DRN-4696794

Financial Ombudsman Service

The complaint

Mr B complains Billing Finance Limited (BFL) irresponsibly entered into a hire purchase agreement because it didn't complete reasonable and proportionate checks to ensure the agreement was affordable.

What happened

Mr B entered into the hire purchase agreement on 11 October 2022 for a used car. The cash price of the car was £11,950. Mr B didn't pay a deposit and the total amount payable under the agreement was £19,651. He was to pay 59 equal repayments of £327.50 and a final repayment of £328.50.

Mr B complained to BFL in April 2023. He was concerned he shouldn't have been given the lending because of his circumstances at the time and said BFL didn't complete the appropriate checks.

BFL responded to the complaint in June 2023. It said it completed reasonable and proportionate checks to ensure the agreement was affordable for Mr B. This included verifying declared income through 12 months of current account turnover (CATO), applying a boundary to the effective disposable income, confirming Mr B's living situation (with parents), and checking credit limit utilisation and credit history. It said it made a fair lending decision based on the information received.

On 15 March 2024, I issued a provisional decision. I said:

> *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 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 BFL complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the agreement in a sustainable way?*
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> *BFL explained it verified Mr B's declared income of £1,800 by using 12 months of current account turnover (CATO) data. It said it applied a boundary to effective disposable income when determining affordability for the new monthly repayments. It said it confirmed Mr B's living arrangements – it understood he lived with his parents. However, Mr B has told us he was living with his partner. I've not seen evidence of Mr B's specific response to BFL, but it doesn't change the overall outcome.*
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> *BFL said it found Mr B had a total credit balance of £3,419. The total revolving credit was £960, and the total non-revolving was £2,459. BFL confirmed it obtained credit history data which showed Mr B had no previous county court judgments (CCJ). It*

said Mr B had no recently settled accounts or defaulted accounts which might suggest financial hardship. It also considered Mr B's credit utilisation which was around 83%.

However, looking at the credit information BFL had it showed a number of missed payments across the borrowing Mr B had taken out in the years leading up to the agreement including more recently within the previous year. It also showed six defaulted accounts, two of which had defaulted within the year preceding this agreement. I think this demonstrated Mr B had recent difficulty managing his finances and it should have prompted some further checks from BFL. This information also showed Mr B regularly borrowed money from high cost and short-term lenders including payday loans.

Overall, I'm not satisfied BFL completed reasonable or proportionate checks to ensure Mr B could sustainably repay the agreement. The total amount repayable and the monthly repayments were significant, and the length of the agreement was also fairly long term. So, in light of the historic and more recent adverse information on Mr B's credit file, BFL should have carried out further checks. BFL should have done more to understand Mr B's specific financial circumstances such as his non-discretionary expenditure. This would have been proportionate in the circumstances.

Would reasonable and proportionate checks have shown that Mr B would be able to repay the agreement in a sustainable way?

As reasonable and proportionate checks weren't carried out for this agreement, I need to decide what a reasonable and proportionate check would likely have shown.

I'm satisfied BFL should have done more to check Mr B's specific circumstances including his non-discretionary expenditure. Therefore, I have considered bank statements which cover the three-month period leading up to the lending agreement. I'm not saying BFL needed to get the bank statements for it to have completed reasonable and proportionate checks. But the statements tell me what information BFL would likely have seen had it completed such checks.

If BFL had gathered further information, then it's likely it would have seen Mr B received a higher income. I appreciate our Investigator used the basic pay (£1,800) for calculating the income and expenditure and this is also what Mr B thinks is fair. But had BFL seen Mr B received a higher income from overtime, I think it would have been entitled to rely on this.

Whilst overtime isn't always guaranteed, Mr B's payslip from August 2022 shows a cumulative total of £16,613 which exceeds his basic pay for the months it covered. So, I think BFL could have concluded Mr B expected to carry out overtime monthly to increase his income. Additionally, he was using his overtime to meet other monthly commitments including paying off money he had borrowed from friends and family. Between July and September 2023, Mr B received an average monthly income of around £2,752.

I've reviewed Mr B's living costs and credit commitments. This includes what he has told us about his commitments to repay friends and family. Whilst they wouldn't necessarily be considered priority debts, it was still a monthly commitment for Mr B and I think these obligations were likely to have come to light through further checks as some were showing as standing orders. Mr B has told us he needed to pay £218 to his mother, £222 to his brother and £218 to his friend. I understand they had taken out borrowing on his behalf. Mr B has also told us he paid around £500 a month to *his partner for living costs and child support and I've compared this to the costs going out on the statements. I've also thought about costs towards food, car costs and petrol. I'm satisfied these commitments came to around £1,395.*

Additionally, I've considered Mr B's credit commitments at the time. Mr B has provided a credit report which was generated in January 2023. BFL have also provided the search it obtained, and I've compared this to what's shown on Mr B's statements. Having done so, I think its likely checks at the time would have shown credit commitments of around £709 per month.

