DRN-6147645

The complaint

Ms Y, who is represented by a third party, complains that Billing Finance Limited ('Billing Finance') irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

What happened

In October 2017, Ms Y acquired a used car financed by a hire purchase agreement from Billing Finance. Ms Y was required to make 60 monthly repayments – 59 of £267.49 and 1 of £268.49. She also paid a deposit of £100. The total repayable under the agreement was £16,050.40.

In July 2020 Ms Y returned the car and voluntarily terminated the agreement. She paid off the remaining balance in January 2022.

Ms Y says that Billing Finance didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable.

Billing Finance didn't agree. It said that it carried out adequate creditworthiness and affordability assessments before granting the finance.

Our investigator recommended the complaint be upheld. They thought Billing Finance ought to have realised the agreement wasn't affordable for Ms Y.

Since Billing Finance has not accepted our investigator's findings, the 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 Miss Y's complaint.

Billing Finance verified Ms Y's earnings by checking one of her payslips, showing her monthly income as being around £1,350. It also carried out a credit check, which didn't show any recent adverse markings on her credit file. She also around £12,250 on other credit, including credit for which she was jointly responsible for paying. Billing Finance also carried out an affordability assessment. On that basis, Billing Finance thought Ms Y would have enough disposable income to afford the new monthly payment.

I agree with our investigator that the size and length of the lending was an issue of concern, bearing in mind that Ms Y would need to be able to afford the repayments and repay them consistently over a five-year period. Also, it cost more than her existing car finance agreement. I think Billing Finance ought to have recognised that there was a real risk that granting this new lending could easily lead to a worsening of Ms Y's financial circumstances.

It therefore would have been proportionate for Billing Finance to have gained a more thorough understanding of Ms Y's financial circumstances before lending.

Although Billing Finance obtained confirmation of Ms Y's pay, I can't see that it asked her for details of her expenditure. The affordability assessment was based on statistical information from a debt charity that worked out Mis Y's typical monthly essential spending to be around £400. Without knowing more about Ms Y's actual level of regular committed expenditure, Billing Finance wouldn't have got a sufficient understanding of whether the agreement was affordable or not.

For these reasons I don't think Billing Finance completed proportionate checks.

One way Billing Finance could have found out more about Ms Y's financial circumstances was by requesting copies of her bank statements at the time of her application. I've reviewed four months of bank statements leading up to the lending decision.

The statements show details about Ms Y's spending and committed expenditure at the time. I can see that alongside her credit commitments, Ms Y was paying several household bills, including some utilities, the TV licence, telecoms and internet, plus also petrol and AA membership for her existing car. She was also making repayments to a debt recovery business. I can also see occasional evidence of funds being transferred in from another account.

I'm in broad agreement with how our investigator calculated Ms Y's monthly spending commitments. Billing Finance have pointed out that Ms Y settled her existing motor finance agreement two months later, thereby freeing up funds. But being left with only around £122 per month by way of disposable income – as opposed to a negative figure had it not been settled - calls into question the reasonableness of the lending decision. I say also keeping in mind that the previous car finance agreement had started in September 2016 with a 36-month term, with no indication being given that it was to be settled when Ms Y took out the new agreement.

My role in deciding whether Billing Finance made a fair lending decision is to look at what was taken into account from evidence and information that was available at the time about Ms Y's financial circumstances. If Ms Y had only limited disposable income available once she'd paid for the new agreement each month, it's then difficult to see how she'd be able to continue paying it on a sustainable basis over the full five-year term. I say this especially given that the new agreement cost almost £90 more than her existing one and she would now have to bear this along with incidentals costs such as servicing and repairs. There's also no allowance for other unexpected expenditure which Ms Y would have to find the funds for - and it's not unreasonable to assume Ms Y might expect to have some money available for occasional leisure spending.

I have considered the points made by Billing Finance in response to our investigator's view but they don't change my finding. In particular, they have suggested that Ms Y's husband would have been sharing household costs, including this agreement. That's something better checks would likely have clarified. But what better checks would also likely have shown was that Ms Y wasn't paying rent or mortgage costs and only some of the utilities. This suggests there was limited surplus income available within the joint household finances

I think all this demonstrates that with the new agreement, Ms Y didn't have enough disposable income to affordably repay the cost of the new finance for the duration of the agreement. I think it's likely proportionate checks would have revealed this to Billing Finance too. It therefore didn't act fairly by approving the finance.

I've considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I'm awarding in this case, as set out below, results in fair compensation for Ms Y in the circumstances of this complaint. I'm therefore satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right – what Billing Finance needs to do

As I don't think Billing Finance 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. Ms Y should therefore only have to pay the original cash price of the car, less her deposit. However, Ms Y did have use of the car for around 33 months, so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of £267.49 as required under the agreement are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Ms Y's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I agree that a fair amount Ms Y should pay is £149.16 for each month she had use of the car. This means Billing Finance can only ask her to repay a total of £4,922.50. Anything Ms Y has paid in excess of this amount should be treated as an overpayment.

To settle Ms Y's complaint Billing Finance should therefore do the following:

- Refund all the payments Ms Y has made, less £4,922.50 for fair usage.

    - If Ms Y has paid more than the fair usage figure, Billing Finance should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement.

      Or;

    - If Ms Y has paid less than the fair usage figure, Billing Finance should arrange an affordable and sustainable repayment plan for the outstanding balance.

- Billing Finance should remove any adverse information recorded on Ms Y's credit file regarding the agreement.

*HM Revenue & Customs requires Billing Finance to take off tax from this interest. Billing Finance must give Ms Y a certificate showing how much tax it's taken off if Ms Y asks for one.

My final decision

I uphold this complaint and direct Billing Motor Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms Y to accept or reject my decision before 14 April 2026.
Michael Goldberg
Ombudsman