DRN-4799196

Complaint

Miss R complains that Family Finance Limited ("Family Finance") unfairly entered into a hire-purchase agreement with her. She's effectively said that the payments to the agreement were unaffordable and so it shouldn't have been provided to her.

Background

In November 2019, Family Finance provided Miss R with finance for a used car. The cash price of the vehicle was £6,100.00. Miss R paid a deposit of £100 and applied for finance to cover the remaining £6,000.00 needed to complete her purchase.

As a result she entered into a 49-month hire-purchase agreement with Family Finance. The loan had interest, fees and total charges of £5,527.55 (comprising of interest of £5,517.55, and an option to purchase fee of £15), and the total amount to be repaid of £11,527.55 (not including Miss R's deposit) was due to be repaid in 48 monthly instalments of £234.95 and 1 final payment of £249.95.

When it investigated Miss R's complaint Family Finance didn't uphold it. It believed that it carried out proportionate checks and that it was reasonable to lend to Miss R. Miss R remained dissatisfied and referred her complaint to our service.

Miss R's complaint was considered by one of our investigators. She didn't think that Family Finance had done anything wrong or treated Miss R unfairly. So she didn't recommend that Miss R's complaint should be upheld. Miss R 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 R's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Miss R's complaint. I'd like to explain why in a little more detail.

Family Finance needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Family Finance needed to carry out proportionate checks to be able to understand whether Miss R could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Family 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.

Family Finance says it agreed to this application after it completed an income and expenditure assessment on Miss R. During this assessment, Miss R provided details of her monthly income which was verified against a copy of a payslip which Miss R provided.

Family Finance says it also carried out credit searches on Miss R which showed some previous adverse credit information as well as active balances on current commitments. But when the amount Miss R already owed plus what Miss R's declared for her living expenses were deducted from her monthly income, she still had enough to make the monthly payments. On the other hand, Miss R says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Miss R and Family Finance have said.

The first thing for me to say is that I don't think that the checks Family Finance carried out did go far enough. Family Finance's searches showed that Miss R had had previous difficulties with credit and a significant number of accounts. In my view, while Family Finance may feel that this was in keeping with its customer base, I still think that it needed to take further steps to verify Miss R's actual living costs, given what the credit search showed in order for its checks to have been proportionate.

As Family Finance did not do this and therefore did not carry out sufficient checks, I've gone on to decide what I think Family Finance is more likely than not to have seen had it obtained further information from Miss R. Bearing in mind, the length of time of the agreement and the amount of the monthly payment and what the credit commitments showed, I would have expected Family Finance to have had a reasonable understanding about Miss R's regular living expenses as well as her income and existing credit commitments.

I've considered the information Miss R has provided us with. And having done so, it isn't immediately apparent to me that when Miss R's actual committed regular living expenses, at the time, are added to her credit commitments at the time and then deducted from income, she did not have the funds to sustainably make the repayments due under this agreement.

I appreciate that the information obtained I have been provided with may not accurately set out the position. For example, I know that Miss R's circumstances changed and that her mortgage payments almost tripled. But, at the time of this application, Miss R declared that she had a monthly mortgage payment of the amount that went out of her account in that month. She did not indicate that this payment was going to change going forward and any further verification will have simply validated what Miss R had said.

So I can't see how Family Finance could possibly have known that this would happen, or factored this into account when making its lending position. This is particularly as it wasn't told about this and it's clear that any explanation Miss R is likely to have provided at the time is more likely to have been geared towards persuading Family Finance to lend to her rather than highlighting any potential unaffordability.

Overall and having carefully considered everything, while I don't think that Family Finance's checks before entering into this hire-purchase agreement with Miss R did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented Family Finance from providing these funds, or entering into this agreement with her.

I now turn to Miss R concerns about being forced to make payments when she was having difficulty doing so. It isn't in dispute that Miss R got into contact with Family Finance, as far back as January 2020, about making up arrears on her account. And, in these circumstances, there is a quite reasonable argument for saying that this ought to have led Family Finance to investigate whether Miss R might have been struggling to make her payments.

Equally once a lender is told, or it realises, that a borrower is experiencing financial difficulties we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations. So I've considered whether Family Finance did do that in this instance. In reaching my conclusions on this matter, I've considered the notes from Family Finance's systems as well as ant correspondence sent.

As far as I can see, Family Finance offered Miss R a number of opportunities to clear arrears and entered into a number of arrangements with her in attempts to bring her account back on track. It even agreed to payment breaks when Miss R temporarily stopped working during the pandemic. So I don't think that it would be fair to say that Family Finance failed to offer Miss R any help.

I do appreciate that Miss R is likely to have been unhappy at being sent default notices as well the implications of this including court action. And I do sympathise with what Miss R has told us, the difficulties she had and also why she might have seen this correspondence as a way of threatening her to make payment. However, firms are required to send this type of information when a customer falls behind on credit repayments.

Furthermore, as there was an asset involved which was depreciating in value as time went on, I don't think that it would have been reasonable for Family Finance to ignore Miss R's inability to bring her account up to date indefinitely. So I don't think that it was unreasonable for Family Finance to consider steps in relation to recovering the vehicle – particularly as this had the potential to limit any outstanding balance Miss R could be left with going forward.

As I've said, I do sympathise with what Miss R has told us and the difficulties she had after her mortgage payments increased. However, as Family Finance did take reasonable steps to try and assist Miss R bring her account up to date, I'm satisfied that it fairly and reasonably offered appropriate assistance to mitigate the effect of any difficulty Miss R was experiencing. Furthermore, while I can understand why she might feel differently, I don't think Family Finance attempted to force Miss R into making her payments either.

Overall and having carefully considered everything, I don't think that Family Finance acted unfairly or unreasonably towards Miss R in its dealing with her and I'm not upholding this complaint. I appreciate that this will be very disappointing for Miss R. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 27 June 2024.

Jeshen Narayanan

Ombudsman