

The complaint

Mr M complains CA Auto Finance UK LTD (CA Auto) irresponsibly entered into a personal contract purchase (PCP) agreement because it didn't carry out reasonable and proportionate checks to ensure the lending was affordable and sustainable for him.

What happened

Mr M entered into the PCP agreement on 24 August 2023 in order to acquire a used car. The cash price of the vehicle was £64,990. Mr M paid a deposit of £283.99. Mr M was to make 48 monthly payments of £1,058.38. There was also an optional final payment of £35,523, alternatively Mr M could return the car. The total amount payable under the agreement was £86,609.23.

Mr M complained in February 2024 that the agreement had been mis-sold and CA Auto didn't complete appropriate creditworthiness checks. CA Auto responded to the complaint on 14 March 2024. It didn't uphold the complaint. It said Mr M had been provided with sufficient information which set out how the agreement worked, and he could have exercised his right to withdraw. It also confirmed Mr M's application met all required checks that would typically be carried out and no issues were flagged. It said it relied on information it received from a credit reference agency (CRA) including current account turnover (CATO) and fairly concluded the agreement was affordable and sustainable for Mr M.

Mr M remained unhappy and asked our service to investigate. Our Investigator issued their view explaining why they felt CA Auto had not completed reasonable and proportionate checks. They felt had such checks been carried out it would likely have discovered Mr M didn't have sufficient disposable income to be able to afford the agreement. Our Investigator concluded Mr M should only have to pay for his use of the vehicle. Since the view, there has been some correspondence about what this figure should be. Mr M accepted our Investigator's findings.

However, CA Auto didn't agree. In summary, it said:

The proper approach to considering Mr M's complaint

- The proper approach of the Financial Ombudsman Service is set out in Section 228(2) of the Financial Services and Markets Act 2000 (FSMA). This requires the Ombudsman to decide a complaint "*by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.*" Section 228(2) of FSMA is reflected in the Financial Conduct Authority's Dispute Resolution Handbook (DISP). DISP 3.6.1R says the Financial Ombudsman Service "*will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.*" This requires a balancing exercise by the Financial Ombudsman Service to consider the evidence before it and make a decision (having regard to that evidence and no further) on what is fair and reasonable in all the circumstances.
- In *R (Fisher) v Financial Ombudsman Service* [2014] EWHC 4928 (Admin), the court

set out the proper approach to deciding complaints and decided that the Financial Ombudsman Service's "*remit is to determine disputes on the basis of the evidence which is presented to it by the parties*". It is self-evident that the Financial Ombudsman Service cannot: decide a complaint based on evidence which is not before it, or based on evidence or inference which cannot be supported by the evidence before it; or decide a complaint on grounds which are not raised by the complainant. A previous Chief Ombudsman provided evidence in 2018 that our service's role was "*not to advance the cases of the individual*" but to provide a "*level playing field*". The Financial Ombudsman Service is not, therefore, an inquisitorial tribunal.

- For these reasons, it had a legitimate expectation for our service to consider the complaint before us. However, our Investigator's view covered facts and issues which went beyond Mr M's complaint. It said they made their own enquiries and essentially undertook their own creditworthiness assessment. Mr M was asked to provide bank statements and findings were based on the Investigator's own assessment. This is wholly unlawful, irrational and it is procedurally improper. If our service acted otherwise, we would not uphold the complaint.

CA Auto's creditworthiness assessment

- It was required to undertake a creditworthiness assessment in accordance with the relevant provisions of the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC 5.2A). It had to consider: the risk the customer would not make the repayments by their due dates (credit risk) and the risk to the consumer of not being able to make the repayments over the lifetime of the agreement. This creditworthiness assessment needed to be based on sufficient information but there is no prescription of what a lender must do. The scope of the assessment should be proportionate to the individual circumstances. There is a list of factors but considering all of them is likely to be disproportionate.
- It was required to take reasonable steps to determine the amount, or make a reasonable estimate, of Mr M's income and non-discretionary expenditure. It took such steps by making enquiries with a CRA and using a recognized industry standard tool - CATO. This assessment led it to estimate Mr M's monthly disposable income of £1,352 (which excluded a previous agreement he was intending to settle and included a buffer). The customer's monthly repayments were considerably less than the assessed amount and only 12.7% of his income. This was sufficient to show the agreement was affordable.
- These checks were proportionate in the circumstances because Mr M wished to borrow £64,706.01 for the vehicle. The vehicle's CAP forecast value when entering into the agreement was £38,250. The price the customer paid for the vehicle was lower than the CAP value. The customer has made all of his payments due under the agreement on time. The amount the customer wished to borrow was not significant and the APR was competitive.
- The customer was given time to consider all the documentation. Mr M signed to confirm he had considered: the monthly repayment amount; his income and expenditure; the affordability of the agreement and whether he was likely to experience a change in his financial circumstances.