This means Mr B had around £2,104 in committed expenditure each month. As his average income over the period was around £2,752 this left him with disposable income of around £648. This was sufficient to cover the cost of the monthly repayment of £328.50 with enough remaining to cover other expenditure. But it should be noted that without Mr B's overtime his basic monthly income wouldn't have been sufficient to meet his monthly repayment.

Mr B has said he had difficulty gambling and I must consider what BFL are likely to have seen through reasonable checks. I can see spending going towards gambling and at times was a significant amount. I note there are more clear gambling transactions which occurred in July 2022 when Mr B spent around £980 (this includes a sum spent at a casino).

However, there were other transactions which were associated with Mr B's gambling and the difficulties he was having. I think further enquiry could have highlighted this. For example, Mr B made significant transactions to someone I'll refer to as "D" after his account got blocked from a betting site. In August 2022 he paid £700 to this account and in September 2022 he paid £320 which enabled Mr B to continue gambling. It seems he spent around £867 on average per month on gambling. In addition to this, he made cash withdrawals which he says were put largely towards gambling and repaying debts. In August 2023 he withdrew £340 and in September he withdrew £220.

In response to Mr B's complaint, BFL explained the gambling seemed to drastically reduce over the three-month period. And I appreciate BFL may argue that it wouldn't have identified the transactions to a friend as gambling even with reasonable and proportionate checks. Also, Mr B might not have disclosed the transactions in August and September 2022 were for gambling because he wanted the lending at the time. Nevertheless, I think the significant spend in July 2022 alone was sufficient to alert BFL to a problem.

Importantly, there were clear indicators this gambling was negatively impacting Mr B's ability to meet his commitments. For example, he was often in his overdraft and received fees for using it. Moreover, he took out additional lines of credit. The credit search obtained by BFL includes a credit card in July 2022, a credit card and a further current account in September 2022 (although I can't see if this had an arranged overdraft). The statements also show income from short term lenders and evidence of borrowing from friends and family. Mr B took out a short-term loan in July 2022 for £200 and this corresponded with the significant spend on gambling.

Therefore, there was clear evidence of problems with gambling which were likely to have come to light through reasonable and proportionate checks. The evidence shows this gambling was negatively impacting Mr B's ability to meet his commitments which led to further borrowing. For these reasons, I don't think the lending decision was a fair one and BFL should take steps to put things right. I'll come back to this *below.*

Has BFL acted unfairly in some other way?

Based on the evidence I've seen, I can't say BFL have acted unfairly in some other way.

I gave both parties the opportunity to provide any further comments or evidence. Mr B confirmed he accepted the decision. BFL said it had nothing further to submit. But noted there should be an obligation on the customer to honestly disclose their circumstances and for them to consider whether anything will impact their ability to pay before entering a finance agreement.

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 reviewed everything which has been provided, I see no reason to depart from the conclusion I reached in my provisional decision. I understand BFL's comment about honest disclosure by customers. However, this doesn't mean BFL are free of its obligations to carry out reasonable and proportionate checks. There were clear indicators further checks were necessary, and had such checks been completed its likely the information about Mr B's gambling would have come to light. Therefore, I remain of the view this wasn't a fair lending decision.

Putting things right

As I don't think BFL 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. But Mr B did have use of the goods for around 17 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of £327.50 are a fair reflection of what fair usage would be. This is because a significant proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr B's usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr B's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have this car. In doing so, I think a fair amount Mr B should pay is £200 per month. This means BFL can only ask Mr B to repay a total figure of £3,400.

To settle Mr B's complaint Billing Finance Limited should do the following:

- End the agreement and collect the car with nothing further to pay.

- Calculate how much Mr B has paid in total and deduct £3,400 for fair usage. If Mr B has paid more than the fair usage figure, Billing Finance Limited should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.

- Remove any adverse information recorded on Mr B's credit file regarding the agreement.

- If there are any arrears after the settlement has been calculated, Billing Finance Limited should arrange an affordable repayment plan. And treat Mr B with forbearance and due consideration.

* If BFL considers that it’s required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it’s taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons outlined above, I’m upholding this complaint and Billing Finance Limited should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 17 April 2024.

Laura Dean
Ombudsman