

The complaint

Mr S complains that MI Vehicle Finance Limited trading as Mann Island ("Mann Island") irresponsibly gave him finance for a car which he couldn't afford to repay.

What happened

In late 2021 Mr S acquired a used car with a hire purchase agreement from Mann Island. The agreement required him to make 48 monthly payments of £1,074, with an optional final payment of £21,400 to purchase the car. The sale price of the car was £59,999, which combined with the cost of the finance gave a total of £72,953 to pay.

Mr S made four of the monthly payments, from January to April 2022. After missing the remaining payments, he handed the car back in August 2022 to voluntarily terminate the hire purchase agreement.

Mann Island arranged for the car to be sold, achieving £42,868 after costs. They then offset that amount against what Mr S owed under the terms of the agreement. That left Mr S with £16,451 to pay.

Mr S complained. He felt the car had been overpriced given the much lower sale price in 2022. And he felt Mann Island shouldn't have given him the finance in 2021, given he'd been turned down for a loan by another lender at the time.

Mann Island didn't agree. They said they'd considered Mr S's credit file and other financial agreements together with his employment details, and found "affordability was evident". They felt this meant they'd completed the checks needed. Mann Island also said the decrease in the value of the car was out of their control.

Mr S brought his complaint to us. I wrote a provisional decision last month explaining why I intended to uphold the complaint. My view was that Mann Island hadn't done enough to check the lending was responsible or affordable for Mr S. And I found that if they had, they'd have seen the agreement wasn't affordable.

To put things right, I felt Mann Island should cancel the agreement and refund what Mr S had paid, less a specified amount for the use he'd had of the car. If Mr S owed Mann Island money I said they should arrange a sustainable payment plan with him. If Mann Island owed Mr S money, they should pay interest at 8% on the amount. And I said Mann Island should remove any negative reporting arising from this agreement that was on Mr S's credit file.

Mr S said he had nothing to add after reading my provisional decision. Mann Island didn't accept what I'd said and asked for a copy of information I'd referred to in my decision, before giving their full response.

Mann Island felt it would have been disproportionate to carry out further checks at the time. And they thought it unlikely Mr S would have given them the information that he's subsequently given our investigation. They felt my view of what was needed wasn't in line with the regulator's rules and guidance. They noted Mr S had a lot of similar agreements

previously, and introduced some arguments for these being taken out by Mr S on behalf of other people. They felt that was a better explanation for his frequent changing of the agreements, given such changes would be likely to create a cost for Mr S when the trade-in price was less than the sale price of a car. They felt Mr S should be held solely responsible for not being able to afford the hire purchase agreement.

I confirm I've read and considered these comments before making my 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.

Having done so, I've decided the outcome I set out last time is the right one for this case. I'll explain why, adding to what I wrote previously to show why Mann Island's latest comments haven't changed my mind.

The rules that apply to credit agreements are set out in the consumer credit sourcebook ("CONC") of the Financial Conduct Authority's handbook. Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like Mann Island to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

With these rules in mind, I'm going to review Mann Island's actions in two stages.

1. Did Mann Island complete reasonable and proportionate checks to satisfy itself that Mr S would be able to sustainably repay the borrowing?
2. If they did, was their decision to then lend to Mr S fair? If they didn't, would reasonable and proportionate checks have shown that Mr S could sustainably repay the borrowing?

Did Mann Island complete reasonable and proportionate checks to satisfy itself that Mr S would be able to sustainably repay the borrowing?

What's considered reasonable and proportionate will vary depending on the details of the borrowing and the borrower's individual circumstances. Some of the factors to consider are set out in CONC 5.2A.20. This includes the amount of credit, the duration, amount and frequency of the repayments, and the total amount payable (CONC 5.2A.20(3)(b) to (3)(f)).

It's worth bearing in mind that these rules were written with all types of consumer credit lending in mind, not just car finance. Car finance is likely to involve relatively high amounts of credit when compared to other forms of consumer credit lending, such as catalogue shopping for example.

I've got that in mind when I say the amount of credit here – £59,999 – was relatively large. And that the monthly repayment - £1,074 – was also relatively large. And when I note that Mr S's commitment to make that repayment was to last for many years. CONC directs the creditworthiness assessment should be more thorough in those circumstances.

I note Mann Island say they looked at Mr S's credit file and other financial agreements. I've seen a copy of Mr S's credit record. That shows me that the other commitments he had in late 2021 were significant. He had unsecured loans, a mortgage, credit cards and three

other active hire purchase agreements.

I find that this level of exposure to debt should have driven Mann Island to consider Mr S's income and expenditure in more detail before lending to him. I can appreciate Mann Island have talked about confirming Mr S's income. But that alone wasn't enough to meet what the regulations required.

To comply with what CONC 5.2A.17 and 18 say about reviewing a customer's non-discretionary expenditure, Mann Island should have tested whether Mr S's level of income would satisfy all of his committed outgoings in a sustainable way. They should also have considered how affordable the agreement would be for him over its full term. I can't see Mann Island did these sorts of checks. So I find their creditworthiness assessment wasn't completed to a reasonable standard.

