

The complaint

Miss P complains that The Car Finance Company (2007) Ltd ("TCFC") irresponsibly granted her a hire purchase she couldn't afford to repay.

What happened

On 31 January 2017 Miss P acquired a used car financed by a hire purchase agreement from TCFC. The cash price of the car was £6,995 and the total repayable under the agreement was £13,120. Miss P made an advance payment of £495 and was to repay the balance with 35 monthly repayments of £361 (figures rounded).

Miss P says that TCFC didn't treat her fairly when it set up the agreement because it wasn't affordable for her. She says she wasn't given all the information she should have been before entering into the agreement and that TCFC didn't treat her fairly when she later had difficulty meeting her repayments. Miss P says the repayment plans weren't affordable for her and TCFC refused to reduce her payments or increase the term of the arrangements. She says this matter caused her great stress as she needed her car for work.

I understand that Miss P made repayments until late 2019. She told us that the car stopped working in August 2020. She says it was deemed unrepairable by a local garage and was subsequently scrapped.

TCFC didn't uphold Miss P's complaint. It said that Miss P signed a contract to pay a total of £13,120 and that if she was struggling to maintain payments, the best option was to give the vehicle back under a Voluntary Termination. It says that it is not a legal requirement to offer refinance and it was not something that it offered as a forbearance option, therefore Miss P couldn't extend the term of the agreement. TCFC also says that it was sorry if Miss P felt bullied but it was her decision to keep the vehicle and it did everything it could to work with her and allow her to do so.

Our investigator found that TCFC hadn't treated Miss P unfairly during the course of the agreement but didn't make a finding as to whether or not TCFC treated Miss P unfairly by entering into an agreement with her in the first place. Our investigator didn't recommend that TCFC compensate Miss P for any errors. Miss P didn't agree with these findings and asked for her complaint to come to an ombudsman to review and resolve.

I considered all aspects of Miss P's complaint and sent a provisional decision to both parties on 9 November 2021 explaining why I planned to uphold it in part. I provisionally found that TCFC hadn't carried out proportionate checks when assessing whether the finance would be affordable for Miss P and that further checks would likely have revealed that it wasn't. I also provisionally found that TCFC should have seen from the information it already had that further credit was unlikely to be sustainable for Miss P. I didn't conclude that TCFC ought to have treated Miss P differently when she couldn't meet her repayments.

TCFC didn't accept my provisional decision and on 23 December 2021 provided further comments and information for me to consider when making my final decision. Miss P accepted my provisional decision and provided further information on 7 January 2022 in

response to my queries, which were prompted by TCFC's comments. I shared this information with TCFC via email on 11 January 2022 and explained why I remained of the view that Miss P's complaint should be upheld. TCFC provided some further comment on 18 January 2022.

I want to reassure both parties that I have considered everything they have said regarding the complaint. This is my final decision on this matter. It will be legally binding if Miss P chooses to accept 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.

Having considered everything again, including what both parties have said in response to my provisional decision, I remain of the view that Miss P's complaint should be upheld in part. I'm appreciate that this will be disappointing news for TCFC and I hope the following clearly explains why I have come to this final decision.

For completeness I will set out again what I'd said in my provisional decision along with my final comments. I'll also refer to the more recent information and comments from both parties as appropriate.

I began my provisional decision with the regulations which TCFC needed to abide by. I said "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 this out in detail.

In brief, TCFC needed to check that Miss P could afford to meet her repayments without difficulty before agreeing credit for her. In other words, it needed to check she could meet her repayments in a sustainable manner, without incurring financial difficulty or experiencing significant adverse consequences. This meant being able to meet her payments out of her usual means over the term of the agreement, without having to borrow further and while meeting her exiting commitments. The checks needed to be proportionate to the nature of the credit and to Miss P's circumstances.

TCFC also needed to take a proportionate and considered approach to a borrower's arrears difficulties. So when Miss P had problems meeting her repayments, it should have given her the opportunity to repay any arrears, potentially deferring payment or accepting token payments for a time. And it needed to give Miss P clear, fair and not misleading information before and during the agreement term."

