

Complaint

Mrs A has complained about a hire-purchase agreement that she entered into with Vehicle Credit Limited ("Vehicle Credit"). She says the payments were unaffordable and so Vehicle Credit shouldn't have lent to her. She also says that she contacted the dealer to reject the car within a few hours of taking receipt as she thought that the brakes were faulty.

Background

Vehicle Credit received an application for finance from Mrs A through an online broker in early June 2016. After a week or so Mrs A purchased a car from a dealer for £7,150.00. Mrs A paid a deposit of £150 and the remaining £7,000.00 was funded through a hire-purchase loan from Vehicle Credit. The loan had an annual percentage rate ("APR") of 45.59%, which included a product fee of £499 and an option to purchase fee of £25, and was due to be repaid in 155 weekly instalments of £74.99 followed by a final instalment of £100.55. This meant that the total charge for the credit was £4,724.00.

Mrs A contacted Vehicle Credit, by email, the day after the sale, to say that she wished to return the vehicle. She said *"I am not happy with the brakes on this vehicle there a grating noise when I attempt to brake which suggest that new brake shoes are necessary"*. She said that she wished to reject the vehicle and asked to be contacted to arrange its return.

As I understand it what followed remains a matter of dispute between the parties. Vehicle Credit says that it made reasonable attempts to have the car inspected. Mrs A says its attempts didn't go far enough. But, in any event, it isn't in dispute that Mrs A didn't make any payments to the agreement. So in September 2016 Vehicle Credit repossessed the vehicle, for non-payment, and sold it at auction for £4,419.00. The balance on Mrs A's account was then reduced to £7,305.00 to account for the sale.

Due to receiving no payments from Mrs A after repossessing the car, Vehicle Credit sold the balance to a third-party debt purchaser in June 2017. As I understand it the third-party debt purchaser commenced action to recover the remaining balance in 2019. Since then, Mrs A has complained to Vehicle Credit that she shouldn't have been provided with the car in the first place as she was never in a position to be able to afford the payments.

Vehicle Credit didn't uphold Mrs A's complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend. Mrs A was dissatisfied at Vehicle Credit's response and referred the complaint to our service.

My provisional decision of 18 March 2020

On 18 March 2020, I issued a provisional decision setting out my initial findings on Mrs A's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started out by setting out the regulatory framework and other relevant publications that I thought were important to my determination of Mrs A's complaint.

The regulatory and legal framework

Vehicle Credit lent to Mrs A while it was authorised and regulated by the Financial Conduct Authority.

The Financial Conduct Authority's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says: *A firm must pay due regard to the interests of its customers and treat them fairly.*

The Consumer Credit Sourcebook (CONC) sets out the rules which apply to providers of consumer credit like Vehicle Credit. It's clear there is a high degree of alignment between the Office Fair Trading's ("OFT") *Irresponsible Lending Guidance* (ILG) and the rules set out in CONC. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's ILG on many occasions.

CONC 4 sets out a firm's obligations around pre-contract disclosure and adequate explanations.

CONC 4.2.5R(1) says:

Before making a regulated credit agreement the firm must:

(a) provide the customer with an adequate explanation of the matters referred to in (2) in order to place the customer in a position to assess whether the agreement is adapted to the customer's needs and financial situation.

CONC 4.2.5R(2) includes:

(a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;

(b) how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement;

(c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee.

CONC 5 sets out a firm's obligations in relation to responsible lending. These rules were updated in November 2018, but I refer below to the rules as they were at the time Vehicle Credit lent to Mrs A in February 2018.

CONC 5.2.1R(2) sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

[Note: paragraph 4.1 of ILG]

(b) the ability of the customer to make repayments as they fall due over the life of

the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'.

CONC 5.2.3G says:

The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

- 1. the type of credit;*
- 2. the amount of the credit;*
- 3. the cost of the credit;*
- 4. the financial position of the customer at the time of seeking the credit;*
- 5. the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;*
- 6. the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;*
- 7. any future financial commitments of the customer;*
- 8. any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
- 9. the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).*

[Note: paragraph 4.10 of ILG]

CONC 5.2.4G(2) says: *A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.*

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1G(1) says: *In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says: *The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

[Note: paragraph 4.1 (box) and 4.2 of ILG]

CONC 5.3.1G(6) goes on to say:

For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:

a. without undue difficulties, in particular:

(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and

(ii) without having to borrow to meet the repayments;

b. over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and

c. out of income and savings without having to realise security or assets; and "unsustainable" has the opposite meaning.