Redress

- The remedy is not fair and reasonable in all the circumstances. The customer gained a significant benefit from the agreement including having use and possession of the

vehicle. It also provided significant personal benefit to him. The customer needed the vehicle for his job. The nature of the PCP agreement meant the customer had something he could sell if he decided to acquire the title to the vehicle.

- The proposed remedy does not take into account the mileage limit or whether any damage has been done to the vehicle.

Since our Investigator's view, there has been further explanation provided about the fair usage figure. This includes information Mr M has provided about the mileage and condition of the vehicle.

As CA Auto didn't agree, the complaint has been passed to me 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've decided this complaint should be upheld and I've set out why below.

The proper approach to Mr M's complaint

I appreciate CA Auto's concerns about the scope of the investigation and what's been relied on. I've thought about the relevant rules and regulations including FSMA and DISP. It's important to note we're able to look at the *substance* of the complaint being made providing the business has had the chance. I'm satisfied it has had the opportunity to consider this based on the summary it included in its final response which explained Mr M complained the agreement was mis-sold and it did not carry out sufficient affordability checks. In my view, the crux of Mr M's complaint is whether it was responsible for CA Auto to lend to him, and I have followed our service's approach to such complaints when making my decision.

CA Auto relied on *R (Fisher) v Financial Ombudsman Service* [2014] EWHC 4928 (Admin) in support of its argument that the Financial Ombudsman Service wasn't and isn't an inquisitorial tribunal. The judgment considered a point made by the claimant about whether our service was required to obtain independent legal advice. This is not a point in contention here. Nevertheless, our remit has been set out and consolidated in court. In *R (Williams) v Financial Ombudsman Service* [2008] EWHC 2142 (Admin), the judge pointed out that: "*The ombudsman is dealing with complaints, not causes of action. His jurisdiction is inquisitorial not adversarial. There is wide latitude within which the ombudsman can operate.*" I've kept in mind my inquisitorial remit when deciding Mr M's complaint.

Our service asked for information from both parties to consider the substance of Mr M's complaint. I've reached my decision based on what's fair and reasonable in all the circumstances. Where evidence is incomplete, inconsistent, or contradictory, I must 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. I've set out what evidence I've seen and how it has informed my decision in more detail below.

In respect of Mr M's complaint, we explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr M's complaint. CA Auto needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC).

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

1. Did CA Auto complete reasonable and proportionate checks to ensure Mr M could sustainably afford to repay the agreement?
 - If so, did it make a fair lending decision?
 - If not, were such checks likely to have shown Mr M would've been able to do so?
2. Did CA Auto act unfairly or unreasonably in some other way?

Did CA Auto complete reasonable and proportionate checks to ensure Mr M could sustainably afford the repayments?

In response to the view, CA Auto set out its obligations in detail. To summarise, CA Auto was required to carry out adequate checks to ensure Mr M could sustainably afford the agreement. These checks had to be borrower-focussed and proportionate. 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, and the consumer's specific circumstances.

CA Auto have pointed to the pre-agreement information which was signed by Mr M. I appreciate it included a declaration which asked Mr M to confirm he had considered his income, the affordability of the agreement and any changes in circumstances which might arise. However, this does not in itself satisfy CA Auto's obligations under CONC to complete reasonable and proportionate checks to ensure the agreement was affordable. Additionally, I note CA Auto's comments about the competitive APR rate and the CAP value of the car. However, this doesn't speak to whether it carried out the appropriate checks and whether the agreement was affordable for Mr M.