I started my investigation by considering what Miss P said about the information she received before she entered into the agreement. I said "TCFC has provided a signed loan agreement dated 31 January 2017. This contains information I would expect to see, for example the cash price of the car, the total charge for the credit, the repayment amounts, and the total amount payable. Of course I don't know exactly what happened at the point the loan was agreed but I haven't seen enough to be able to say Miss P didn't receive all the information I think she should have prior to entering into the agreement."

I then considered what TCFC knew or should reasonably have found out through proportionate checks on affordability before entering into this agreement with Miss P, and whether its decision to offer credit was fair.

I said in my provisional decision that "TCFC carried out an income and expenditure

analysis before agreeing credit for Miss P and calculated that she had a disposable monthly income of almost £1,500. It seems inconsistent to me that with this level of disposable income Miss P hadn't paid a larger deposit and reduced her monthly repayments or indeed saved to purchase a vehicle. Given the amount Miss P was borrowing, the size and term of the repayment, and the consequences she faced if she couldn't meet her repayments, I think it would have been proportionate for TCFC to have verified some of the figures it relied on, for example, via a recent payslip of Miss P's or evidence of benefit awards or bank statements. I can't see that this happened. Altogether, I can't say that TCFC took reasonable steps here to assess the risk of the credit being unaffordable for Miss P.

Had TCFC looked into Miss P's circumstances before providing credit for her, I don't think it would have been reassured that she would be able to meet her repayments without difficulty. I note that Miss P told TCFC she was in financial difficulty in April 2017, two and a half months after taking out the agreement. An income and expenditure analysis mid-April showed that Miss P had a disposable income of £386. TCFC assumed Miss P would have 80% of this, £309, available to meet her finance payment. The analysis also showed she was a single parent and was spending at least 22% of her income on repaying other debt, including council tax arrears. TCFC agreed a six month repayment plan of £200 a month. I think TCFC understood at that point that the agreement as it stood wasn't affordable for Miss P, and I think it's likely it would have understood this prior to lending had it carried out proportionate checks.

TCFC had checked Miss P's credit file prior to the agreement and provided a copy of its findings. I think there was enough adverse information showing on Miss P's credit file at the time to indicate that she wasn't likely to be able to meet repayments for further credit in a sustainable manner. She had incurred two county court judgements (CCJS) in the previous three months, one of which was for a hire purchase agreement of almost £19,000; the other was for over £3,500 of overdraft debt. Miss P had recently defaulted on a short term loan, had missed payments on a home credit account and was in sustained arrears on a credit card. In addition Miss P had older defaults which remained unpaid, for example telecoms, home credit and bank accounts, some of which were with a debt collector. It seems Miss P had debts of at least £25,000 which she was not managing to repay. I don't think TCFC treated her fairly when it agreed credit for her knowing her level of existing debt and how she was managing this."

I provisionally concluded that TCFC was irresponsible when it entered into the hire purchase agreement with Miss P and said it should take steps to put this right.

I then went on to consider what happened when Miss P couldn't make her repayments. I said that "TCFC has provided its customer records and I've reviewed these. On a number of occasions TCFC accepted a reduced payment from Miss P when she explained that she couldn't meet her full repayment for the month. I can see that several repayment plans were set up over the years, for various amounts and terms.

I note that in April 2019 TCFC recorded that Miss P had £35,000 of debt, including £1,000 of arrears on her gas bill. She said she was being supported by a national debt advice charity and was on medication for longstanding mental health problems. TCFC also noted that Miss P suggested she could reduce her outgoings by cutting down on certain costs including food spend. It seems to have accepted these circumstances and put a 12 month repayment plan in place a week or so later.

Miss P says the repayment plans that were agreed were unaffordable and inappropriate for her. TCFC considered Miss P's income and expenditure each time, though I can't see that it took steps to verify her expenditure at any point. I find it concerning that TCFC put

a repayment plan in place which required Miss P to reduce her spending on food for it to be affordable, especially under circumstances which indicate that she was in a vulnerable position on a number of counts.