[Note: paragraph 4.3 and 4.4 of ILG]

CONC 1.3.1G provides guidance on what may indicate that a consumer is in financial difficulties. It says:

In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:

- 1. consecutively failing to meet minimum repayments in relation to a credit card or store card;*
- 2. adverse accurate entries on a credit file, which are not in dispute;*
- 3. outstanding county court judgments for non-payment of debt;*
- 4. inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- 5. consecutively failing to meet repayments when due;*
- 6. agreement to a debt management plan or other debt solution;*
- 7. evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling.*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) states: *(a) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*

And CONC 5.3.7R says that: *A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).*

[Note: paragraph 4.31 of ILG]

CONC also provides guidance to lenders about how to deal with consumers in arrears, this time making reference to the OFT's Debt Collection Guidance (DCG).

CONC 7.3.2G says: *When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.*

[Note: paragraphs 7.12 of ILG and 2.2 of DCG]

CONC 7.3.4R says that: *A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.*

[Note: paragraphs 7.3 and 7.4 of ILG and 2.2 of DCG]

CONC 2.5 sets out rules and guidance for the conduct of business for credit broking. Again there is an alignment between the Office of Fair Trading's Credit Brokers and Intermediaries Guidance (CBG), as well as the ILG and the rules set out in CONC 2.5, as again the Financial Conduct Authority rules refer back to sections of the OFT's guidance.

CONC 2.5.3R says: *A firm must:*

1. *where it has responsibility for doing so, explain the key features of a regulated credit agreement to enable the customer to make an informed choice as required by CONC 4.2.5 R;*

[Note: paragraphs 4.27 to 4.30 of CBG and 2.2 of ILG]

2. *take reasonable steps to satisfy itself that a product it wishes to recommend to a customer is not unsuitable for the customer's needs and circumstances;*

[Note: paragraph 4.22 of CBG]

3. *advise a customer to read, and allow the customer sufficient opportunity to consider, the terms and conditions of a credit agreement or consumer hire agreement before entering into it;*

[Note: paragraph 3.9I of CBG]

CONC 2.5.8R says a firm must *not*:

...

(10) effect an introduction to a lender or an owner or to another credit broker, where the firm has considered whether the customer might meet the relevant lending or hiring criteria and it is or should be apparent to the firm that the customer does not meet those criteria;

[Note: paragraph 3.9aa and 4.41i of CBG]

...

(17) unfairly encourage a customer to increase, consolidate or refinance (which expression has the same meaning as in CONC 6.7.17 R) an existing debt to the extent that repayments under an agreement would be unsustainable for the customer;

[Note: paragraph 4.26h of CBG]

(18) encourage a customer to take out additional credit or to extend the term of an existing credit agreement where to do so is, or is reasonably likely to be, to the detriment of a customer;

[Note: paragraph 4.41h of CBG]

The Consumer Credit Act 1974 (CCA) is an act established for the protection of consumers and the control of traders of the provision of credit. S56 of the Act provides as follows:

56 Antecedent negotiations

(1) In this Act “antecedent negotiations” means any negotiations with the debtor or hirer—

(a) conducted by the creditor or owner in relation to the making of any regulated agreement, or

(b) conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement within section 12(a), or

(c) conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or (c), and “negotiator” means the person by whom negotiations are so conducted with the debtor or hirer.

(2) Negotiations with the debtor in a case falling within subsection (1)(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity.

(3) An agreement is void if, and to the extent that, it purports in relation to an actual or prospective regulated agreement—

(a) to provide that a person acting as, or on behalf of, a negotiator is to be treated as the agent of the debtor or hirer, or

(b) to relieve a person from liability for acts or omissions of any person acting as, or on behalf of, a negotiator.

(4) For the purposes of this Act, antecedent negotiations shall be taken to begin when the negotiator and the debtor or hirer first enter into communication (including communication by

advertisement), and to include any representations made by the negotiator to the debtor or hirer and any other dealings between them.

