

The complaint

Mr N complains that N.I.I.B Group Limited trading as Northridge Finance (Northridge) irresponsibly gave him a hire purchase agreement he couldn't afford.

What happened

In December 2021, Mr N acquired a used car using a hire purchase agreement from Northridge. The cash price of the car was £39,980 and this was financed by the credit agreement. Mr N paid a deposit of £4,500 and was required to make 49 monthly repayments of £557.36 and one monthly payment of £15,713 – making a total repayable of £46,966.28 at an APR of 6.8%

Mr N said he'd stopped working in January 2021 due to his health and, in November 2021 he started looking for a new car to reduce his monthly payments. Mr N said when he submitted his application to Northridge, he did so through a broker and Mr N says they told him to use his previous or expected income as he was hoping to return to work. At the time of the application, Mr N's income consisted of payments from an income protection policy.

Mr N returned to work in January 2022, but at a significantly lower income than before, and said he had to borrow funds to meet his monthly repayments.

Mr N complained to Northridge in November 2022 and said the agreement was unaffordable and unsustainable and shouldn't have been provided.

Northridge sent Mr N their final response to his complaint in January 2023. They said they completed proportionate checks prior to entering into the agreement with Mr N, and these showed no financial stress or indebtedness, so they didn't think they'd irresponsibly lent to Mr N.

Unhappy with this, Mr N brought his complaint to this service. He said Northridge failed to ask for enough information when providing the finance and, if they had, they'd have seen he wasn't able to afford it. Mr N said he'd like the agreement cancelled, for Northridge to take the car back and reimburse the interest paid plus 8% interest and refund his deposit of £4,500.

Our investigator gave her view that she didn't think Northridge had completed reasonable and proportionate affordability checks before granting the finance to Mr N. She said although there was a dispute over Mr N's income, had Northridge completed appropriate checks its likely they would've seen that the agreement wouldn't have been affordable for Mr N. So, she recommended that they end the agreement and collect the car from Mr N, refund his deposit plus 8% simple interest and remove any adverse information from his credit file. Our investigator said that Mr N had use of the vehicle whilst it was in his possession, and a fair charge for this use was £410 for each month he had the car. So, she recommended that Northridge calculate how much Mr N has paid in total and deduct a fair usage charge from this before refunding any overpayments plus 8% simple interest.

Northridge didn't agree. They said had Mr N disclosed his true financial position in his application, it would've been declined. They also said Mr N committed application fraud in concealing this information on his application.

Our investigator said she hadn't seen any evidence that Mr N had committed application fraud, and, in any event, she remained of the opinion that had Northridge completed proportionate checks as required, they would've seen that the finance was unaffordable for Mr N.

Northridge didn't agree, they said it was clear that Mr N had submitted false information in his application, and so their checks were secondary to the act of fraud they said Mr N committed.

As an agreement can't be reached, the case has been passed to me for a decision. I issued a provisional decision on this complaint in November 2023 recommending that it was upheld. I made the following provisional findings:

Mr N's complaint relates to a hire purchase agreement. This is a regulated consumer credit agreement, which means we're able to look into complaints about it.

Northridge have said that Mr N committed fraud when entering the agreement, and their checks were secondary to this act. I've thought about this carefully. It's not for this service to decide whether the actions Mr N took amounted to fraud or not. It's not clear if Northridge have taken any action against Mr N for what they say was a fraudulent act, but in any event, there is no complaint from Mr N about this, only about Northridge's decision to lend to him.

I don't agree that Northridge's checks were secondary to the information that Mr N provided during his application. 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. There isn't a set list of checks that had to be completed. CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

What is considered proportionate will vary in each case as there isn't a one-size-fits-all approach to assessing affordability. In deciding what is proportionate, Northridge needed to take into consideration things such as (but not limited to): the total repayable, the size of the monthly repayments, the total charge for credit and Mr N's individual circumstances.

The total repayable here was £46,966.28 over a four-year term. This was a significant financial commitment, and therefore my starting point is that any proportionate affordability check ought to have been relatively thorough.

I've seen evidence of the application data received by Northridge in December 2021, which sets out that Mr N had been employed for five years and six months at a salary of £4,000 net each month.