CA Auto had information about Mr M's financial circumstances from the application. Mr M declared he was in full time employment with an annual income of £100,000, was married and a homeowner. It has told us this income was successfully verified via CATO for the three-month period leading up to the agreement. It obtained information from the CRA which showed Mr M was on the voters roll and electoral roll.

CA Auto has not provided a copy of the credit search it carried out and without the search it's difficult for me to conclude the checks were proportionate. This is because I can't see exactly what information it took into account about Mr M's credit commitments when deciding to lend. I would expect a credit search to provide a sufficient level of detail to enable CA Auto to consider the sustainability and affordability of this agreement.

In the absence of this, I've thought about what information CA Auto was likely to have obtained. To do this, I have considered a copy of Mr M's credit file and what CA Auto set out in its final response to the complaint. In the final response, CA Auto said Mr M had the following credit commitments:

- Mortgage: £641 per month
- 2 accounts with overdrafts: £500 total balance with a limit of £3,500
- 4 credit cards with available credit of £6,500 (no balance information provided)
- Active loans with balances of £13,899, £11,273, £400 and £3,866
- 3 other active external hire purchase agreements totaling £1,675 per month

It went on to explain Mr M's accounts were all well paid and didn't show any concerns with the customer's ability to make repayments. There were no signs of any defaults or county court judgments. The customer would be paying off an existing agreement with monthly repayments of £593.

The credit file provided by Mr M does support what CA Auto has explained about Mr M maintaining his credit commitments. However, Mr M's credit file also shows several of the credit commitments had been entered into within the months preceding this agreement. Whilst Mr M settled some accounts, seven new accounts were opened between January and July 2023. This included an unsecured loan with significant repayments of £717. It also included car finance agreements with monthly repayments of £333, £80 and £1,039. He also opened a credit card with a limit of £2,000, a mail order account with a limit of £600 and a communications account.

Having considered this, I think the recent increase in debt and repayment amounts because of these new lines of credit ought to have prompted some more thorough checks. Additionally, whilst I don't have all the balance information for the revolving credit, it seems the monthly credit repayments for Mr M's non-revolving credit alone would have taken up a fairly significant proportion of his likely net monthly income. Again, this ought to have prompted more thorough checks.

As mentioned, I don't have a copy of the credit search, but I would expect a credit search for an agreement of this size and duration to show key information about the credit commitments including when accounts were opened. So even if I was satisfied CA Auto didn't have this information, I would be concluding checks weren't proportionate and it ought to have obtained further information. This is particularly the case where Mr M had around 13 active accounts at the time of the lending with some sizeable repayments.

Additionally, the information provided by the CRA from CATO data showed Mr M had an estimated disposable income of £1,325 a month (excluding a previous car finance agreement which was being settled). CA Auto said its underwriting policy included a buffer of £50. The customer's monthly repayment of £1,058.38 fell comfortably within that figure and was 12.7% of the customer's monthly income. The customer's indebtedness score provided by CATO was 31. This fell within its risk tolerance and showed that there was a good prospect of the customer being able to maintain his repayment to it.

I acknowledge this is an industry standard tool. However, the information I have from CA Auto about the check doesn't satisfy me it provided sufficient detail about Mr M's expenditure to ensure it was borrower-focussed. For example, it doesn't provide detail about what Mr M's other non-discretionary spend might include and I don't think this was sufficient in the circumstances, particularly given the size of the repayments.

I've reviewed all of the information I have been provided about the affordability checks CA Auto completed. Overall, I'm not satisfied CA Auto completed reasonable and proportionate checks in the circumstances. This is in light of the information CA Auto had about Mr M's financial circumstances as well as the size of the loan and the terms of the agreement. Mr M was to make 48 significant monthly repayments of £1,058 (with an optional final repayment of £35,532). Also, Mr M's debt in the six months leading up to the agreement seemed to increase and a significant proportion of his net monthly income would be used for his credit commitments bearing in mind the monthly repayment under this agreement. Outside of the credit commitments and CATO check, CA Auto had little information about what other specific non-discretionary spend Mr M might have had. In addition to this, I'm unable to confirm exactly what CA Auto saw when it completed the credit check because I haven't been provided a copy. For all of these reasons, I'm satisfied CA Auto ought to have done

more to obtain information about Mr M's specific financial circumstances and importantly his specific expenditure.