So one of the purposes of Section 56 CCA is to deem credit-brokers and suppliers to be the agent of the creditor when conducting antecedent negotiations with a debtor in relation to goods and services purchased with finance under debtor-creditor-supplier agreements.

Section 99 CCA sets out a consumer's right to terminate a hire purchase or conditional sale agreement by giving notice. It states:

99 Right to terminate hire-purchase etc. agreements.

- 1. At any time before the final payment by the debtor under a regulated hire-purchase or regulated conditional sale agreement falls due, the debtor shall be entitled to terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement.*
- 2. Termination of an agreement under subsection (1) does not affect any liability under the agreement which has accrued before the termination..."*

Section 100 of the CCA sets out the consumer's liability on termination:

100 Liability of debtor on termination of hire-purchase etc. agreement.

- 1. Where a regulated hire-purchase or regulated conditional sale agreement is terminated under section 99 the debtor shall be liable, unless the agreement provides for a smaller payment, or does not provide for any payment, to pay to the creditor the amount (if any) by which one-half of the total price exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination...*

I then explained that taking into account the relevant rules, guidance and law, and considering the main reason for Mrs A's complaint, I thought there were two overarching questions that I needed to consider in order to provisionally decide what was fair and reasonable in the circumstances of this complaint. These questions were:

- Did Vehicle Credit complete reasonable and proportionate checks to satisfy itself that Mrs A would be able to repay the credit in a sustainable way?
 - If so, was a fair lending decision made?
 - If not, would those checks have shown that Mrs A would've been able to do so?
- Did Vehicle Credit act towards Mrs A unfairly or unreasonably in some other way?

I explained that if I determined that Vehicle Credit did not act fairly and reasonably in its dealings with Mrs A and that she has lost out as a result, I would go on to consider what was fair compensation.

I proceeded to consider the first of the overarching questions.

Did Vehicle Credit complete reasonable and proportionate checks to satisfy itself that Mrs A would be able to repay in a sustainable way?

I started by explaining that the regulations in place when Vehicle Credit lent to Mrs A required it to carry out a reasonable assessment of whether Mrs A could afford to make her repayments in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

Any affordability checks had to be “borrower-focused” – so Vehicle Credit had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences *for Mrs A*. In other words, it wasn’t enough for Vehicle Credit to think only about the likelihood that it would get its money back without considering the impact of repayment on Mrs A herself.

Checks also had to be “proportionate” to the specific circumstances of the application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different credit applications.

I explained that in light of this, I thought that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to make repayments to an agreement from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should be for an application for credit – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I’ve thought about all the relevant factors in this case.

I set out that Vehicle Credit said that it carried out a full affordability assessment before providing Mrs A with her credit. It said that information was obtained from credit reference agencies, which showed Mrs A had been on the voter’s register since February 2016 and had a loan that she was paying well. An extensive review of Mrs A’s income and expenditure, using Mrs A’s last three bank statements, also took place.

As Mrs A was on maternity leave, she was also required to provide evidence to confirm she was returning to work after her leave ended. I also explained Vehicle Credit had provided copies of the information it obtained and the records of the contact it had with Mrs A during the application. I was also satisfied that Vehicle Credit did obtain the information that it says it did.

All of this led me to find that, bearing in mind it obtained a significant amount of information on Mrs A’s circumstances, Vehicle Credit did carry out a proportionate check – at least in terms of the information requested – before entering into this agreement with Mrs A.

Did Vehicle Credit make a fair lending decision?

I then went on to explain that it isn't enough for a lender to simply request information from a consumer before deciding to lend to them. So even where a lender may have requested a proportionate amount of information - like Vehicle Credit did here - it may still be the case that it will not have acted fairly and reasonably towards a borrower if it didn't carry out a fair and reasonable evaluation of the information it obtained.

I explained that this was because a lender is required to carry out an assessment of the borrower's ability to repay any credit advanced. And any assessment requires an evaluation, judgement, appraisal and scrutiny of any information obtained. Vehicle Credit said its assessment of the information obtained led it to conclude that Mrs A's agreement was affordable for her as she'd be able to sustainably make her repayments.

So I went on to consider what Vehicle Credit had said and when doing so I also scrutinised the supporting information it provided. As a result of doing so, I had a number of observations.

