

The complaint

Ms M complains that Tandem Motor Finance Limited trading as 1st Stop Car Finance (1st Stop) irresponsibly granted her a hire purchase agreement that she couldn't afford to repay. Ms M also complains that the interest rate attached to the finance was excessive.

What happened

Ms M is represented by a third party in bringing her complaint. For ease of reading, I'll mainly refer to Ms M in my decision.

In January 2019 Ms M acquired a vehicle financed by a hire purchase agreement from 1st Stop. Ms M was required to make 59 monthly repayments of £174.91 and a final payment of £194.71. Including an advance payment of £400 the total amount repayable under the agreement was £10,914.40. Ms M believes 1st Stop failed to complete adequate affordability checks. Ms M says that if it had it would've been clear the agreement wasn't affordable at the time.

1st Stop disagreed. It said it carried out an adequate creditworthiness and affordability assessment which included credit file searches, verification of Ms M's income and a validation call. It said these searches showed that Ms M had a monthly income of £2,000 and that this meant the agreement was affordable when factoring in existing commitments. It felt that the monthly payment for the agreement only accounted for 10% of Ms M's monthly income. It said its searches also showed two historic defaults, one which had been paid and the other still outstanding. It also saw consistent use of Ms M's overdraft facility and that Ms M's overall debt balance was around £1,699. It explained its searches showed no other existing credit accounts.

Our Investigator didn't recommend that the complaint should be upheld. They thought 1st Stop's checks weren't proportionate in the circumstances but that had it completed proportionate checks at the time of sale 1st Stop most likely would have still found the agreement was affordable for Ms M's circumstances.

Ms M didn't agree. She explained she felt the affordability calculations completed by our Investigator were unfair. She felt that they shouldn't include benefit payments or childcare maintenance from her ex-partner. She felt that the maintenance costs of the vehicle weren't considered, and neither was the fact that she was in her overdraft and had missed several direct debits. Finally, she felt that the remaining amount our Investigator felt was left over after existing commitments was not enough to reasonably live on. Ms M asked for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Ms M's complaint. 1st Stop needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that 1st Stop needed to carry out proportionate checks to be able to understand whether any lending was affordable for Ms M before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Ms M's complaint. These two questions are:

1. Did 1st Stop complete reasonable and proportionate checks to satisfy itself that Ms M would be able to repay her loan without experiencing significant adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Ms M would've been able to do so?
2. Did 1st Stop act unfairly or unreasonably in some other way?

Did 1st Stop complete a reasonable and proportionate affordability check?

1st Stop was required to ensure it carried out adequate checks on Ms M's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

1st Stop says that Ms M's application underwent credit and underwriting checks, and these didn't raise any concerns. Her income was also statistically verified. It felt that these searches were reasonable and proportionate in this scenario.

I'm not satisfied that 1st Stop gathered a reasonable amount of information from Ms M about her expenditure prior to approving the finance. I understand 1st Stop made the decision to lend on the basis that her estimated disposable income was acceptable and that it found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Ms M.

1st Stop hasn't provided a copy of the credit file check it completed, and Ms M's own provided copy of her credit file shows more information available at the time of sale than 1st Stop has accounted for in its responses. I appreciate that 1st Stop's responses indicate that these accounts were not reflected on the searches it completed at the time – but as its not provided evidence to show this I find on balance that its more likely these accounts would have shown on the credit file search completed at the time. I also would note that 1st Stop has not contested this fact following our Investigator's findings which highlighted the same discrepancy.

So, at the time of the application Ms M's provided credit report suggests that she had an essential utility account which had two missed payments in April and May 2018. I do think this ought to have indicated Ms M may have been struggling financially – particularly as the contractual payments were only £12. And so, I would've expected 1st Stop to take further consideration of Ms M's specific financial situation before approving any lending.

I want to be clear that I've considered 1st Stop's position about the number and type of checks that it did complete. And I understand that its searches attempted to approximate the affordability of the agreement based in part on its percentage of Ms M's monthly income. However, considering the possibility of financial difficulties in her specific circumstance I'm not satisfied that these checks adequately gathered a proportionate amount of information as they failed to answer how much she actually had left to spend after her existing commitments.