Northridge said they carried out credit checks which showed Mr N's expected income was £84,139 based on current account turnover, and they estimated his disposable income at £2,193 based on the income supplied at application. Northridge said Mr N's credit file showed no missed payments or financial commitments that would make the agreement unsustainable.

I haven't seen any evidence that Mr N's income was verified. Given the overall size of the borrowing, the monthly repayments and the term of the agreement, and noting the discrepancy in the income figures obtained, I think it would have been proportionate for Northridge to have done so.

Northridge complete a credit check, but given the doubts around income, I think it would have been reasonable for Northridge to have checked Mr N's expenditure in order to calculate disposable income.

I've reviewed three months of bank statements leading up to the lending decision. I think these give a reasonable indication of what Northridge would have found out had it verified Mr N's income and asked about his expenses. These show that Mr N was receiving £2,385.35 a month from an income protection policy, and this was his sole income at the time.

The statements show that Mr N had a committed expenditure of £1,758 a month to cover rent, insurances, gym, phone, training courses, internet, and nursery fees, along with an existing credit commitment of £117. This left Mr N with a disposable income of £510.35 a month for food, fuel and car payments. This is significantly lower than the disposable income estimated by Northridge.

This demonstrates that Mr N didn't have enough disposable income to afford to sustainably repay the additional borrowing and I'm satisfied that Northridge acted irresponsibly in granting Mr N the finance that it did.

Having concluded that Northridge acted irresponsibly in granting Mr N the finance that it did, what I now need to decide is what it should have to do to fairly and reasonably compensate Mr N.

I note that the cash price of the car was nearly £40,000. From the information provided, Mr N has repaid around £15,000 (including the deposit), which represents about 37% of the cash price.

The purpose of our awards is to try as best as possible to place consumers like Mr N back in the position they would have been in had the unfair lending not taken place. Mr N doesn't own the car and as things stand, he's a long way from paying off the cash price, so I'm now asking Northridge to terminate the agreement.

As I don't think Northridge should have granted the finance, it should refund all the payments Mr N has made, including any deposit. However, Mr N has had use of the car and I think it's only fair that he pays for that use. But I'm not persuaded that the monthly repayments of nearly £560 a month are a fair reflection of that usage.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr N's overall usage of the car, the nature of the goods and what Mr N's costs to stay mobile would likely have been if he didn't have the car.

Mr N has had average use of the car whilst it's been in his possession, and I need to consider that it wasn't a budget car, but a relatively high spec car that he's had use of. Our investigator thought that Mr N should pay £410 a month for the 17 months he'd had the car from December 2021 to April 2023. I'm persuaded that this is reasonable as Mr N had the option to use the car whilst it was in his possession and Northridge weren't aware of Mr N's wish to return the car until his complaint was made.

Mr N has now had the car for a further six months and appears to have maintained his average use of it, he'll also continue to have the option to use the car until Northridge settle the complaint. Mr N has said that Northridge knew he wanted to hand the car back at the time of our investigators view in April 2023. He also said that Northridge have continued to allow arrears to build up whilst the case has been with this service, and if they'd continued their normal collection activities it's unlikely Mr N would still have the car, so he doesn't think it's fair that he continues to pay £410 a month for use of the car.

I've thought about what Mr N has said. I'm persuaded that Northridge were aware that Mr N was unable to afford the agreement and wanted to hand the car back no later than in April 2023. Northridge had the option to continue with collections activity during this time, but it's not unusual for a business to pause this whilst our service investigates. I've also considered that Mr N could have stopped using the car, and instead found an alternative method of transport, knowing that our investigator had previously said she thought £410 a month was fair usage. But I appreciate the risks involved in this for Mr N as he was at risk of having to pay twice for keeping himself mobile.

Taking everything into account, I think it would be fair for Mr N to pay a reduced figure for fair usage from April 2023 to reflect the fact that Northridge allowed Mr N to continue in an agreement that they knew was unaffordable, but also to reflect that Mr N has still had use of a relatively high spec car for this period of time. I think it would be fair for Mr N to pay £200 for each month he has had the car from April 2023 or continues to have the car until the case is settled.

Mr N has said that he's had to pay for repairs to the car whilst it's been in his possession. Our investigator said she didn't think Northridge needed to refund these costs as they related to the use Mr N had of the car.