Our investigator asked Vehicle Credit what it thought about the information on the credit searches it carried out, in particular the defaults, showed about Mrs A's credit history at the time. Vehicle Credit declined to answer and instead reiterated what it did when it investigated Mrs A's complaint. It was unclear to me whether this was because Vehicle Credit had misunderstood the investigator's question, or whether it ignored it. But, in any event, I'd reviewed the information and set out that I'd drawn my own conclusions on it.

I thought that the documentation provided showed that Mrs A had defaulted on, at least, 13 (thirteen) different credit accounts. These included five hire purchase agreements, two home collected-credit loans, two credit cards, two unsecured loans, one payday loan and perhaps most concerning of all, a utility account. A fourteenth account was also shown as being delinquent with 16 (sixteen) missed payments.

There were five accounts in the section entitled 'current good credit'. This included three current accounts which looked like they didn't have an overdraft attached to them, a home collected credit account with an outstanding balance of £130 and an unsecured loan with a balance of £3,846. Vehicle Credit relied on one of the loans as having been 'paid well' and I proceeded on the assumption that this was the loan it was referring to when making this argument.

But I could see that the starting balance of the loan relied upon was £3,975. So it seemed to me that Mrs A hadn't made many payments to this loan. And I wasn't persuaded that these payments were indicative of this loan having been paid well especially when considering the myriad of other contradictory information on the bank statements (which I confirmed I'd return to further on) and the defaulted accounts shown on the search. I had significant concerns that Vehicle Credit chose to focus on this single account and I questioned the wisdom of this from a creditworthiness point of view, let alone a borrower focused affordability one.

Nonetheless I also reviewed what was recorded on the 'Footprints' document Vehicle Credit had provided, which appeared to be a record of the contact Vehicle Credit's employees had with Mrs A. I could see an entry recorded by an underwriter on 7 June 2016 which said:

"... vr 02/16 to date, has loan paid ok – other short term loan has been rolled over. Some recent paydays, loan delinq 05/16. recent tend not good- review with 3 months s/ments"

So it was clear to me that Vehicle Credit didn't rely on the credit search information alone and it said that its checks were underpinned by the three months' worth of bank statements it

received from Mrs A. But I also had some concerns about how this information was interpreted.

There was an entry, on the footprints document, from a Customer Sales Executive ("CSE") at 13:17 on 14 June 2016, which said:

"Called customer to ask about incoming payments on banks stats – still able to approve without these payments to max lend – brilliantly ran B/S. Never overdrawn and good static balance. All DD's and bills paid, happy to accept pending I&E once customer on site".

This was then followed by an entry from a Senior Underwriter just over an hour later at 14:54 on 14 June 2016, which said:

"Couple of returned DD's on bank stat, bit of gambling. Have asked for workings out on income and to ensure we have all commitments on I&E when completed. Overall conduct of bank stats is acceptable".

I was surprised at the fact that there was such a stark difference in the way that Vehicle Credit's representatives interpreted the bank statements.

I set out that there was a further entry from the CSE at 16:13 on 15 June 2016. This said:

"I&E complete – customer pays partner £80 per month for her share of the rent which includes gas and water. £60 electric, £55 landline/BB/tv package. £18 (mobile phone provider), £83.78 car insurance. Pays £108.69 to (guarantor loan provider)* which has 2 years left but is hoping to pay this off within the next few months. One payment to (home collected credit provider)* for £30 which was for a friend. Saves well with Credit Union as evident on B/S. Spends around £60 per month on lottery/gambling but is not excessive by any means. Good conduct on B/S and all bills paid. 1 returned DD in the last few months and never O/D. Happy to approve application based on U/W approval. Customer also on maternity leave but returns to work on 4th July earning £808 after deductions.".*

*name of provider removed

There was also an income and expenditure document, which was also dated 15 June 2016, which appeared to indicate that Mrs A had a monthly disposable income of £1,579.12. And I could see that this figure was then adjusted to take account of the fact that Mrs A's monthly salary was less than what was worked out (due to her employer confirming what her salary would be on her return to work) and her expenditure some £400 a month more. Leaving Mrs A with a monthly disposable income of £908.19.