Given the size of the lending, the monthly repayments, the length of agreement, the information in Ms M's credit file, I think it would have been proportionate for 1st Stop to have verified Ms M's expenditure. This would have included costs such as food, petrol and housing. Without knowing what her regular committed expenditure was 1st Stop couldn't have got a reasonable understanding of whether the agreement was affordable for her circumstances. 1st Stop needed to do more in the circumstances before agreeing to lend. I'm satisfied 1st Stop didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

Did 1st Stop make a fair lending decision?

I've considered what 1st Stop would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Ms M would have told 1st Stop had it asked about her regular expenditure. I don't think 1st Stop necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Ms M's statements three months prior to the finance being approved as an indication of what would most likely have been disclosed.

These statements show that Ms M's monthly income averaged at around £2,850. Her average monthly expenditure was around £2,220. This includes credit commitments, housing, insurances, utilities, food, and petrol. It meant Ms M was left with around £630 in disposable income before paying towards the agreement. So, the amount of disposable income after factoring in the finance, around £450, allowed enough for emergency or unexpected costs.

Taking these figures into account, it appears to show the agreement was affordable for Ms M. For this reason, I'm not persuaded that 1st Stop acted unfairly when approving the finance. I'm satisfied that if 1st Stop had completed proportionate checks it would have likely revealed Ms M was able to sustainably afford the repayments owed under the agreement.

Ms M and her representative has disputed the agreement's affordability for a variety of reasons concerning the income and expenditure considerations. I've considered each point in turn but cannot say that I'm persuaded that our consideration of Ms M's income and expenditure is unreasonable. I'll explain why.

I can't agree that Ms M's childcare benefits should be excluded from any income calculation – childcare benefits are a relatively permanent expectation for the length of time of the childhood. And so, whilst 1st Stop may have wanted to reconsider the sustainable nature of benefits such as unemployment benefit, I think it would have been reasonable for it to rely upon childcare benefit in its income assessment.

I also understand from Ms M's submissions that the child maintenance she was receiving from her ex-partner was not a reliable source of income. Shortly after the agreement was started she's described how she started to not receive the expected payments. I'm sorry to hear this. However, I've had to base my decision on the information that would have been available to 1st Stop at the time of sale. I can't expect it to have relied on hindsight. For the

four months prior to the agreement starting, I can see that Ms M did receive regular child maintenance payments. And so I can't say it would have been unreasonable for 1st Stop to have incorporated this amount into Ms M's income calculations.

Ms M's representative has reiterated the fact that Ms M was living within her arranged overdraft and had missed direct debits. I agree that these factors could ultimately be a sign of financial difficulty, which is in part why my decision states that 1st Stop's original checks weren't proportionate. But ultimately these would not in isolation have been enough for 1st Stop to reasonably understand Ms M's financial situation. It would instead mean that it should have completed further checks to ensure that the agreement would have been affordable and sustainable for her. Ultimately, I've found that further checks would have shown the agreement to still be affordable. And so, I'm not satisfied that it would have been fair for 1st Stop to have declined Ms M's application for finance at the time of sale just because she was utilising her overdraft in an acceptable manner.

Finally, Ms M's representative has pointed to a lack of consideration for the running costs of the vehicle, and that the remaining £450 calculated wouldn't be enough for Ms M to survive on. I've thought about this carefully as well – but the remaining £450 was only for unexpected costs, the maintenance of the vehicle and any potential water bill which Ms M has yet to disclose. All other regular commitments you could usually expect to encounter have been included already in the deductions to date – financial commitments, accommodation, food, petrol, tax, charges, utilities, and subscriptions. I'm satisfied that the remaining £450 allowed enough for emergency or unexpected costs and the running of the vehicle in question.

Did 1st Stop act unfairly or unreasonably in some other way?

Ms M has complained that the interest rate on offer was unfairly high – but I'm satisfied that the documentation Ms M signed was clear in its illustration of the finance offered. 1st Stop were clear about the total amount that would be owed under the agreement and the amount required to be paid monthly for the term of the agreement. I can't agree that 1st Stop acted unfairly in presenting its offer to Ms M, and it was up to Ms M to decide if she wanted to agree to the terms offered by 1st Stop.

I'm not persuaded from the submissions made to date that 1st Stop acted unfairly or unreasonably in some other way. I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 18 September 2024.

Paul Clarke
Ombudsman