Would reasonable and proportionate checks have shown that Mr S could sustainably repay the borrowing?

I can't be certain what further enquiries Mann Island would have made here or what those would have found. But I've spoken to Mr S about his use of credit at the time, and I've looked at his bank statements from the three months before he took the finance from Mann Island.

From this information, I've got an idea of what Mann Island would more likely than not have found if they'd completed a reasonable check. I also now have the benefit of Mann Island's review of the information I referred to last time against the information they had at the time.

For his income, I can see Mr S received a lot of money from sources other than his salary. Over the three months of statements I've seen he received £24,759. Only about 30% of this – £7,545 – was from his salary. The rest came from other sources.

Some appear to be one-off payments. For example Mr S appears to have sold a car in the months prior to this agreement. These couldn't be relied on over the full term of the agreement, so I'm not going to consider them deeply for my review.

There were also payments from another account in Mr S's name, possibly his savings. And other payments came from named individuals who featured repeatedly over the months, suggesting Mr S could rely on them as a source of income into the future. But the amounts varied, and would be dependent on the availability of Mr S's savings, and the willingness of named people to continue giving Mr S money.

Looking just at the payments present in all of the statements where the amount was fixed each month, I can see Mr S regularly received £3,190 each month. That's consistent with the £48,000 income Mann Island had determined for Mr S when they considered his finance application. So I'm comfortable relying on that figure as his reliable income each month.

Looking at Mr S's monthly expenditure, I can see he paid £1,004 each month to a mortgage. Mann Island have mentioned considering this as a joint expense, but Mr S disagrees with that view. I note though that Mr S received about as much from his wife over the three months of bank statements as he paid towards the mortgage. Mann Island have also pointed out that Mr S's credit file identified it as a joint mortgage at the time of his application. So I think it's reasonable to conclude Mr S's wife would have made some contribution to the mortgage if Mr S wasn't able to.

But it wouldn't be right to completely ignore this as non-discretionary expenditure for Mr S. It paid for the roof over his head, and to meet a commitment jointly in his name. So he was always likely to pay something towards it.

In addition, Mr S's credit file and his bank statements show he had a lot of existing debt. He had loans and other hire purchase agreements that required monthly repayments. Factoring out the £869 per month hire purchase agreement Mr S was looking to replace, he seems to have had £1,459 to pay on top of his credit cards.

Mann Island have commented that these accounts were being run in an orderly manner. But the assessment also needed to consider how the new borrowing would sit alongside the existing committed expenditure.

Adding the £1,459 of monthly debt repayments to the £1,074 per month commitment Mann Island were considering gives £2,533. Comparing this with Mr S's reliable income of £3,190, he'd have had £657 left each month to put towards his mortgage, his credit cards, running costs for the car, and any other household expenses.

Given his mortgage alone was more than this, I find Mr S couldn't have afforded this agreement based just on his own salary and reliable income. He'd have needed to use savings and have support from his wife's finances. But attempting to factor that support in is complicated by the fact she wasn't part of Mr S's application and I don't have confirmed details or independent evidence of her financial position at the time.

The absence of those details in part reflects that Mann Island didn't complete sufficient checks at the time. In the absence of this sort of information, it's unsound to conclude Mr S's access to extra funds to support his debts would have continued. As an application solely in Mr S's name, I find this agreement was unaffordable.

Mann Island have referred to Mr S having access to a £2,000 overdraft at the time. But I don't consider factoring this in would be in keeping with CONC 5.2A.12(3). That rule says "the firm must consider the customer's ability to make repayments under the agreement without the customer having to borrow to meet the repayments". An overdraft is a type of borrowing, and would need to have been paid back somehow.

Another factor here was that Mr S didn't plan to keep this car. He's told me he was following a pattern where he would acquire a car on finance, keep it for a short time, and then trade it in. His past use of hire purchase agreements seems to reflect this – none of them from the three years prior to this agreement lasted more than six months.

Mr S has explained that in this way he was able to have a car while pushing his payment schedule back so there was over a month between payments. He made use of the delay between an agreement starting and the first payment being due.

Mann Island have questioned the sense in this, feeling it would be more expensive than keeping the original car and payment schedule. I agree it doesn't sound like a sensible approach to this type of credit. But I can see the approach working as Mr S described.

For example, the statement of account Mann Island have shown us for this case tells me his first payment became due on 24 January 2022. But Mr S's banks statements and credit file tell me the last payment he made to the £869 per month finance agreement this one replaced was on 25 November 2021. That's a gap of two months between payments.

So I can believe Mr S's frequent change of vehicle was – in part – to achieve a longer period between repayments. That's not to say it was a good method to use. But I feel a proportionate and thorough creditworthiness assessment would have found this was Mr S's approach, and concluded it pointed to problems with affordability.