Miss P told us that she had no choice but to accept the repayment plans because she couldn't work if she didn't have a car. She says she would have preferred to have paid less each month over a longer term to allow her to keep the car. Miss P says *"What would have been fair and reasonable, positive and sympathetic was for them to allow me to reduce my payments over an extended term (bearing in mind the agreement was due to end January 2020 and is still in place). This would have been no detriment to [TCFC] and would have avoided the emotional and mental stress, anxiety and severe hardship I was subjected to."*

TCFC says that it is not a legal requirement to offer refinance and it was not something that it offered as a forbearance option, therefore Miss P couldn't extend the term of the agreement. There's nothing in the regulations to say that TCFC couldn't have extended the time over which Miss P could repay what she owed under the agreement, as long as it didn't make the term unreasonably excessive and it could find a level of repayment that was affordable for her.

Let me say at this point that I accept what Miss P says about how difficult managing the agreement has been for her and I can understand her perspective about what the best course of action would have been. However, having considered this aspect of Miss P's complaint carefully, I haven't come to the conclusion that TCFC ought to have treated Miss P differently when she couldn't meet her repayments. Miss P has ended up without a car and remains liable for the full amount owing under the agreement. I can't say that she would have been in a better financial or emotional position if TCFC had taken a different course of action following the agreement inception. I think the problems Miss P had meeting her repayments followed from its decision to lend to her in the first instance..."

In response to my provisional decision TCFC said that:

- The fact that Miss P paid a deposit of £495 was more the exception than the rule as larger deposits were unusual with car finance lending in the sub-prime market. So it didn't think this level of deposit was inconsistent.
- The audit trail from its business systems strongly suggested that Miss P's income was verified at the time of application and showed that the finance was affordable at that point.
- It initially wasn't happy to proceed with the agreement because it could see that Miss P had incurred a CCJ. However, it appeared that the ongoing liability associated with this CCJ had been investigated by TCFC and understood and so it was disregarded. There was only one other account that had defaulted in the last 12 months, and this didn't raise concern.
- At the time of approval in January 2017 Miss P's disposal income was calculated at £1,250. As at April 2017 this had reduced to £386 a reduction of £864. There seem to be three main reasons for the reduction:
 - Main salary reduction of £332 to £2,228 per month;
 - Loss of DWP income of £333 per month; and
 - Council tax arrears to be paid at £378 per month.

- It is regrettable that Miss P's financial position deteriorated so soon after the loan was made but TCFC couldn't or shouldn't have foreseen this at the time of the original credit assessment. Much of this deterioration, for example the council tax arrears, was temporary.
- Miss P could have avoided much of her current financial hardship had she taken up the appropriate offer of a Voluntary Termination in 2019 thereby extinguishing her debt and improving her credit record. TCFC is accountable for its lending decisions, but Miss P has admitted to providing inflated income information at times and declined help throughout the agreement, for example taking her car to a garage in to have a fault investigated (21/11/2017) as well as turning down the Voluntary Termination Offer.

I asked Miss P for some additional information prior to responding to TCFC on the above and shared this information with it in my communication of the 11 January 2022. I've set out my response in full below.

I said that "I can accept that TCFC asked Miss P for proof of her income based on the call notes the lender provided and what Miss P has since told us. The call notes also mention proof of income and benefits by way of bank statements. And I can see that TCFC checked Miss P's credit file.

However, even if I now consider these checks to have been proportionate, that doesn't mean that I think everything went as it should have when Miss P applied for credit. I provisionally concluded that TCFC didn't treat Miss P fairly when it agreed credit for her, given what its checks revealed, and I'm afraid haven't seen anything which changes my mind about this. I appreciate this will be disappointing news, but I remain of the view that Miss P's complaint should be upheld.

