DRN-5312539

The complaint

Mr R, who is represented by a third party, complains that Billing Finance Limited ('Billing') irresponsibly granted him a hire purchase agreement he couldn't afford to repay.

What happened

In December 2020 Mr R acquired a new car financed by way of a hire purchase agreement from Billing. The amount borrowed was £8,400. Mr R was required to make 59 payments of £230.30 with a final payment of £231.30. The total repayable under the agreement was £13,819.

Mr R says Billing failed to carry out proper checks to ensure the agreement was affordable for him and he'd be able to repay it sustainably.

Billing looked into the complaint and said it was confident that it had carried out reasonable and proportionate affordability checks that showed the new agreement was likely to be both affordable and sustainable for Mr R.

Our investigator made a finding that Billing hadn't acted unfairly in approving the finance. And she also didn't think Billing had acted unfairly or unreasonably in any other way. As Mr R and those representing him don't agree, his complaint has been passed to me for a final decision.

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.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr R's complaint.

In much the same way as our investigator, I'll first look at the checks Billing carried out before agreeing to lend to decide if they were fair and proportionate. In this complaint, for reasons I'll explain, I don't think they were. So I'll then move on to look at what reasonable and proportionate checks would have shown.

Did Billing carry out reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the loan in a sustainable way?

When assessing affordability, there isn't a set list of checks that Billing needed to complete. But the checks needed to be borrower-focused and proportionate to things like the type of lending, the cost of the lending as well as the amount and the period of time over which Mr R would need to make repayments.

Before approving the finance, Billing looked at the information Mr R provided in his application. Mr R said he was working full time and earning an income that worked out at around £1,300 per month net. Billing asked him to provide copy payslips so it could verify his income. Based on these, using his income for the year to date, it calculated his monthly net income to be around £1,740.

Billing also says it also carried out a credit check that showed there were no missing payments on his existing credit commitments or other adverse markings on his credit file. And it estimated these commitments to be around £350 per month.

In terms of checking for affordability, aside from what it could see about his monthly income, Billing also relied on statistical information. This took into consideration Mr R's age, location and residential status. Based on that, it estimated he had committed monthly spending, including household and living costs of around £525, including his mortgage. But I've not seen a breakdown of these figures.

Billing concluded this established that Mr R could afford the agreement and would be able to pay it sustainably going forwards.

However, like our investigator, I have some concerns as to whether Billing acted fairly in approving the finance without first carrying out better checks. I say this because Mr R appeared from the credit check to have an unpaid debt sum of around £7,100. In addition, there had been a default on a catalogue account from around two years earlier. Also, there's a significant discrepancy between what Billing thought Mr R was earning in each month and what his bank statements actually showed.

Considering all this together with the lack of specific detail at to what Billing was allowing for when estimated Mr R's committed monthly spending, I think Billing ought to have been prompted to have gathered more detailed information about Mr R's financial circumstances before lending. But I'm not convinced that happened. Mr R was taking on a significant financial commitment that was intended to run for the next five years. Without knowing what his regular committed expenditure was Billing wouldn't have got a reasonable understanding of whether the agreement was affordable or not. As I think it would have been reasonable and proportionate to have better understood Mr R's specific financial circumstance before lending, I therefore can't say it completed proportionate checks.

I therefore agree with our investigator that it would have been proportionate for Billing to have got a more thorough understanding of Mr R's financial circumstances before lending to him. That means it should have done more than it actually did.

What would reasonable and proportionate checks more likely or not have shown at the time? Did Billing reach a fair decision to lend?

I next need to consider what better checks by Billing would likely have shown about Mr R's ability to make sustainable repayments under the agreement.
I can't be certain what Mr R would have told Billing had it asked about his regular expenditure. To help, I've reviewed some bank statements those representing Mr R sent us from the period before he made the finance application. I've also seen a recent credit report Mr R has obtained.
Dealing first with the credit report, I can see Mr R's earlier credit agreement, also with Billing. There had been no issues with repaying this agreement, so I agree that this would have provided Billing with some reassurance.

The bank statements I've seen show that Mr R was receiving a variable monthly income and for the three months leading up to the agreement it averaged out at around £1,550. He was also receiving state benefits which, depending on the month, varied between £85 and £250.

I broadly agree with our investigator that his committed monthly spending, as far as it can be seen, was around £1,000. This includes some payments such as his mortgage costs, some utilities and car running costs. I can also see existing monthly credit repayments of around £100 each month.

Allowing for having to pay the new agreement – whilst no longer having to pay for his previous car finance agreement – Mr R looked to have at least £250 left by way of disposable income. I say this on the basis that he was likely to be receiving total income of around £1,600 each month on average.

I've also noted that Mr R was making regular use of his £800 overdraft. Over-reliance on an overdraft is always an issue of concern. Further, and as noted by our investigator, he was having direct debits returned in November 2020. I've also seen that Mr R and those representing him have suggested that these factors show that he wouldn't have enough disposable income and that our investigator made an unrealistic estimate about the new agreement being affordable. They also pointed out that simply because Mr R said he urgently needed the car doesn't make the lending fair.

The reason we consider bank statements in cases like this is to gain a fair and reasonable idea of what a business might have seen had it carried out better checks at the time. In the specific circumstances of Mr R's complaint, he appeared to have enough disposable income to be able to take on the new agreement, bearing in mind he was settling his previous one. And I note the monthly repayments appear to be less than what he was paying for his previous car finance agreement. I think had Billing made further enquiry, it would be understandable for Mr R to be at pains to demonstrate that the new finance was affordable. To be clear, I am not suggesting that Mr R wouldn't have to be careful with his spending going forwards. But from what I've seen, Mr R's financial situation was relatively stable and without issues to suggest that it might be at imminent risk of deterioration.

Taking all of this into consideration, I think the new agreement was affordable for Mr R and I can't see that taking it on meant that he wouldn't be able to manage it alongside his wider finances sustainably. For this reason, I'm not persuaded that Billing acted unfairly in approving the finance.

All of this means that I don't think Billing made an unfair lending decision in agreeing to provide this finance to Mr R.

Did Billing act unfairly or unreasonably in any other way?

Having noted Mr R's payment history and Billing's customer records, I can see that Mr R settled his agreement in March 2022, apparently to take on a new finance agreement with them. Prior to that, from what I've seen he was able to keep to the repayment schedule set up under the agreement. So I agree with our investigator that I can't say there's evidence of him taking steps to seek help or support from Billing due to payment issues. I can see that Mr R was considering changing his car around nine months after the agreement started due to issues he was having with the car. But I can't see enough to show or suggest that Billing ought to have done more to support him.

So, taking everything I've seen into consideration, I'm not persuaded that Billing acted unfairly in approving the finance, or that it ought to have done more to help him in some other way.

I've also considered whether the relationship between Mr R and Billing might have been unfair under Section140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don’t think Billing lent irresponsibly to Mr R or otherwise treated him unfairly. I haven’t seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I’ve given above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 14 May 2025.
Michael Goldberg
Ombudsman