I was concerned about the plausibility of the disposable income arrived at notwithstanding the adjustments made. In my view, the monthly disposable figure arrived at was wholly inconsistent with the information on Mrs A's credit file. I struggled to see how someone who had in excess of £900 a month in disposable income could have had such difficulties repaying previous credit.

I was also concerned that the CSE appeared to have simply accepted, at face value, that Mrs A was going to settle her guarantor loan – when there was absolutely nothing to support her being in a position to do so bearing in mind her lower income and difficulties repaying previous loans. The CSE also appears to have accepted that Mrs A was making payment to someone else's home credit account even though Mrs A had one of her own. So, in my view, there were number of things that simply didn't add up.

I also had concerns with the information on the bank statements that were reviewed. There appeared to be large transfers to and from a second account that didn't appear to have been investigated. There were also payments to a rent-to-own provider which didn't appear to have been included on Mrs A's expenditure too. And rather than being savings, I think that the payments going to a credit union were loan repayments as a large influx of funds went into Mrs A's account from the credit union concerned in May 2016.

Finally, I returned to the payments to Mrs A's guarantor loans. While Vehicle Credit said this loan was being paid well, it was clear that Mrs A was making part payments to this loan. I could only see only one payment having been made in full in the period covered in the bank statement. This didn't happen on any of the other occasions. I accepted that this shortfall in payments didn't show up on the credit search – possibly because the guarantor may have been making up the shortfall – but these 'broken' payments clearly showed up on the copies of the bank statements that Vehicle Credit had.

I also managed to get hold of copies of the statements for Mrs A's other account. And having looked at them, I was satisfied that Mrs A's financial position was even worse than it looked. She was missing payments to a number of existing creditors – hence the defaults on her credit file – including the guarantor loan that Vehicle Credit was relying on to demonstrate that her financial position had improved.

Bearing in mind all of this, I was satisfied that any reasonable scrutiny of the information Vehicle Credit obtained would have shown that it was more likely than not Mrs A wouldn't be able to sustainably repay this loan. As this was the case, I was also inclined to find that while Vehicle Credit had taken proportionate steps in requesting information from Mrs A, it nonetheless made an unfair lending decision. So I was left intending to find that Vehicle Credit didn't act fairly and reasonably towards Mrs A when it entered into this hire purchase agreement with her.

Did Vehicle Credit act unfairly or unreasonably in some other way?

Even though I'd already set out why I was intending to find that Vehicle Credit had not treated Mrs A fairly and reasonably when making its decision to lend, I still had a couple of other concerns about its dealings with Mrs A.

Firstly, I'd seen an email that was sent to the car dealer the day after the purchase. And it was clear that Mrs A had concerns about the brakes on the car she was sold. I was a little concerned that this matter didn't look to have been adequately resolved. But as I'd already found that Vehicle Credit had unfairly entered into this agreement with Mrs A in the first place, I didn't think that any finding that I may have made in relation to the car Mrs A was sold not being of satisfactory quality, would have materially affected Mrs A's position. As such, I thought that while Vehicle Credit and/or its agent dealer ought to have responded to Mrs A's concerns about the car, I made no finding on whether or not the car was of satisfactory quality.

I also thought about the circumstances behind Vehicle Credit taking possession of the car and the outstanding balance it sold on to the third-party debt purchaser. My concern here was that Mrs A's statement of account showed that £4,200.00 of interest and £524 of fees were added to Mrs A's loan balance when the account was opened. Meaning that Mrs A had an opening account balance of £11,874.00.

Her deposit of £150 reduced this to £11,724.00 and as Mrs A didn't make any of her scheduled repayments this remained her outstanding balance when the car was repossessed in September 2016. Vehicle Credit obtained a purchase price of £4,419.00

when the car was sold and it simply deducted this amount from the outstanding balance of £11,724.00 and sold on a balance of £7,305.00 to the third party debt purchaser.

I couldn't see how or why it was fair and reasonable for Vehicle Credit to sell on a balance including three years' worth of interest and fees on £7,150.00 when in reality it had only been without a significant proportion of this amount (£4,419.00) for just over three months.

In these circumstances, I found that Vehicle Credit acted unfairly and unreasonably towards Mrs A when it failed to acknowledge that Mrs A had only been with the car for a very short period of time and was still being expected to pay more than the initial purchase price. I invited Vehicle Credit's thoughts on this matter in its response to this provisional decision.