On the matter of Miss P's deposit, my point here was not that the level of deposit Miss P provided was low and therefore unusual for the sector, rather that the level of available income seemed unusually high. I thought if Miss P actually had this amount of disposable income available to her each month, she might have paid a larger deposit or saved to buy a car outright. I asked Miss P about her deposit and she said: *"I applied for the finance ahead of 31st January 2017 but I didn't take out the agreement until 31st January 2017 as I needed to get paid to have the deposit (I didn't have enough), TCFC agreed to wait until this date. So come pay day I took the bus ... completed the agreement and took the car home."*

Regarding Miss P's income, a salary of £37,500 (as you've mentioned and as shown on her payslip from January 2018) yields a monthly income of about £2,200, with no deductions. I can see from Miss P's bank statements that her usual income fluctuated around this amount (e.g. £2,138 in February 2017, £2,228 in March and £2,108 in April) so I am unsure where the wage of £2,560 recorded in her application comes from – perhaps this includes a benefit amount? (see call notes from 4/01/2017)

I asked Miss P to tell me about her income and what proofs she provided at the time. She said: *"My gross salary was £37,500 and I provided a copy of my contract (I began my employment October 2016), bank statements and [my son's] DLA award letter ... I did (and still do) receive payments from DLA (now PIP) which is for my son, it was/is made to me as I was/am his appointee but the money was/is for him due to his disability to help with his day-to-day needs/living costs."* The DWP DLA payment was about £333 a month at the time.

Miss P also said *"Prior to October 2016 I was unemployed (for approximately a year) and*

received benefits as shown on my bank statements. Therefore, as TCFC were aware, the Tax Credits I received at the time of application were based on benefit income and not a salary and therefore couldn't be used to verify affordability for the duration of the agreement as come April 2017 at the financial YE it was envisaged/expected that they would cease."

It does seem likely to me that Miss P's usual income was around £2,200. I also think it was foreseeable that her tax credits (a means-tested benefit) were likely to change, given what she was earning and that she'd recently started working. I noted that Miss P was in receipt of child benefit of about £90 a month and that the DWP benefit wasn't awarded to her (the NI number on her bank statement reference is different to the one on her payslip). She's confirmed this wasn't her benefit but her son's. It's debatable for me whether the DWP money would have been available to Miss P to cover her debt repayments, given the nature of the benefit.

Regarding Miss P's outgoings – she'd declared expenses of £1,927 at the time of the loan. This included £470 a month repaying over £4,000 of existing debt across four loans - I note from the credit file TCFC provided that she'd missed a payment on one of these loans and another was delinquent. This £470 didn't include any payments towards the £25,000+ that was in default. Some of this was with debt collectors, and she'd incurred two recent CCJs so it's likely she would have had court costs and repayments for these two defaulted debts at least.

TCFC's income and expenditure analysis of April 2017 included court costs and collections payments totalling £105 a month, and it also included £125 towards a student loan (shown on the January 2018 payslip provided). So altogether, I think Miss P was likely to have been spending at least £700 on debt repayments each month, a significant proportion of her means even before adding in a further commitment of £361.

I understand that Miss P's council tax arrears arose before the agreement was taken out. I asked her about these and she said *"the Council tax arrears were £378 in total and were deducted from my salary 31st May 2017 - I received £1,694.79."* The bank statements confirm this pay.

I provisionally concluded that further checks on Miss P's circumstances prior to lending to her wouldn't have provided reassurance that she would be able to meet her payments sustainably and I'm afraid I haven't seen anything since that makes me think otherwise. I don't think it's a case of her financial situation deteriorating rapidly in the months following the agreement inception. I think further analysis of the information TCFC had would likely have confirmed that Miss P's means of repayment weren't as high as it considered and her debts were greater. She wasn't managing her debt well – the CCJ's, defaults and recent delinquency were known to TCFC – and she was in considerable financial difficulty. This all leads me to conclude that TCFC didn't treat her fairly by entering into this agreement because it wasn't likely to be sustainable for her.