Would reasonable and proportionate checks have shown Mr M could sustainably afford the repayments?

I must now consider whether reasonable and proportionate checks would have shown this agreement was affordable for Mr M. As explained above, the information I'd have expected CA Auto to consider includes specific information about Mr M's expenditure. To decide what such checks were likely to have shown, I have reviewed Mr M's bank statements for the three-month period leading up to the agreement.

CA Auto have expressed concerns about using the bank statements to decide this complaint. So, I want to be clear about why I have considered them. I'm not necessarily saying CA Auto needed to go as far as to get statements to complete reasonable and proportionate checks. However, the bank statements contain information which shows what was likely to have been discovered at the time CA Auto agreed the lending. I also have a copy of Mr M's credit file which also provides some information about his credit commitments. I'm satisfied it's fair and reasonable to rely on this information when determining Mr M's complaint.

Having reviewed the statements, it seems Mr M had an average monthly income of £7,818. This was made up of payments from his salary which averaged around £6,718 and rental income of around £1,100.

I've also thought about Mr M's expenditure, and on average his non-discretionary spend and credit commitments seemed to total around £7,307 each month. I appreciate this is a slightly lower figure than explained by our Investigator. I can see our Investigator included an amount for food which was confirmed by Mr M. Although it's not unreasonable to expect Mr M to have to purchase food as part of day-to-day living, I've not seen this on his statements, and it doesn't change the outcome of the complaint. So, I've not included it. I've also thought about what Mr M was likely to need to pay in order to sustainably repay his revolving credit commitments. Overall, I'm satisfied this doesn't change the outcome given the size of the monthly repayment needed for this agreement.

The non-discretionary spend I can see includes utilities, rent, mortgage, council tax, and credit commitments including loans and credit cards. There were some financial commitments which seem to have been settled. So, I've only thought about those commitments which would have been ongoing after the inception of the agreement.

Taking into consideration the information I've seen, I think reasonable and proportionate checks were likely to have shown Mr M had around £511 disposable income each month after accounting for his committed expenditure. As the repayments under this agreement were £1,058.38, I'm satisfied it was likely to have been discovered he didn't have sufficient remaining to sustainably afford the agreement.

Having considered everything, I'm not satisfied CA Auto carried out reasonable and proportionate checks to ensure this agreement was affordable for Mr M. Had it done so, I'm satisfied such checks were likely to have shown this agreement wasn't affordable or sustainable for Mr M as he didn't have sufficient disposable income. Therefore, CA Auto should put things right and I'll explain how below.

Did CA Auto act 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. However, I'm satisfied the redress I have directed below results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case. I've noted CA Auto's position that this is not a complaint about an unfair relationship. However, I'd note Mr M has explained the ongoing impact the agreement and making the repayments has had on him. Nevertheless, I don't think it's necessary to comment on this point further as it does not change the outcome of this decision.

Putting things right

As I don't think CA Auto 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 M did have use of the vehicle for around nineteen months, so I think it's fair he pays for that use.

CA Auto expressed some concern about the fair use figure set out by our Investigator. There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr M's usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr M'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. Mr M has had the car for around 19-months, and his mileage seems to have been in line with UK averages. Mr M has also confirmed there isn't any damage. Therefore, I think a fair amount Mr M should pay is £600 for each month he had use of the car. This means CA Auto can only ask him to repay a total of £11,400.

To settle Mr M's complaint CA Auto Finance UK LTD should:

- End the agreement and collect the vehicle.
- Refund the deposit, adding 8% simple interest per year* from the date of payment to the date of settlement.
- CA Auto should calculate how much has been paid in total and deduct £11,400 for fair usage. If Mr M has paid more than the fair usage figure, CA Auto should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.
- If there are any arrears after the settlement has been calculated, CA Auto should arrange an affordable repayment plan. And treat Mr M with forbearance and due consideration.
- Remove any adverse information recorded on Mr M's credit file regarding the agreement.

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

My final decision

I'm upholding this complaint and CA Auto Finance UK LTD should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 April 2025.

Laura Dean
Ombudsman