

The complaint

Mr P has complained that Vehicle Credit Limited (“VCL” or “the lender”) was irresponsible to have agreed car finance for him in September 2016. Mr P also says he was misinformed about the agreement and that VCL didn’t treat him fairly when he fell into arrears.

What happened

In September 2016 VCL entered into a hire-purchase agreement with Mr P, through an intermediary, in order for him to acquire a car. The cash price of the car was £7,844 and Mr P paid a deposit of £100. He borrowed the balance of £7,744 which cost £5,170 in interest and charges. The agreement was for a total of £13,014. This was to be repaid by weekly instalments of £83 over three years, with a final payment of £107. (I’ve rounded all figures to the nearest pound.)

Mr P also had the option of voluntarily terminating the agreement at any point and returning the car. This option would limit Mr P’s total liability to half the amount owing, in other words £6,507, if he’d taken reasonable care of the car.

I understand Mr P missed payments from January 2017 and made an arrangement to repay these alongside his usual weekly payment throughout that year. He continued to miss payments with many returned direct debits throughout 2018 and made no payments for several months. Further payment arrangements were put in place but Mr P was unable to maintain them. This continued into 2019. Eventually, the outstanding balance of £4,516 was sold to a third party debt collector in early 2020. I understand that Mr P still has the car and has paid just over £8,500 (including his deposit) for the use of it from September 2016 to date.

Mr P says VCL was irresponsible to have agreed to lend to him. He also says that he was told before entering into the agreement that he could refinance at a lower interest rate (and lower monthly repayments) after 18 months. Mr P also complains that VCL didn’t treat him fairly in early 2018 when he was unable to work due to ill health – he says the lender increased his repayments to cover his arrears, which wasn’t helpful.

VCL disagrees that it was irresponsible to enter into an agreement with Mr P. It says he met the minimum lending requirement and that his credit was appropriately approved. It also says it couldn’t comment on anything Mr P might have been told by the selling dealership which wasn’t written into the credit agreement. Finally, VCL says that it acted fairly in administering Mr P’s account.

One of our investigators looked into Mr P’s complaint and didn’t recommend that it be upheld. They concluded that VCL ought to have looked into Mr P’s circumstances more fully before lending to him but that it wouldn’t have found anything to suggest it shouldn’t go ahead with the finance at the time.

Mr P disagreed with the recommendation and asked for his complaint to come to an ombudsman to review and resolve and the complaint came to me. I issued a

provisional decision in May 2021 explaining that I was minded to uphold Mr P's complaint because I found VCL was irresponsible to have agreed finance for him.

Mr P agreed with my provisional decision. VCL has not responded. This is my final decision on the matter and will be legally binding on both parties if Mr P accepts it.

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.

As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. These included, for example, the Consumer Credit Act 1974, its revisions in 2015 and the Financial Conduct Authority's Consumer Credit Handbook (CONC) which set out regulations and guidance for lenders such as VCL.

VCL hasn't commented on my provisional conclusions or my proposed redress, nor has it provided any new information for me to consider. Having reviewed the matter again, I haven't found any reason to depart from my provisional conclusions or depart from my proposed redress. For completeness, I'll set out below my reasons for upholding Mr P's complaint.

As I'd said in my provisional decision, the credit to buy the car was granted by VCL under a hire purchase agreement meaning Mr P would own the car when the credit had been repaid. VCL was the owner until that point and Mr P was, in essence, paying for the use of it.

VCL needed to check that Mr P could afford to meet his repayments sustainably before agreeing credit for him. In other words, it needed to check he could repay the credit out of his usual means without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit and Mr P's circumstances, and VCL needed to take proper account of the information it gathered.

VCL also needed to take a proportionate and considered approach to borrowers' arrears difficulties. So when Mr P fell into arrears, VCL should have given him the opportunity to repay the arrears, potentially deferring payment or accepting token payments for a time.

The overarching requirement is that VCL needed to pay due regard to Mr P's interests and treat him fairly.

Bearing all of this in mind, the main questions I need to consider in coming to a decision on this complaint are as follows:

- Was the agreement mis-represented to Mr P, in other words was he given false information about it which persuaded him to purchase the car on finance from VCL?
- did VCL complete reasonable and proportionate checks when assessing his application to satisfy itself that he would be able to make his repayments in a sustainable manner? If not, what would a proportionate check have shown?
- Overall, did VCL treat Mr P fairly and with due regard to his interests?

Mr P says he was given incorrect information about the agreement: *"I was told that I could refinance this agreement half way through after a year and half to a different vehicle and was advised that this will reduce my monthly repayments and the interest rate and will also improve my credit rating. Unfortunately this has not happened as there is no car dealer that I have come across with that deals with ... Vehicle Credit".* Mr P says this was one of the reasons he entered into the agreement and says *"My plan was to keep this agreement for a year and a half then to reduce interest and monthly repayments."* He says he did eventually find a dealer who worked with VCL but didn't change the agreement because he wasn't offered a lower interest rate or lower monthly repayment.

I can see from VCL's customer contact notes that in April 2018 Mr P enquired about reduced monthly payments as he wouldn't be working for several months due to a disablement. A few months later he was advised that VCL wouldn't consider refinancing the agreement because of his arrears but would consider an early settlement figure if he was offered credit elsewhere.

VCL says that it didn't tell Mr P it would refinance his agreement at a lower rate after 18 months and says that it couldn't comment on what the selling dealership might have told him in this regard. I would remind VCL that as the owner of the car bought from the dealership, it was responsible for any negotiations the dealership had with Mr P, including advertisements, before he entered into the agreement.

