DRN-3745461

The complaint

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

What happened

In February 2017, Miss C acquired a used car financed by a hire purchase agreement from TCFC. Miss C was required to make 22 monthly repayments of around £148. The total repayable under the agreement was around £3,253.

Miss C says that TCFC didn't complete adequate affordability checks. She 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 which included a credit worthiness assessment consisting of a credit reference check and an income and expenditure assessment. It said the credit check showed all open accounts were up to date and that there was one active county court judgement from 2015. It said Miss C was unemployed and receiving benefits and it confirmed her income from her bank statements. It said Miss C provided information verbally about her outgoings. Based on this it said the agreement was affordable.

Our investigator recommended the complaint be upheld. He noted Miss C's credit commitments and thought TCFC ought to have realised the agreement wasn't affordable to Miss C.

TCFC didn't agree. It didn't agree with our investigator's assessment of credit commitments totalling £2,700 and said Miss C's credit report and regular payment commitments showed regular expenses of just over £650 a month. It noted the accounts with the collection agencies (totalling £784) and said two of the accounts were on performing repayment plans. It said the loan was relatively low value compared to the average of the time and this reflected the debt she had at the time. It agreed that an amount should have been included for gambling but said a contingency was always added. TCFC said that had Miss C's credit commitments been as high as our investigator said she wouldn't have been able to maintain her repayments as she did. It noted that Miss C didn't raise a complaint about the affordability of the agreement until almost two years after it had been repaid.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- Before providing the agreement, TCFC gathered a reasonable amount of evidence and information from Miss C about her ability to repay. TCFC carried out a credit check, asked Miss C about her income and expenditure and received bank statements which could be used to verify her income and expenses information. However, just because I thought TCFC carried out proportionate checks, it didn't automatically mean it made a fair lending decision. So, I thought about what the evidence and information showed.

- The monthly income disclosed on the income and expenditure form was £1,871.43, and this was in line with the income shown on the bank statements.

- The credit check results TCFC received showed Miss C had several home credit accounts, mail order accounts and hire purchase accounts, two credit card accounts, debt collector accounts and a utility account. Some of Miss C's accounts were recorded as in arrears and others were over their agreed limits. I thought this should have raised concerns that Miss C was struggling financially.

- Miss C provided information about her living expenses which totalled around £1,302 which included around £654 of credit commitments. Our investigator noted that Miss C had over £2,700 of credit commitments. TCFC didn't agree with this. I looked in detail at the credit information TCFC received. This recorded regular payment information on many of the accounts. While some were recorded as monthly payments many were recorded as weekly payments. Calculating a monthly credit commitment amount from this information gave a total in excess of £3,000 - even higher than our investigator had noted. That said, I noted that many of the payment amounts recorded as weekly had balance figures shown for the months leading up to the report and these suggested the payment amount was for the month. Therefore, I recalculated the credit commitments as shown in the TCFC credit results having consideration to the amounts paid as suggested by the balances as well as the regular payments recorded. This gave credit commitments of around £830. I noted this number would likely underestimate the amounts due as when a consumer was in financial difficulty, they are likely to miss repayments and so the amount paid was likely to be less than the amounts due to be paid.

- Miss C provided information about her living costs. Having looked at the amounts and considered the information in Miss C's banks statements these amounts appeared reasonable. An amount was included for rent of £36 but I noted that Miss C's bank statements showed her rent to be £450 in the months leading up to the agreement. This gave a total of around £1,070 for living costs. Adding the reduced amount calculated above for credit commitments gave total monthly costs of £1,900. This was higher than Miss C's monthly income before the finance agreement was taken into account.

- Additional to the above costs, Miss C was spending regularly on gambling and this was clearly seen in the statements.

- Given Miss C's living costs and existing financial commitments were higher than the amount of income she received each month, I didn't find that the agreement should have been considered affordable. Added to this the adverse information recorded in Miss C's credit report which suggested ongoing financial difficulties and her regular gambling I thought TCFC should have realised that providing further credit to Miss C wasn't responsible.

TCFC responded to my provisional decision. It said it had looked at Miss C's credit commitments and calculated a figure of £757. It also said that Miss C's rent was recorded as £36 as this was the net figure taking into account housing benefit that she received and hadn't been included in her income figure. It said that based on these figures the agreement was affordable for Miss C.

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.

As I have set out previously, I think the checks carried out before the agreement was provided were reasonable. However, just because I think TCFC carried out proportionate checks, it doesn't automatically mean it made a fair lending decision.

I've looked again at the evidence provided and taken into account TCFC's response to my provisional decision. I note that TCFC has come to a different amount for Miss C's credit commitments. The difference appears to arise due to the assessment of which payments were weekly versus monthly and the amounts paid. I have looked again at the evidence and find that it is reasonable to consider some of the payments recorded as weekly to actually be monthly payments but I do not think it reasonable to reduce the amounts recorded below that amount. Having re-assessed the information in the TCFC credit results, I still find a reasonable amount for Miss C's credit commitments is around £830 a month and I still feel this may underestimate the actual amount due based on the reasons I have previously set out.

I accept the approach taken by TCFC in regard to the rent. While the amounts recorded are £450 Miss C did receive a benefit that hadn't been included in the income figure and so offsetting this is reasonable and gives net rent of £36. I looked again at Miss C's living expenses as recorded in her bank statements and including the rent at £36 (but before any entertainment costs), I found a figure of around £700 for items such food, utilities and insurance. This gives monthly expenses of around £1,530 against a monthly income of £1,871.

The repayments on the agreement were for around £148 which would leave Miss C with less than £200 a month disposable income. While in certain circumstances this could be considered affordable, given the amount of credit commitments Miss C had, and that I consider the calculation of her repayments is likely to be higher than the £830 figure included, I think that this level of disposable income raises concerns that this agreement wouldn't be sustainably affordable.

Added to the issue above, given Miss C's credit history, her clear reliance on credit based on the number of credit agreements she had in place, I do not think that TCFC should have considered providing additional credit to Miss C at this time as responsible.

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 C should therefore only have to pay the original cash price of the car, being £1,995. Anything Miss C has paid in excess of that amount should be refunded as an overpayment.

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

- Refund any payments Miss C has made in excess of £1,995 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 C's credit file regarding the agreement.

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

My final decision

My final decision is that I uphold this complaint. The Car Finance Company (2007) Ltd should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 7 November 2022.

Jane Archer
Ombudsman