine grievance.

I've considered these points carefully, but I fail to see how bringing a complaint four years after the event makes it any less genuine. Northridge Finance will be aware that our jurisdiction accommodates for complaints raised far longer than four years after the event complained of. There are a multitude of reasons why a customer might not complain instantly, and it's also perfectly acceptable for a customer to only decide to complain after speaking with a claims management company. Many complaints are brought to the Financial Ombudsman in this manner. In any case, as Miss P's complaint has been brought within the time limits of our jurisdiction, I'm satisfied that it should be investigated.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Miss P's complaint. These two questions are:

1. *Did Northridge Finance complete reasonable and proportionate checks to satisfy itself that Miss P would be able to repay her loan without experiencing significant adverse consequences?*

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

2. *Did Northridge Finance act unfairly or unreasonably in some other way?*

<u>Did Northridge Finance complete a reasonable and proportionate affordability check?</u>

I'm not satisfied that Northridge Finance gathered a reasonable amount of information from Miss P about her income and expenditure prior to approving the finance. Northridge Finance's searches found that Miss P's annual income was around £15,000. This meant the total amount repayable under the agreement was more than Miss P would make in a year and the monthly repayments were a sizeable amount of her income even before taking account of Miss P's committed expenditure.

Northridge Finance says that Miss P's application was automatically approved by its credit scoring system. It says its credit checks showed Miss P had no existing financial commitments that might impair her ability to repay, and it felt her income was significant enough to service a monthly agreement of £205.97 per month. Its credit bureau data also demonstrated Miss P had previous agreements with higher monthly repayments that had run without any missed repayments. In conclusion it felt none of its checks raised any concerns or showed any indication of financial stress. Northridge Finance has provided a copy of the credit check it completed and I've considered the information it contains carefully. I'm not satisfied enough consideration was given to the personal risk posed to Miss P.

Whilst there appears to be no history of missed payments the information provided shows two credit cards which are effectively at their credit limit. This may have been an indication that Miss P was already struggling to manage her finances. As well as this there was another loan in place which alone accounted for around 14% of the income Northridge Finance recorded at the time. This loan combined with the proposed hire purchase agreement repayments amounted to around 30% of Miss P's total recorded monthly income, before any consideration towards other costs such as credit cards, rent, utility bills, food, petrol and insurance.

I want to be clear that I've considered Northridge Finance's position about the type of checks that it did complete. And I understand that it felt none of the searches it completed demonstrated any risk of financial stress. However, considering the circumstances already mentioned I'm not satisfied that these checks adequately gathered a proportionate amount of information. Northridge Finance were lending Miss P a significant amount of money which required payments over a four-year period. Its checks failed to answer how much Miss P actually had left to spend from her relatively low income after her existing commitments. Whilst I understand Northridge Finance relied in part on a history of previous agreements being managed well at higher monthly repayment amounts, her financial circumstances may well have changed by the point this particular agreement was being considered.

Northridge Finance have also highlighted that Miss P signed the agreement confirming that she understood the credit agreement to be affordable for her – and I don't doubt that at the time she believed this to be true, but I'm also not satisfied that this confirmation would remove the need for Northridge Finance to complete proportionate affordability checks for her specific circumstances and come to its own conclusion.

Given the size of the lending, the monthly repayments, the length of agreement, the information in Miss P's credit file and her relatively low income, I think it would have been proportionate for Northridge Finance to have enquired about Miss P's expenditure – including costs such as food, petrol, utilities and housing. Without knowing what her regular committed expenditure was Northridge Finance wouldn't have got a reasonable understanding of whether the agreement was affordable for her specific circumstances.

As Northridge Finance don't appear to have sought a reasonable understanding of Miss P's total committed expenditure, I don't think it carried out reasonable and proportionate affordability checks before lending. Northridge Finance needed to do more in the circumstances before agreeing to lend. Without knowing what her regular committed expenditure was, Northridge Finance wouldn't have got a reasonable understanding of whether the agreement was affordable for her.

I'm satisfied Northridge Finance didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

Would reasonable and proportionate checks have shown that Miss P could sustainably repay the borrowing?

I've considered what Northridge Finance would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Miss P would have told Northridge Finance had it asked about her regular expenditure. I don't think Northridge Finance necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Miss P's statements from the three months leading up to the application.

The statements show Miss P was receiving an average of around £1,230 a month in income from her salary and benefits. Her regular committed monthly expenditure at the time was around £1,100. In calculating these amounts I've included any applicable payments for her credit commitments, housing costs, utilities, food, fuel and other ongoing costs. I've also removed Miss P's previous motor finance agreement that was ended upon obtaining this hire purchase agreement.

Taking these figures into account, it appears to show the agreement wasn't affordable for Miss P. Altogether her income and expenditure at the time satisfies me that the agreement did not appear to be affordable. On average Miss P was left with around £130 of disposable income. This did not leave enough to cover the monthly payments of £205.97, let alone leave any amount for emergency costs. For this reason, I'm not persuaded that Northridge Finance acted reasonably when approving the finance.

Taking this into account, it's clear that if Northridge Finance had completed reasonable and proportionate affordability checks it would most likely have found that Miss P couldn't sustainably afford the hire purchase agreement. I'm satisfied that it now needs to put things right.

Did Northridge Finance act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that Northridge Finance acted unfairly or unreasonably in some other way.

Putting things right

As I don't think Northridge Finance ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Miss P has already settled the agreement in full by part-exchanging the vehicle in March 2020. So, Miss P did have use of the car until March 2020. I think it's fair that Miss P pays for that use, but I don't think that the monthly repayments under the agreement are a fair reflection of what fair usage for the vehicle should be. This is because a large proportion of the repayments went towards repaying interest.

There isn't an exact formula for working out what fair usage ought to be. However, in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, the likely use Miss P had of the car and the costs she would likely have incurred to stay mobile if she'd never entered into this agreement. In doing so, I think a fair amount Miss P should pay is £170 for each month she had use of the vehicle up to the point it was part-exchanged, and the agreement was settled in March 2020.

Miss P also part-exchanged her existing vehicle when taking out the finance in question – the agreement shows the part-exchange amount was £310.02. Northridge Finance should refund this amount as well to as closely put Miss P back in the position she would've been in were it not for the finance being unfairly approved.

To put things right N.I.I.B. Group Limited trading as Northridge Finance should:

- Refund £310.02 which represents the part-exchange amount, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Refund all the monthly payments Miss P made, less £170 per month she had use of the vehicle.
- If Miss P has paid more than the fair usage figure, N.I.I.B. Group Limited should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or:
- If Miss P has paid less than the fair usage figure, N.I.I.B. Group Limited should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once N.I.I.B. Group Limited has received the fair usage amount, it should remove any adverse information recorded on Miss P's credit file regarding this agreement.

*HM Revenue and Customs requires N.I.I.B. Group Limited to deduct tax from the interest payment referred to above. N.I.I.B. Group Limited must give Miss P a certificate showing how much tax it's deducted if she asks for one.

My final decision

My decision is that I uphold this complaint and direct N.I.I.B. Group Limited trading as Northridge Finance to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss P to accept or reject my decision before 15 December 2023.

Paul Clarke
Ombudsman