Clearly, I can't know exactly what was discussed at the dealership before Mr P agreed to buy the car with finance from VCL or how the agreement was presented to him. I can understand why, considering how events unfolded, Mr P now feels he wasn't fully informed about all aspects of the agreement. However, I am not considering this point further and haven't made any finding on whether or not VCL got something wrong in this regard. As I will go on to explain, even if I concluded that everything happened as it should have at the point of sale, I'm upholding Mr P's complaint because I think VCL was irresponsible to have agreed credit for him at that time.

VCL says that it checked Mr P's ability to meet his repayments in a number of ways including the information he gave about his income and expenses and his credit history. Mr P said he was self-employed with a monthly income of £1,767 which he explained was an average estimate. He provided VCL with bank statements, recent invoices and his current contract, which I note seems to be a zero hours contact signed in June 2016. According to VCL's lending policy this should have required Mr P to evidence six months continual work.

VCL says it verified Mr P's income using his bank statements from the months of May and August 2016. I understand its lending policy at the time required self-employed applicants to provide three months bank statements or three years accounts. VCL says that Mr P was unable to provide transaction history for June or July, but he'd explained that he was out of work for a time and went abroad, coming back into employment in August.

It's clear from the bank statements that Mr P's weekly income varied – he worked as a courier and he was paid more for same day deliveries. The minimum weekly payment shown on his bank statements for August was about £500, with an average of about £700. This is gross income however and, being self-employed, Mr P presumably needed to pay tax and national insurance from this.

Mr P gave his monthly expenses as £679. I note this didn't include an amount for rent or existing credit commitments. It also didn't include his business expenses, the largest of which was the hire of his delivery vehicle which ranged upwards of £200 a week, along

with fuel costs of about £500 a month. These costs are clearly identifiable on his bank statements.

VCL provided a copy of Mr P's credit file and says that, although his current account was over the limit and he had two mail orders in arrears, he met its lending criteria at the time. VCL says that it is a sub-prime lender, in other words will consider credit for people who have struggled to manage previous credit. I can see from this record that Mr P had problems with his finances over the years – he incurred a county court judgment in 2012 and has at least six defaulted accounts from before this time. It doesn't seem as though any of these debts had been repaid. VCL has mentioned the arrears on two accounts – these were recorded as delinquent from late 2015 and I can see that Mr P hadn't made any recent payments to the accounts.

Taking all of this together, I think VCL had enough information to show that it wasn't likely Mr P would be able to meet his repayments on this finance without difficulty. It was likely he wouldn't have enough to cover the repayments and he seemed to be having ongoing problems making inroads into his existing debt. I've concluded therefore that VCL was irresponsible to have agreed credit for Mr P given the information it had, and I don't think further information about his circumstances would have provided any reassurance. And so I am upholding his complaint in this regard.

I've also considered whether VCL treated Mr P unfairly when he fell into arrears. I can see from the customer contact notes that Mr P struggled with repayments a few months into the agreement and missed payments for several months in the summer of 2018. He agreed a repayment plan with VCL to pay £110 a week from October 2018 to clear the arrears alongside his regular payments but didn't manage to keep to this and by May 2019 had stopped paying.

I don't think VCL did anything wrong here in providing Mr P with the opportunity to clear his arrears. What isn't clear to me is whether Mr P was given the option to voluntarily terminate the agreement. It seems to me that by July 2018 he'd paid more than half the amount owing under the agreement - £6,507. The contact notes from early 2019 mention voluntary surrender and state that Mr P should realise that the vehicle is not affordable for him. It seems Mr P agreed to surrender the car in early 2019 but later said that he'd rather find a way to retain it, given the amount he'd paid so far. So I'm not sure if Mr P would have chosen to voluntarily terminate the agreement, even had he been given this option.

Altogether, I haven't seen enough to conclude that VCL didn't treat Mr P fairly when he fell into arrears. But, as I've explained, I do think it was irresponsible to enter into the agreement with him in the first place and it now needs to take steps to put things right for him.

Putting things right

As I explained in my provisional decision, this Service's general approach to redress in cases where we've found that credit for a vehicle has been irresponsibly agreed is that the borrower shouldn't have to pay any interest or charges associated with the agreement. So, for example, where an agreement has run to term and the borrower has made all the payments and owns the car, then fair redress might be a refund of interest and charges paid (plus compensatory interest). Where an agreement has ended before running to term and the lender has taken back the car, for example, fair redress might be a refund of all payments made with a proportion retained by the lender to reflect the borrower's use of the car.

In this case, I understand that the agreement hasn't yet been terminated. Mr P is still using the car and has paid about £8,500 in total, more than the cash price of the car at £7,844. The outstanding balance of £4,516 had been sold to a third-party debt collector.

I think the fairest thing to do in the circumstances of this case is to end the agreement and allow Mr P to retain the car with nothing further to pay. I think he should be refunded the payments he made above the cash price of the car, in other words all payments above £7,844, along with 8% simple interest per annum from the date the overpayments happened to the date of refund.

As mentioned, I understand VCL sold the outstanding debt to a third party debt collector. VCL will need to ensure Mr P isn't pursued for the debt which may involve buying the debt back or paying an amount to the current debt owner. VCL should also remove any adverse information about this agreement from Mr P's credit file, once settled.

My final decision

For the reasons set out above, I'm upholding Mr P's complaint about Vehicle Credit Limited and it needs to put thing right as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 September 2021.

Michelle Boundy
Ombudsman