I note Mann Island have said there were other conclusions to reach about this pattern of

credit use. Particularly around Mr S taking out finance in his name with the intention other people would use the cars it acquired and pay him back for the monthly amounts due. I can see one agreement where this appears to be the case. But I can't see evidence of Mr S doing that for the agreement with Mann Island, or the agreement this finance replaced.

Whether considering Mr S's explanation or Mann Island's hypothesis, the issue remains that any gain from these approaches appears to be wiped out if the trade-in or resale value of the car is much less than its purchase price.

I've considered whether that's where the unsecured loans on Mr S's credit record come in. He'd effectively be taking on a smaller loan to cover the difference in price, in order to free himself from the larger car finance commitment. But I can't see the figures or dates really match up.

What's more notable to me is that part of Mr S's complaint was about the large fall in the value of this car. Although in hindsight this seems like the obvious risk in his approach, it appears he hadn't considered how this would affect him until it happened. I can appreciate Mann Island's view that this makes Mr S responsible for the problems he went on to have with the agreement. But my decision here is about Mr S's complaint about Mann Island, not their view of him.

Deeper enquiries from Mann Island could have got them to a point where they could see this risk in Mr S's approach to his car finance agreements. Or they could – as they seem to now – conclude that Mr S had taken out credit agreements to benefit other people previously, and was possibly doing so here. Either way, I find it unlikely they'd have agreed to lend this much money to him in those circumstances.

For my decision, Mr S's need to rely on money that I can't see could be relied on for the whole term of the agreement, coupled with the way he was using his hire purchase agreements to get more time to pay, speaks to this agreement being unaffordable for him. With better checks I find Mann Island would have seen that was the case, and should have declined his application for finance.

Putting things right

I've decided a reasonable aim here is to put Mr S in the position he would have been in, if Mann Island hadn't agreed to lend to him.

That would have meant he didn't have this agreement, and Mann Island couldn't have charged him interest and fees for this borrowing. So I find a fair remedy will be to have Mann Island cancel the agreement and refund what Mr S has paid for it.

This remedy will need to factor in that Mr S has had the use of the car from December 2021 to August 2022. There isn't an exact formula for working out a fair amount to reflect that use. But I've thought about the monthly amount payable for this car under the agreement without any interest being applied.

The purchase price for this car was £59,999. Although Mr S has said he now feels that was overpriced, that's not something I can directly comment on. The price was set by the car dealership, which doesn't fall within the scope of my decision. And Mr S agreed to pay that price. So I don't intend to step in and change that figure.

Under the agreement with Mann Island, there'd have been an optional final payment of £21,400 to purchase the car after four years. The difference between that and the purchase price – £38,599 – can be considered as the amount Mr S would have paid off towards the

car separate to interest and charges under the agreement.

With a monthly payment of £1,074, Mr S would have paid a total of £51,552 after 48 months. Dividing the £38,599 by this amount tells me 74.9% of the monthly payment was effectively paying towards the car's cost. Applying that percentage to the monthly payment amount, I calculate that £804 per month was being paid towards the cost of the car.

I've decided £804 will be a fair value to reflect Mr S's use of this car. It's relatively high, but that reflects that the car was relatively expensive. And it's in keeping with the monthly cost of the hire purchase agreement Mr S had before this one with Mann Island. And it reflects that the car here hadn't been used excessively, clocking up less than 7,000 miles before Mr S handed it back.

That means any refund for what Mr S paid under the agreement should deduct nine months' worth of this fair use payment, to reflect the use Mr S had from the car. That comes to £7,236, which I believe is more than Mr S has paid to date. Mann Island will need to work out what's still owed, and then arrange a reasonable payment plan with Mr S.

If Mr S has paid more than this and Mann Island need to pay him some refund, they should add simple interest at 8% per year from the date Mr S made the payment to the date the money is paid back to him. This will reflect that Mr S has been without the use of the money for that time.

In addition, it seems likely the credit agreement here will have caused adverse markers to be added to Mr S's credit record. Mann Island should take steps to remove these from Mr S's credit record, to reflect my decision that he shouldn't have been given the credit.

I've also thought about compensation for the trouble and upset Mr S has been caused. But I've decided not to direct a remedy for this. I can understand that struggling to make the payments needed to meet this agreement would have been distressing for Mr S. But there was also a benefit to having the car this agreement allowed him to acquire. I feel ultimately the emotional impact of this case is broadly balanced out so that things aren't worse than they would have been if the service had been reasonable.

My final decision

For the reasons above, I've decided to uphold Mr S's complaint about MI Vehicle Finance Limited trading as Mann Island, and I direct them to:

- cancel the agreement with Mr S and refund what he's paid towards it, less a deduction of £804 per month for the time Mr S had the car;
- arrange a reasonable and sustainable payment plan with Mr S for any money he may still owe for the fair usage, or add 8% simple interest per year to any money Mr S has paid in excess of the fair usage cost; and
- remove any adverse information from Mr S's credit file in relation to this hire purchase agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 November 2023.

Paul Mellor
Ombudsman