You did mention in your response that you would want me to reconsider my redress proposals. You said: *"Miss P could have avoided much of her current financial hardship had she taken up the appropriate offer of a Voluntary Termination in 2019 thereby extinguishing her debt and improving her credit record."* The agreement states that such a termination would mean capping Miss P's liability at £6,559.93. I'd proposed capping her liability at £6,450, which I don't think is significantly different."

TCFC responded to the above communication on 18 January 2022 to confirm that it still disagreed that it had been irresponsible when it entered into the finance agreement with Miss P. In summary TCFC said that:

- The quotes from Miss P provided in my email of the 11 October 2021 suggested that I had access to information that was not provided to it;
- It feels strongly that the level of compensation I've requested to pay Miss P is disproportionate for someone who had the use of the vehicle for four years, who declined to voluntarily terminate the agreement in 2019 when she could have limited her own financial hardship and capped the financial loss to TCFC and who has admitted providing false financial information during the life of the agreement. The point I had made about the proposed liability cap being equivalent to the Voluntary Termination amount was not correct. Under a Voluntary Termination TCFC would have taken the car back and would have offset the net sales proceeds against the liability; and
- Miss P made her referral to the Financial Ombudsman Service on 19 November 2019, and it has taken over two years to resolve. Had the current decision been made within the Service's 90-day service level a considerable amount of penalty interest would have been avoided. It requested as a minimum that penalty interest is not awarded on this case.

I hope I have reassured TCFC that I have shared all the information I have relied on in making this decision. I accept what it's said about it not having had the opportunity to acquire and sell Miss P's car to offset the net sales proceeds against any loan balance. However, had TCFC recovered and sold Miss P's car, I might have to consider including in my redress any difference between what Miss P's car sold for in an auction sale and what it might have cost her to replace it, in other words the market value. So TCFC may have found itself in the position now of having to refund more than what I have proposed, along with compensatory interest. As it happened, in this case the car was scrapped and so was lost to both parties.

Finally, I'm afraid I cannot agree that compensatory interest is not included in my redress. I accept that we could have reached the right outcome earlier in our process, but TCFC might not have agreed with it. Equally, TCFC could have resolved this complaint at any point, either before or after Miss P referred her complaint to us. Until Miss P is refunded, it is my view that she has been unfairly deprived of her money and I think our usual compensatory interest is appropriate in this case.

My final conclusion is that TCFC was irresponsible when it entered into this agreement with Miss P and I've set out below what it needs to do to put things right for her.

Putting things right

As I don't think TCFC ought to have approved the finance, it should therefore refund all the payments Miss P has made, including her deposit. However, Miss P did have use of the car for a time and I think it's fair that she pays something for that use. As mentioned, Miss P told us that the car stopped working in August 2020 and was scrapped. I've assumed, therefore, that Miss P had use of the car from February 2017 to July 2020 – approximately 43 months.

I'm not persuaded that repayments of over £360 a month are a reasonable reflection of what a fair usage cost 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 cost should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Miss P's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car.

Altogether, I currently think a fair amount Miss P should pay is £150 for each month she had use of the car. I understand that this means TCFC can only ask Miss P to repay a total of £6,450. Anything she has paid in excess of this amount should be treated as an overpayment.

I understand that there is a balance outstanding on the agreement. In May 2020 this was just over £2,000 and is currently shown on Miss P's credit file as £1,725. I also understand that this debt is now owned by another company and that it recently recorded a default on Miss P's credit file.

To settle Miss P's complaint, TCFC should do the following:

- End the agreement with nothing further for Miss P to pay. This may mean it needs to pay an amount to the current debt owner to cover any outstanding balance; and
- Refund all the payments Miss P has made above the fair usage total. This includes any amounts paid to the current debt owner; and
- Add 8% simple interest per year* to these overpayments from the date of each overpayment to the date of settlement;
- Remove any adverse information recorded on Miss P's credit file regarding the agreement. It may need to liaise with the current debt owner to ensure all adverse information is removed.

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

My final decision

For the reasons set out above I am upholding Miss P's complaint against The Car Finance Company (2007) Ltd and it needs to put things right as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 14 March 2022.

Michelle Boundy
Ombudsman