DRN-2753916

The complaint

Mrs L believes The Car Finance Company (2007) Ltd ('TCFC') acted irresponsibly by agreeing a hire purchase agreement she'd applied for.

What happened

In March 2016, Mrs L was supplied with a used car through a hire purchase agreement with TCFC. The agreement was for £4,494 over 36 months, with monthly repayments of £218.74. After falling in to arrears several times over the course of the agreement, Mrs L cleared the finance in full in September 2019.

Mrs L has complained that TCFC didn't act responsibly when approving the finance. She's said she still owed over £1,000 on an agreement on her previous car (which was no longer roadworthy) and couldn't afford another one. She's also said she was gambling online at the time and was in a debt management plan ('DMP'). So it should've been clear to TCFC that this agreement was unaffordable. TCFC didn't agree they'd acted irresponsibly, so Mrs L brought her complaint to us for investigation.

TCFC provided a copy of the credit file and the income and expenditure calculation they considered when they approved Mrs L's application. Based on this, our investigator said she didn't think TCFC had carried out reasonable and proportionate checks – they didn't account for the money Mrs L owed on her defaulted accounts; they didn't take any allowance for payments she made to her DMP or to her payday loan; and they didn't allow enough for her regular monthly expenditure given that she had four dependent children.

The investigator thought TCFC should've asked for evidence of Mrs L's income and expenditure, rather than relying on what she'd declared. So the investigator did these checks, based on Mrs L's bank statements at the time to show what her financial position was. And this showed the loan wasn't affordable to Mrs L.

Because Mrs L had already settled the agreement in full, the investigator said she should only have to pay the money she borrowed. So she thought that TCFC should refund her all of the interest and fees she'd paid them, plus interest on this refund. And she said they should also remove any adverse information from her credit file.

TCFC didn't respond to the investigator's view. So this has been passed to me to make 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did TCFC complete reasonable and proportionate checks to satisfy itself that Mrs L would be able to repay the credit in a sustainable way?

    a. if so, did TCFC make a fair lending decision?
    b. if not, would reasonable and proportionate checks have shown that Mrs L could sustainably repay the borrowing?

2. Did TCFC act unfairly or unreasonably in some other way?

And, if I determine that TCFC didn't act fairly and reasonably when considering Mrs L's application, I'll also consider what I think is a fair way to put things right.

Did TCFC complete reasonable and proportionate checks to satisfy itself that Mrs L would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

In their final complaint response letter, TCFC have said they confirmed Mrs L's income from the information she provided, including her bank statements. And they calculated this to be £1,729.44 a month (including benefits). And they took into consideration the expenditure Mrs L had declared on the income and expenditure statement - £1,176.95. So TCFC calculated Mrs L's disposable income at £552.49 a month. Allowing for a £300 buffer for emergency expenditure, TCFC said Mrs L had £252.49 a month to pay their payment of £218.74. So they considered the loan was affordable at the time Mrs L took it out.

Mrs L's income and expenditure statement, dated 12 March 2016, shows she declared an income of £1,792.33 a month. It also shows she declared monthly outgoings of £1,217.90, which include £373 a month towards her credit commitments. There are handwritten notes on this statement, which show TCFC's amended income, expenditure and disposable income figures referred to in their final complaint response letter.

TCFC provided a copy of the credit file they checked at the time of Mrs L's application. This says Mrs L had 17 active credit accounts, owed £19,535 on revolving credit and owed £8,577 on loans. It also showed that Mrs L had previously relied on short-term payday loans and that she was in arrears with a mail order account at the time.

The credit file shows Mrs L paid £373 a month towards a mail order account, loan and existing car finance. But it also shows she had an outstanding payday loan and owed £12,345 on her defaulted accounts – the balances for most of which show that Mrs L was still making regular monthly payments, albeit only a few pounds a month per account.

As TCFC's disposable income calculation said that Mrs L only had £33.75 a month without taking into consideration the payday loan and the payments to the defaults; had these been taken into consideration, the disposable income would've been less – and maybe not enough to support the loan Mrs L had applied for. Given this and the mail order arrears, which may have been an indication of current financial difficulties; I would've expected TCFC to do additional checks before making their lending decision.

Would reasonable and proportionate checks have shown that Mrs L could sustainably repay the borrowing?

The main additional check I'd expect TCFC to have done is to check Mrs L's income and expenditure to ensure their finance was affordable at the point of application, and to see that affordability was sustainable throughout the lifetime of the lending. While TCFC have said they used Mrs L's bank statements to verify her income, they didn't use these same documents to verify her expenditure.

Mrs L has provided her bank statements for the periods 18 January to 22 January 2016 and 29 January to 8 March 2016. She signed the agreement with TCFC on 12 March 2016 so, in the absence of anything else, I think these statements give a good indication of what TCFC would likely have discovered if they'd asked about Mrs L's expenditure at the time and/or checked the bank statements they'd been provided with for any payments she was making.

The bank statements show that Mrs L received an average of £576.52 a month from her main employer; £63.92 every other week from a second employer; £274.20 every four weeks from child benefit; and £131.05 a week tax credits (which had reduced from £156.10 a week over the period of the statements). So this would give her an average monthly income of £1,579.95. Which is less that the £1,729.44 TCFC had calculated.

The bank statements don't show most of the monthly household/utility outgoings Mrs L had declared; but they do show additional undeclared payments relating to car ownership – payments to the DVLA and insurance payments. And payments to the payday loan and Mrs L's DMP showed on her bank statements. There were also regular gambling transactions.

Which means that the monthly expenditure TCFC calculated for Mrs L would need to be increased by £69.76 a month for the car costs. And the payday loan payment, and the payment to the DMP, would increase Mrs L's credit commitments outgoings by a further £169 a month. Which gives an adjusted monthly expenditure of £1,415.71.

And this means that Mrs L only actually had £164.24 a month disposable income **before** TCFC could account for their £300 buffer and their loan payment of £218.74. Based on this, I'm satisfied that, had TCFC carried out reasonable and proportionate checks, they would've seen that the finance wasn't affordable or the payments sustainable. And they wouldn't have approved the loan. So, in not doing the additional checks I'd expect them to do, TCFC didn't act responsibly when approving the finance.

Did TCFC act unfairly or unreasonably in some other way?

I haven't seen anything to make me think TCFC acted unfairly or unreasonably in some other way.

Putting things right

Mrs L had use of the car while she was paying the finance payments, so I think it's right that she should pay for the car. But, because the finance should never have been agreed, I don't think it's right that he should have to pay any interest or charges. And her credit file should reflect that the finance shouldn't have been approved.

So, TCFC should:

- refund all of the interest and charges applied to Mrs L's finance agreement, plus simple interest at 8% from the date the interest and charges were paid to the date of the refund †; and
- remove all records of the finance agreement from Mrs L's credit file.

†HM Revenue & Customs requires TCFC to take off tax from this interest. TCFC

must give Mrs L a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained above I uphold Mrs L's complaint. The Car Finance Company (2007) Ltd must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 7 July 2021.

Andrew Burford
Ombudsman