I've seen evidence that Mr N paid for a replacement intake manifold in October 2023. I've considered these costs, and I think that as Mr N has had use of the vehicle, it's fair that he pays for repairs required as a result of wear caused by that use of the vehicle. So, I'm not asking Northridge to refund these costs.

Mr N responded to my provisional decision. He said he wouldn't be taking a new insurance policy on the vehicle, so wouldn't be able to use it for much longer. He later provided evidence that the vehicle was declared as SORN after the MOT expired on 14 November 2023.

Mr N said this is the first he'd heard about the allegations of fraud that Northridge had made, and he'd had no opportunity to address the allegation with Northridge. Mr N said he denied committing fraud and the circumstances were more complex than providing directly false information.

Northridge responded to my provisional decision. They said it was established that Mr N defrauded Northridge, and this service has previously considered complaints where the consumer was found to have committed application fraud. Northridge said that the Office of Fair Trading 'OFT' irresponsible lending guidance stated, amongst other things, that creditors would not be considered culpable by the OFT for placing reliance on information provided by borrowers, which was subsequently found to be inaccurate or untrue at the time it was provided, where the creditor had no reason to suspect that this was the case.

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.

Northridge have said it's established that Mr N defrauded them. I've thought carefully about this, but I don't agree. I can't see that Northridge have taken any action against Mr N, nor discussed the circumstances and the allegation with him in any way. I'm not persuaded that any fraud Northridge say Mr N has committed has been established.

And so, I remain satisfied that it's not for this service to decide whether the actions Mr N took amounted to fraud or not. Should Northridge decide to take action in regard to this allegation, and Mr N is unhappy with that action, this service may then be able to consider whether Northridge treated Mr N fairly and reasonably in all the circumstances of the case.

Northridge have quoted OFT irresponsible lending guidance to further explain their position. Regulation of consumer credit was taken over by the FCA in 2014, and so I'm satisfied that the CONC rules considered in my provisional decision are the rules that applied at the time Northridge lent to Mr N.

However, the quote provided by Northridge does set out that creditors would not be considered culpable for incorrect information provided by borrowers, where the creditor had no reason to suspect it was inaccurate or untrue. For the reasons set out in my provisional decision, I'm satisfied that Northridge did have reason to complete further checks based on a discrepancy in income figures. So, I'm not persuaded in any event that Northridge 'had no reason to suspect' that the information provided was inaccurate or untrue.

I'm satisfied that the rules set out in CONC by the FCA applied, and required checks as set out in my provisional decision. I'm satisfied that Northridge didn't complete reasonable and proportionate checks for the reasons set out in my provisional decision. And I'm satisfied Northridge shouldn't have granted the finance for the reasons set out in my provisional decision.

Mr N said he didn't intend to use the car and I've seen evidence that it was declared as SORN when its MOT expired in November 2023. So, I think it's fair that Mr N pays £410 a month for the first 17 months that he had the car, and £200 a month for the following seven months up to when he stopped using the car in November 2023 as fair usage. All other payments Mr N has made should be refunded.

Putting things right

For the reasons set out in my provisional decision I'm now asking Northridge to terminate the agreement and collect the car from Mr N, refund the payments Mr N has made, less £410 a month for the first 7 months and £200 a month for the following seven months, and to calculate whether Mr N has paid more or less than the figure for fair usage. If Mr N has paid more any overpayments should be refunded, adding 8% simple interest. If Mr N has paid less Northridge should arrange an affordable and sustainable repayment plan for the outstanding balance.

My final decision

My final decision is that I uphold this complaint and to settle matters, N.I.I.B Group Limited trading as Northridge Finance must:

- End the agreement and collect the car from Mr N
- Refund Mr N's deposit of £4,500 plus 8% simple interest per year* from the date of payment to the date of settlement

- Refund all the payments Mr N has made less £410 a month for the first 17 months he had the car, and £200 a month for the next seven months he had the car.
- If Mr N has paid more than the fair usage figure, Northridge should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement, or
- If Mr N has paid less than the fair usage figure, Northridge should arrange an affordable and sustainable repayment plan for the outstanding balance
- Once Northridge has received the fair usage amount, it should remove any adverse information recorded on Mr N's credit file regarding the agreement

* If Northridge considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr N how much it's taken off. It should also give Mr N a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 March 2024.

Zoe Merriman
Ombudsman