

The complaint

Miss B and Mr H complain that The Car Finance Company (2007) Ltd (TCFC) irresponsibly granted them a hire purchase agreement they couldn't afford to repay.

What happened

In August 2016, Miss B and Mr H acquired a used car financed by a hire purchase agreement from TCFC. Miss B and Mr H were required to make 48 monthly repayments of £271. The total repayable under the agreement was £13,010.

Miss B and Mr H say that TCFC didn't complete adequate affordability checks. They say 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 which included credit checks and verifying the income through payslips and bank statements.

Our investigator recommended the complaint be upheld. She thought TCFC ought to have realised the agreement wasn't affordable for Miss B and Mr H.

TCFC didn't agree and said Miss B and Mr H's income was verified and that the policy at the time was to check expenditure against third party databases and to ask the customer to verify by signing the income and expenditure summary. It said a contingency of £300 was always included. It noted that TCFC operated in the sub-prime market and so customer's having some adverse credit information wasn't unusual and that the account was cleared with the contractual 48 months. It said its checks were proportionate.

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.

The credit check TCFC completed for Miss B didn't show any recent issues. The credit check for Mr H showed a number of defaults and a county court judgement. While I note the defaults were historic, I think the number should have raised concerns and there was also a delinquent account recorded in the previous 12 months suggesting that Mr H was still experiencing financial difficulties. Mr H had a large outstanding balance for revolving credit and loans and his bank statements showed he was making use of short-term loans. The agreement was in both names and it was Mr H's income that was verified. Given the information identified through Mr H's credit check I think TCFC ought to have been concerned that Mr H was struggling financially. It therefore would have been proportionate for TCFC to have got a more thorough understanding of Miss B and Mr H's financial circumstances before lending.

Before granting the finance, I think TCFC gathered a reasonable amount of evidence and information from Miss B and Mr H about their income. I say this because it verified the income using payslips and had copies of bank statements. Information was gathered about

Miss B and Mr H's expenditure and the income and expenditure information was signed. However, given the information contained in Mr H's credit file and noting the variation in Mr H's income (and that Miss B didn't have an income) I think that the expenditure amounts should also have been verified.

I've reviewed the bank statements leading up to the lending decision. These show that Mr H was struggling financially. There are returned direct debits for household bills, regular use of a payday loan provider and payments to other credit providers. Mr H's account was consistently in overdraft and any income received was used generally within the day of receipt. Clearly Miss B and Mr H weren't in a position to afford the repayments towards the new agreement without financial difficulty or having to borrow further. Had TCFC considered all the information that was provided as part of its checks, I think it's likely it would have discovered this too. It therefore didn't act fairly by approving the finance.

Putting things right

As I don't think TCFC ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Miss B and Mr H should therefore only have to pay the original cash price of the car, being £6,500. I note the comment about this price but this was the amount included in the signed agreement and I do not find I have enough evidence to say this was incorrect. Anything Miss B and Mr H have paid in excess of that amount should be refunded as an overpayment.

To settle Miss B and Mr H's complaint TCFC should ensure the following happens:

- Refund any payments Miss B and Mr H have made in excess of £6,500, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Miss B and Mr H's credit file regarding the agreement.

*HM Revenue & Customs requires TCFC to take off tax from this interest. TCFC must give Miss B and Mr H a certificate showing how much tax it's taken off if they ask 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 Miss B and Mr H to accept or reject my decision before 26 July 2022.

Jane Archer
Ombudsman