

Complaint

Mr W complains that Billing Finance Limited (“Billing Finance”) unfairly entered into a hire-purchase agreement with him. He’s said that the monthly payments to this agreement were unaffordable and so it shouldn’t have been provided to him.

Background

In December 2020, Billing Finance provided Mr W with finance for a used car. The cash price of the vehicle was £11,500.00. Mr W didn’t pay and entered into a hire-purchase agreement with Billing Finance for the total amount.

The loan had total interest, fees and charges of £7,510.40 (made up of interest of £7,509.40 and an option to purchase fee of £1) and a 60-month term. This meant that the total amount to be repaid of £18,660.40 was due to be repaid in 59 monthly instalments of £310.99 followed by a final monthly payment of £311.99.

Mr W’s complaint was considered by one of our investigators. She didn’t think that Billing Finance had done anything wrong or treated Mr W unfairly. So she didn’t recommend that Mr W’s complaint should be upheld.

Mr W 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 Mr W’s complaint.

Having carefully considered everything, I’m not upholding Mr W’s complaint. I’ll explain why in a little more detail.

Billing Finance needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Billing Finance needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W before providing it.

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.

Billing Finance says it agreed to this application after Mr W provided details of his employer and his income, which it verified with copies of payslips that he was asked to provide. It says it also carried out credit searches on Mr W which showed that he didn't have any defaulted accounts or county court judgments ("CCJ") recorded against him. However, he did have a revolving credit account that was in arrears.

Nonetheless, it considered that when reasonable repayments towards the amount Mr W owed on his active accounts, plus a reasonable amount for Mr W's living expenses were deducted from his monthly income the monthly payments were affordable.

On the other hand, Mr W says the monthly payments were unaffordable.

I've thought about what Mr W and Billing Finance have said.

The first thing for me to say is that Billing Finance has provided the output of the credit checks it carried out at the time of Mr W's application. And there was no significant adverse information such as defaulted accounts or County Court Judgements ("CCJ") recorded against him. Furthermore, Billing Finance searches also appear to show that Mr W's unsecured debt total at the time of the application wasn't excessive either.

Nonetheless, given Mr W had some arrears on a revolving credit account, I do think Billing Finance needed to obtain further information from Mr W about his actual regular living costs. As I can't see that Billing Finance did obtain this information from Mr W, I've not been persuaded that the checks it carried out were proportionate.

In order to do assess whether Billing Finance carrying out proportionate checks would have made a difference to its decision to lend, I've looked at the bank statements Mr W has provided us with. To be clear, I've not considered these bank statements on the basis that Billing Finance should have obtained them from Mr W before lending to him.

Indeed, there was and still remains no requirement for a lender to obtain bank statements from a customer, prior to lending. It is up to a lender to determine how it assesses income and expenditure. The reason I've considered the bank statements Mr W has provided is because they provide the simplest access to the information I now need to be able to determine what proportionate checks are likely to have shown, at this stage.

Having considered the information provided, I think that even if Billing Finance had found out more about Mr W's actual living expenses this wouldn't have made a difference to its decision. I say this because the information Mr W has provided about his living expenses now don't show me that they were significantly higher than the estimates that Billing Finance used at the time, or more importantly that using these actual amounts would have shown the monthly payments to be affordable.

So I don't think that Billing Finance finding out about Mr W's actual living expenses, rather than relying on statistical data, would have made a difference here.

I accept that Mr W's actual circumstances at the time may have been worse than what the information I think that Billing Finance ought to have obtained shows. I've noted that Mr W has said that he was living pay check to pay check and borrowing from family and friends in order to get by. I've considered what Mr W has said.

However, any borrowing from friends and family wouldn't have shown up in Billing Finance's credit checks. So it's difficult for me to see how it could reasonably be expected to know

about this. I also have to consider Mr W's current submissions in the context that they are now being made in support of a claim for compensation.

Whereas at the time of the sale, at least, Mr W saw it as an appropriate time to purchase a car and wanted the one that he had chosen. In these circumstances, I think it's fair to say that any explanations he would have provided would have been with a view to persuading Billing Finance to lend to him, rather than highlighting that the agreement was unaffordable.

Therefore, I think that it is unlikely – and certainly less likely than not – that Mr W would have disclosed that he was borrowing from friends and family, if pushed for further information on his circumstances at the time, or that Billing Finance would have been in a position to know about this.

In reaching my conclusions, I've also considered whether the lending relationship between Billing Finance and Mr W might have been unfair to Mr W under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Billing Finance irresponsibly lent to Mr W or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

Overall and having carefully considered everything, while I don't think that Billing Finance's checks before entering into this hire purchase agreement with Mr W did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Billing Finance from providing these funds, or entering into this agreement with him. I appreciate that this will be disappointing for Mr W. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 June 2025.

Jeshen Narayanan
Ombudsman