

The complaint

Mr S complains that The Car Finance Company (2007) Ltd (“TCFC”) irresponsibly granted him a loan he couldn’t afford to repay.

What happened

In June 2015, Mr S took receipt of a car that he financed through a hire purchase agreement with TCFS. Mr S was required to monthly repayments of £255.49 over the 36-month agreement with a final optional payment of £10 if he wanted to own the car at the end of the agreement. The total repayable under the agreement was £9,197.64.

Mr S says that TCFC didn’t complete adequate affordability checks. He says if it had, it would have seen the agreement wasn’t affordable. TCFC didn’t agree. It said that it carried out a thorough assessment by reviewing bank statements and Mr S’s credit file and by asking him to confirm his income and expenditure.

Our investigator recommended the complaint be upheld. She thought TCFC ought to have realised the agreement wasn’t affordable for Mr S.

TCFC didn’t agree. In a response to us in March 2022 they explained that views on gambling and pay day loans in 2015, when the application was made, were very different than they are now. They also provided evidence to show a call had been made to Mr S to clarify details on his bank statement and that in the first twelve months of his agreement he’d always been up to date except for a couple of slow payments. They explained that Mr S had been a good payer on his previous agreement and that would have had a great bearing on the business’ decision to lend again. They understood that evidence now suggested Mr S’s income was lower than had been established at the time of the application but they said even when that was taken into account he’d still have about £924 of disposable income a month from which he could afford the monthly instalments on this new application.

The case 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.

TCFC will be familiar with all the rules, regulations, and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don’t consider it necessary to set all of this out in this decision.

Before granting the finance, I think TCFC gathered a reasonable amount of evidence and information from Mr S about his ability to repay. I say this because it reviewed his credit file, looked at his bank statements for the three-month period immediately before the application and asked him about his income and expenditure.

However, just because I think it carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

Mr S declared his income as £3,020 and TCFC calculated it as about £3,568. But in calculating that income TCFC included payments from gambling and income from payday loans and from another account of Mr S's that they hadn't sought information from. The bank statements suggest his actual income was about £2,153 on average. Whilst that may have been sufficient to cover his expenditure I think there was a lot of evidence that Mr S was struggling to control his finances.

The credit checks TCFC completed showed he had a total debt of about £37,000 and that several accounts had been defaulted and with significant balances. Bank statements showed that Mr S was gambling heavily (£1,772 in March 2015 three months before the application). They also showed he was taking out pay day loans and hadn't made a payment to one he'd taken out in March 2015. Whilst "views" on gambling and pay day loans may have changed over the years I still think Mr S's financial struggles should have been clear to TCFC. His payment history on the account he had with them was only one of the issues they should fairly have considered when they were establishing if Mr S could sustainably afford to repay this loan.

I think it should have been clear to TCFC that Mr S was struggling financially and was unlikely to be able to sustainably repay the debt. TCFC therefore didn't make a fair lending decision.

Putting things right

Mr S has explained that the car was written off after it was in an accident 11 months into the agreement. After the insurance pay out and Mr S's contributions were taken into account there was a still a balance to be paid.

As I don't think TCFC ought to have approved the lending, it should therefore refund all the payments Mr S has made, including any deposit (although I can't see one was paid here). However, Mr S did have use of the car for around 11 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of over £255 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, Mr S's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount Mr S should pay is £140 for each month he had use of the car. This means TCFC can only ask him to repay a total of £1,540. Anything Mr S has paid in excess of this amount should be treated as an overpayment.

To settle Mr S's complaint TCFC should do the following:

- Waive any interest and charges still owed by Mr S.
- Refund all the payments Mr S has made, less £1,540 for fair usage.
 - If Mr S has paid more than the fair usage figure, TCFC should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Mr S has paid less than the fair usage figure, TCFC should arrange an affordable and sustainable repayment plan for the outstanding balance.

- Once TCFC has received the fair usage amount, it should remove any adverse information recorded on Mr S's credit file regarding the agreement.

*If HM Revenue & Customs requires TCFC to take off tax from this interest. TCFC must give Mr S a certificate showing how much tax it's taken off if Mr S asks for one.

My final decision

I uphold this complaint and direct The Car Finance Company (2007) Ltd to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 April 2022.

Phillip McMahon
Ombudsman