

The complaint

Miss H complains that Unity Auto Finance Ltd (UAF) acted irresponsibly in agreeing to lending that she said she couldn't afford to repay.

What happened

In March 2022 Miss H acquired a car when she entered into a hire purchase agreement with UAF. The cash price of the car was £13,800, Miss H paid a deposit of £100 and after interest and charges were applied the total amount she needed to repay was £17,726. This was payable over 60 months by 59 payments of £293.60 with a final payment of £303.60. Miss H said at the time of the lending she was already struggling to meet her financial commitments, and after 11 months she had to sell the car as she couldn't sustain the repayments. She complained to UAF.

UAF said they'd checked Miss H's income and credit file and had used statistical data to determine her other outgoings. They said Miss H had maintained all her repayments and had settled the agreement in February 2023. They said their checks had been proportionate and showed the lending was affordable.

Miss H wasn't happy with UAF's response and referred her complaint to us.

Our investigator said as Miss H was committing to a high level of borrowing over a long period of time UAF should have done more thorough checks of her financial circumstances. And if they had they would have found that Miss H wouldn't be able to sustain the repayments. To put things right UAF needed to:

- Deduct all the payments Miss H made above the £13,800 purchase price. They should treat any payments Miss H made over and above the purchase price as overpayments. And any overpayments should be refunded to Miss H. Adding 8% simple interest per year on any overpayments from the date they were made by Miss H to the date of settlement.
- Remove any adverse information recorded on Miss H's credit file regarding the agreement.

UAF didn't agree they said their checks had been proportionate and reflective of Miss H's financial situation. And she'd maintained her repayments, settling the agreement early without any indication of financial difficulty. They asked for the complaint to be referred to an ombudsman to decide.

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 this complaint. I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone

complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did UAF complete reasonable and proportionate checks to satisfy themselves that Miss H would be able to repay the credit in a sustainable way?

a. if so, did UAF make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Miss H could sustainably repay the borrowing?

2. Did UAF act unfairly or unreasonably in some other way?

Regulations in place at the time UAF lent to Miss H required them to carry out a reasonable assessment of whether she could afford to repay the loan in a sustainable manner.

This is sometimes referred to as an "affordability assessment" or "affordability check". The affordability checks should be "borrower-focused", meaning UAF needs to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Miss H. In other words, it wasn't enough for UAF to think only about the likelihood that they would get their money back without considering the impact of repayment on Miss H herself.

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty. Consideration should also be given to the amount, type and cost of credit being applied for. We take the view that a reasonable and proportionate check would usually need to be more thorough amongst others where there is a low income, reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income, the higher the amount due to be repaid, the longer the term of the loan.

So, I've considered whether UAF in lending to Miss H had been thorough in the checks they made. And whether they've taken all these factors into account in deciding to lend to her.

UAF assessed Miss H's affordability using credit reference agencies (CRA) and statistical data. Their checks showed Miss H to have an income of £1,606.71, and her non-discretionary spending based on rent, financial commitments, revolving credit, living costs and factoring in the new lending of £293.60 to be £1,545.20 leaving Miss H with a disposable income of £41.51.

From the information UAF has provided I can see Miss H had fixed term loans amounting to £36,885, a monthly credit commitment of £763, two credit cards with a total credit limit of £1,400 and an overdraft to £900. Miss H was utilising £870 of her credit card limit and £780 of her available overdraft. I can also see that Miss H had been two or more months in arrears in the previous 11 months, and one month or more within the previous five months.

From their assessment Miss H had a high level of indebtedness, and the amount of disposable income left to her was below the level we'd consider to be reasonable to cover any discretionary spending or unexpected costs given the lending was for a period of five years. And her circumstances could change over this amount of time, especially given Miss H was living with her parents when she entered into the agreement.

Miss H has provided her credit report and I can see she'd other car finance agreements. I can see UAF considered one of Miss H's car finance agreements would be replaced by the new agreement she'd with them in their affordability assessment. But I think her existing level of indebtedness, and the low amount of her disposable income should have prompted UAF to do further checks to establish Miss H's actual financial situation rather than a reliance on statistical data.

As previously mentioned, there isn't a set list of checks that a lender should do. And I'm not saying UAF needed to ask for bank statements to verify Miss H's income and expenditure. But for us it's probably the most efficient way to work out whether the lending was affordable.

I've considered Miss H's sole and joint current accounts for the three months prior to the lending I've also asked for further statements for the same period for her savings account as there were transfers to and from this account to her current account during this time.

Miss H had an average monthly income from her employment of £1,377.81, but I can see for this period she also had additional income paid into her account for example through salary finance. I've considered other items on Miss H's bank statements showing transactions in and out of the account. These transactions seem to be related to mainly family and that there is evidence of money being paid to family which was then paid back to Miss H. I can see transactions to and from Miss H's partner who she jointly had a bank account. CONC 5.2A.12(b) says a lender can consider:

"income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement.."

Over the three months I'd consider Miss H had an additional average income from her partner of £272 a month.

I can also see regular transactions to a family member some of which have been referenced "van", and from another "phone bill". Its also evident hat Miss H had proceeds from the sale of other vehicles, which she has explained were acquired and sold for various reasons, being unsuitable or for work purposes, with the proceeds being used to settle any outstanding finance. Taking all of this into account I consider Miss H's average income a month to be around £2,065. An amount higher than the income UAF said Miss H had.

I've also considered Miss H's non-discretionary spending, including food, phones, insurance, active car finance agreements, credit cards, salary finance, overdraft fees and transport costs, which amounts to £1,895, leaving her with a disposable income of around £170. But this doesn't factor in the new lending of around £294, which I think shows the lending wasn't affordable for Miss H. And if UAF had considered the evidence supplied by Miss H I don't think they would have agreed to lend to her.

I've also considered whether UAF acted unfairly or unreasonably in some other way given what Miss H has complained about, including whether their relationship with her might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. But because I'm upholding Miss H's complaint already for the reasons I've explained I don't think I need to make a finding on this. I believe the redress I've suggested below results in fair compensation for Miss H in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

Miss H settled her agreement with UAF in February 2023 so taking ownership of the car. But as I don't think UAF should have lent to her, she shouldn't have had to pay anymore than the cash price.

My final decision

I uphold this complaint. And ask Unity Auto Finance Limited to:

- Refund Miss H any payments she's made above the cash price of £13,800 adding *8% simple interest from date of payment to date of settlement.
- Remove any adverse information recorded on Miss H's credit file with regard to the agreement.

*Should HM Revenue & Customs require Unity Auto Finance Limited to take off tax from this interest. They must give Miss H a certificate showing how much tax they've taken off should she ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 11 September 2024.

Anne Scarr
Ombudsman