

The complaint

Mr H is complaining that Oasis Motor Finance Limited (OMF) shouldn't have lent to him – he says the lending was unaffordable. A representative has brought his complaint to us but for ease I've written as if he's dealt with us directly.

What happened

In December 2022, Mr H took out a hire purchase agreement with OMF to finance the purchase of a vehicle. He borrowed £9,980 – the cash price of the vehicle. The agreement required Mr H to make 59 monthly repayments of £307.70, followed by a final instalment of £406.70 (including a £99 option to purchase fee). Since the beginning of the agreement a number of Mr H's direct debits have bounced but he's made up the payments each time.

In June 2023, Mr H complained to OMF, saying that he thought OMF had failed to conduct appropriate checks before lending to him.

In response, OMF said they'd carried out all the correct checks including an open banking check before lending to Mr H. They said they'd confirmed the finance agreement was affordable and the lending was responsible.

Mr H was unhappy with OMF's response and brought his complaint to our service, saying the lending has had a significant adverse impact on his finances and his mental health. Our investigator said he thought the complaint should be upheld – he didn't think OMF had done proportionate checks and said if they had, they'd have realised the lending was unaffordable.

OMF weren't happy with our investigator's view. In summary, they said there weren't any other checks they could have done which might have brought any unaffordability to light. They said Mr H had told them over the phone that there weren't any forthcoming circumstances which might affect him making his repayments. And they said it was fair to include tips and child benefits in an assessment of income – and doing so would suggest the agreement was affordable. OMF asked for an ombudsman's decision and the complaint's come to me.

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 Mr H'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 OMF carry out proportionate checks?

OMF said they carried out the following checks:

- reviewed Mr H's credit file; and
- reviewed his open banking data.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, and what OMF found. At over £18,500, the total amount Mr H would have to repay was significant, and the term of the loan was five years. So my starting point is that the checks needed to be thorough.

OMF have provided a summary of Mr H's credit file. This doesn't give much information – for example it doesn't show any balances or indications of monthly credit commitments. It does show that at the time of Mr H's application he had taken out five new lines of credit in the preceding three months. I'd expect this to have raised concerns for OMF. And I'd expect OMF to have had access to and taken into account the amounts Mr H owed.

Looking at Mr H's copy of his credit report, I can see he had credit balances of over £20,000, as well as a mortgage of over £260,000. So he was heavily indebted, with a lot of new debt, at the time of OMF's lending decision. I appreciate there was no evidence of recent late payments or defaults, but I think the level of new debt was enough to warrant additional investigation into Mr H's financial situation.

It's not entirely clear how OMF used Mr H's open banking data. It seems they've reviewed one month's transactions and determined from this data that the agreement was affordable. I'm not satisfied one month is long enough to support an assertion that Mr H would be able to make the repayments in a sustainable way, over the 5-year term. And OMF's assessment doesn't appear to take into account the repayments Mr H would need to make under the new loans he had recently taken out – despite OMF being aware of these loans from the credit check they had done.

On that basis, I'm inclined to say OMF didn't do proportionate checks – I think they should have done more to check his income, to calculate his payments to creditors, and to understand his regular non-discretionary spending.

What would OMF have found if they had done proportionate checks?

I've started by looking again at Mr H's credit report. This shows that at the time of his lending application, Mr H was supposed to be paying £2,365 each month to his creditors alone. OMF have said Mr H's mortgage was joint, but Mr H has told us he was separated and solely responsible for living costs. I've seen no evidence which shows the mortgage was joint – OMF have told me that they would have based this on the electoral roll information contained in the credit check – which showed that Mr H and Mrs H were both living at the property.

I'm not satisfied that's a reasonable basis for assuming the costs of the mortgage (or other living expenses) were shared. And it certainly doesn't mean Mr H was only liable for half of the mortgage payments. If OMF had asked Mr H at the time, I think it's likely he'd have told them he was responsible for all living costs.

Looking at Mr H's bank statements and payslips, it appears his average income was around £2,250, taking into account his salary, tips, and child benefit payments. So, with income of £2,250 per month and payments to creditors of £2,365 per month, it's clear that a new agreement was unaffordable for Mr H and I'm satisfied this would have been apparent to OMF if they'd done reasonable and proportionate checks.

Even if I only included half of the monthly mortgage payment Mr H's monthly payments to creditors would still amount to £1,641. Adding on the proposed repayments to OMF for this new agreement would have taken this figure to around £1,950, which would have left Mr H with around £300 per month for all living expenses, including utilities, food, council tax, and costs of running the new vehicle. I'm not satisfied OMF could have fairly decided that £300 would be enough to cover those expenses.

In summary, Mr H's monthly income was less than the monthly payments he needed to make against his existing debts at the time of the lending decision. So if OMF had done proportionate checks, they wouldn't have been able to fairly decide to lend to Mr H.

Putting things right

As I don't think OMF should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mr H has had use of the vehicle for around 13 months so it's fair he pays for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Mr H's case I've thought about the amount of interest charged on the agreement, Mr H's overall usage of the car, and what his costs to stay mobile would have likely been if he didn't have this car. In doing so, I think a fair amount Mr H should pay is £166 for each month he had use of the car, so a total of £2,158. To settle Mr H's complaint, OMF should do the following:

- End the agreement and collect the car.
- Refund all the payments Mr H has made in excess of £2,158, adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- If Mr H has paid less than £2,158, OMF should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Remove any adverse information recorded on Mr H's credit file regarding the agreement.

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

My final decision

As I've explained, I'm upholding this complaint. Oasis Motor Finance Limited need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 March 2024.

Clare King
Ombudsman