Overall and having thought about the two overarching questions, set out earlier in my provisional decision, I was left intending to issue a final decision which found that:

- Vehicle Credit *did* request reasonable and proportionate information about Mrs A to decide whether she'd be able to sustainably make the payments to her loan. However, its failure to properly analyse and scrutinise this information resulted in it *unfairly* lending to her;
- Vehicle Credit *did* act unfairly and unreasonably to Mrs A in some other way. This was because it sold on an outstanding balance to a third-party debt purchaser, which was unfairly and unreasonably high as it didn't reflect that the car was repossessed and Mrs A had only had it for a very short period of time.

These findings left me minded to reach the overall conclusion that Vehicle Credit unfairly and unreasonably entered into this agreement with Mrs A.

Did Mrs A lose out as a result of Vehicle Credit's shortcomings?

I then proceeded to consider whether Mrs A suffered adverse consequences as a result of Vehicle Credit unfairly entering into this hire purchase agreement with her. And I thought that Mrs A had because she had been left in the position where she was being expected to pay £7,305.00 to the third-party debt purchaser. I was particularly concerned that Mrs A had been left with an outstanding balance which was larger than the purchase price of the car, this was despite the vehicle being repossessed and her having had at best (bearing in mind Mrs A's concerns regarding the quality of the car), three months' use of the vehicle.

So overall and having thought about everything provided and what was fair and reasonable in all the circumstances of this case, I was minded to find that Mrs A lost out because Vehicle Credit unfairly entered into a hire purchase agreement, which it ought to have realised were unsustainable and harmful for her, with her. And this meant I thought that Vehicle Credit needed to put things right.

I finally set out a method of putting things right for Mrs A, which I found addressed Vehicle Credit's failings and Mrs A's resulting loss.

Responses to my provisional decision

Mrs A responded to my provisional decision confirming that she accepted my reasons for upholding her complaint. But she also thought that any negative information should be removed from her credit file.

Despite being a significant amount of additional time and being chased to do so, Vehicle Credit didn't respond to my provisional decision or provide anything further for me to consider.

My findings

I've considered all the available evidence and arguments provided from the outset, including Mrs A's response to my provisional decision, in order to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I remain of the view that the two overarching questions I set out in my provisional decision are what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint. These are:

- Did Vehicle Credit complete reasonable and proportionate checks to satisfy itself that Mrs A would be able to repay the credit in a sustainable way?
 - If so, was a fair lending decision made?
 - If not, would those checks have shown that Mrs A would've been able to do so?
- Did Vehicle Credit act towards Mrs A unfairly or unreasonably in some other way?

I carefully considered these questions and set out, in some detail, my findings in relation to them in my provisional decision of 18 March 2020.

Given this is the case, and I've not been provided with anything further, in relation to whether the complaint should be upheld, to consider, I've not been persuaded to depart from the provisional findings I reached on 18 March 2020.

In these circumstances, it remains the case that I find that:

- Vehicle Credit *did* request reasonable and proportionate information about Mrs A to decide whether she'd be able to sustainably make the payments to her loan. However, its failure to properly analyse and scrutinise this information resulted in it *unfairly* lending to her;
- Vehicle Credit *did* act unfairly and unreasonably to Mrs A in some other way. This was because it sold on an outstanding balance to a third-party debt purchaser, which was unfairly and unreasonably high as it didn't reflect that the car was repossessed and Mrs A had only had it for a very short period of time.

This means that I find that Vehicle Credit didn't act fairly and reasonably towards Mrs A when it entered into a hire purchase agreement with her. I've already explained why Mrs A lost out because Vehicle Credit didn't act fairly and reasonably towards her. So I'll now set out what Vehicle Credit needs to do to put things right.

Fair compensation – what Vehicle Credit needs to do to put things right for Mrs A

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Vehicle Credit putting Mrs A in the position she'd now be in if she hadn't been sold the car in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mrs A was given the car in question and it has since been repossessed. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mrs A back in the position she would be in if she hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Vehicle Credit to put things right in the following way.

Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints. We usually say that the borrower needs pay back the credit amount provided and that the lender should refund any interest, fees and charges that the borrower paid. This is because the borrower will have had the benefit of the credit that they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out. So this would mean Mrs A paying back the £7,000.00 she was originally lent less the amount that the car was sold for.

But I don't think that a refund of the interest fees and charges is appropriate here. The car was repossessed very soon after the agreement started. So Mrs A clearly hasn't had anywhere near the full benefit of what she was lent. And I don't think that it would be fair and reasonable for Mrs A to have to repay the remaining £2,731.00 outstanding on her balance once all interest fees and charges have been removed.

So I've given careful thought to how else it might be fair and reasonable to put things right for Mrs A bearing in mind the particular circumstances of this case. And, in doing so, I'm particularly mindful of the circumstances that Vehicle Credit lent to Mrs A. I've already explained that Vehicle Credit lent to Mrs A when it had a substantial amount of information showing that Mrs A's finances were in distress and she'd proved unable to meet her commitments to a significant amount of creditors. And, in my view, this meant that Vehicle Credit advanced credit to Mrs A in circumstances where it ought reasonably to have realised that there was a significant risk it wouldn't get what it was advancing back without this causing Mrs A financial difficulty.

As Vehicle Credit's decision to advance a substantial amount of credit in these circumstances was so egregious and Mrs A has clearly been unable to pay these funds back, I'm intending to say that Vehicle Credit provided credit in circumstances where it ought to have known there was realistic possibility it would never see the funds advanced and it, in any event, chose to take that risk. That loss went on to materialise and I think that it is Vehicle Credit that should now bear that loss, not Mrs A.

So Vehicle Credit should either buy back the outstanding balance from the third-party debt purchaser and write it off. Or it should pay the third-party debt purchaser an amount to settle the outstanding debt. As I'm directing Vehicle Credit to arrange for the entire outstanding balance on Mrs A's loan to be written off – including all interest and charges – I'm satisfied that this also puts things right for Vehicle Credit selling an unfairly high debt, which didn't in any way reflect that Mrs A only had the car for an incredibly short period of time, to a third-party debt purchaser.

Mrs A paid a deposit of £150 – and although it might usually be fair and reasonable to refund that in an upheld complaint about unaffordable lending, I'm mindful that Mrs A did have use of the car for three months. So I think it's fair and reasonable for Vehicle Credit not to refund Mrs A's deposit as I think that this fairly and reasonably covers any fair usage deduction from Mrs A's use of the vehicle.

Mrs A's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on any loans or credit they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe. This is what Mrs A wants to be done here. But I don't think that doing this would be the fair and reasonable thing to do here given my reasons for upholding the complaint.

To explain, the basis for Mrs A's complaint was and is that Vehicle Credit shouldn't have lent to her because doing so would cause her harm. I've accepted that this is the case, I've upheld her complaint and have directed Vehicle Credit to have the balance written off, in large part, because of the sheer amount of negative information on her credit file. So in making my decision, I've accepted Mrs A shouldn't have been lent to because of the seriousness of her financial position.

It would be unreasonable for me to depart from this conclusion in terms of Mrs A's affairs going forward – especially where Mrs A has said her financial position hasn't improved. In these circumstances, it seems to me that amending Mrs A's credit file to remove adverse information (and in effect record that this credit was settled on time) and increasing the chances of her being able to access even more funds would be counterproductive and arguably not in her best interests, or those of any potential lender.

So having carefully thought about everything, as I'm asking Vehicle Credit to arrange for the outstanding balance to be written off, I'm not going to ask it to amend Mrs A's credit file. This means that Vehicle Credit can and should record that it has written off an outstanding balance on this agreement.

All of this means that it is fair and reasonable in all the circumstances of Mrs A's complaint for Vehicle Credit to put things right in the following way:

- Either buy back the outstanding balance on Mrs A's account from the third party debt-purchaser and write it off; OR
- Pay the third-party debt purchaser an amount to settle any remaining liability;
- It can record a balance was written off on this agreement on Mrs A's credit file.

My final decision

For the reasons I've explained, I'm upholding Mrs A's complaint. Vehicle Credit Limited should put things right in the way that I've set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs A to accept or reject my decision before 10 July 2020.

Jeshen Narayanan
Ombudsman