

The complaint

Miss C complains that Creation Consumer Finance Ltd lent irresponsibly to her. She's said the hire purchase agreement took up a substantial proportion of her income and had Creation looked at her credit file it would have seen she couldn't have afforded to repay the lending. She argues she is still unable to repay this debt.

What happened

In October 2020 Miss C took out a hire purchase agreement to purchase a car. The total cost of the car was £32,491. Miss C paid a £500 deposit, and the rest was funded under the agreement with Creation. The agreement required Miss C to make a monthly repayment of £511.56 over 42 months. The total charge for the credit was £5,897.96, making the full cost, over the life of the agreement (including deposit) £38,888.96.

Miss C argues she couldn't afford to repay this agreement and if Creation had completed proportionate checks before agreeing to lend, it would have seen this, and it shouldn't have approved this agreement.

In addition, Miss C has argued that she was coerced into taking out this agreement by an ex-partner and so didn't willingly enter the agreement.

Creation considered Miss C's complaint but didn't agree. It concluded it completed proportionate checks and these checks revealed Miss C could have afforded to repay the agreement.

One of our investigators considered Miss C's complaint. He disagreed Creation completed proportionate checks, but concluded that had it done so, proportionate checks would have most likely revealed Miss C could have afforded to repay the agreement. He also didn't think Creation would've reasonably been aware Miss C was coerced into taking out this agreement.

However, he considered how Creation had exercised forbearance (i.e. how it had treated her in light of her wider circumstances as a vulnerable customer) once it was made aware of these. He felt that Miss C had provided persuasive testimony and evidence to suggest she was coerced into taking out the agreement and that she didn't gain any benefit from it (as her then partner drove the car). In addition, the car has since been recovered and sold, so Creation has recovered the asset. The investigator felt that the fair and reasonable outcome to this complaint was for Creation to write-off the outstanding balance and mark the debt as satisfied.

Creation didn't agree. It felt that because the investigator hadn't concluded Creation did something wrong when the agreement was taken out (and which caused a loss to Miss C), it wasn't prepared to write-off the debt. As an agreement couldn't be reached, the complaint has been passed to me to consider.

I issued a provisional decision setting out that I intended to uphold this complaint in part. In my provisional decision I said:

There are three different elements to this complaint which I will address in turn. Firstly, that Miss C argues she didn't freely agree to enter into this agreement. She argues she was coerced by an abusive ex. partner. So should Creation reasonably have been aware that Miss C didn't freely enter into the agreement? Secondly, whether or not Creation lent irresponsibly to Miss C by giving her a loan she couldn't afford to repay? And finally, whether Creation has taken appropriate forbearance since being aware of Miss C's wider circumstances. I'll address each point in turn below.

Should Creation have reasonably been aware, as Miss C alleges, that she was coerced into taking out this agreement?

Miss C has said she was coerced into taking out the agreement. She argues her ex-partner conducted all the interactions with the car dealership and the finance provider. So I've considered how the sale took place to determine if there should have been any indications to Creation (or the car dealership, for which Creation would be liable) that Miss C wasn't entering freely into the agreement.

The car dealership has said that its records suggest this was a "*distance sale*" and so it has said it's likely the sale was conducted online. It hasn't provided a copy of Miss C's signed credit agreement, but it has provided an extract from a sales document dated from the time of the sale with Miss C's signature on it. And it's said its records suggest this was a "*wet signature*". Miss C has said that the sale took place online and it was her ex-partner who made the application. So it seems most likely that the sale was conducted online and Miss C may have signed documentation which was likely returned via the post. This seems the most plausible explanation and is consistent with the evidence provided by both parties.

Given it's likely the sale took place online, the dealership (and by extension Creation) had far less opportunity to discover that Miss C was being coerced. What I can see is that the agreement was in Miss C's name, with her information (such as her address) included on it. I've also noted that the dealership was able to provide a copy of Miss C's driver's licence so it's likely this was also provided during the application process. Finally looking at the signature the dealership has provided and the one on Miss C's driver's licence, I think they're broadly similar. In the round, I don't think Creation should have reasonably been on notice that Miss C wasn't freely entering into the agreement. So I can't uphold the complaint for this reason.

Did Creation lend responsibly to Miss C?

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. I have used this approach to help me decide Miss C's complaint.

Creation needed to make sure it lent responsibly to Miss C. It therefore needed to complete sufficient checks to determine if Miss C could afford to sustainably repay the lending. Our website sets out our approach to what we typically think when deciding if a lender's checks were proportionate. There is no set list of checks a lender should do, but there is guidance on the types of checks a lender could complete. However, these checks needed to be proportionate when considering things like the amount and term of the lending, what the lender already knew about the consumer, etc.

Generally, we think that earlier in a lending relationship it would be reasonable for a lender's checks to be less extensive. However, we might expect a lender to do more, for example, if a borrower's income was low or the amount lent was high.

Creation has said that prior to lending it asked Miss C for details of her employment, and she told it she was employed for over three years earning an annual income of £30,000 per year. It said it "*validated*" this income with a credit reference agency. In addition, Creation completed a credit search which showed Miss C had an outstanding balance on a credit card of £2,897, of which it calculated a 3% repayment each month of £86, and an existing loan with a monthly repayment of £289. Creation has said it asked Miss C for details of her

housing costs and she declared £0 as she was living with parents. Therefore, including the repayment about for this loan (of £511) it calculated Miss C had £1115 disposable income.

I've thought carefully about the checks Creation completed before agreeing to lend and I don't think they were proportionate. Creation was allowing Miss C to take on an almost £40,000 debt, with a £511 monthly repayment and which needed to be sustained for a 42-month period. I think that Creation needed to get a much more thorough understanding of her actual income and regular expenditure before agreeing to lend. I don't think it was proportionate to base a lending decision of this size on a credit search, and her self-declared housing and income figures. Whilst I appreciate that Creation used a credit search agency to see if the income was broadly plausible, I think it needed to independently verify her actual position.

As Creation didn't complete proportionate checks, I can't say for sure what they would have revealed. So using the information available I've tried to recreate what proportionate checks would've most likely revealed. I can see from her bank statements Miss C actually earned just over £1,500 net per month. Therefore, this repayment together with her existing loan repayment, made up just over 50% of her net monthly income. In addition to this, Miss C had an existing credit card balance of almost £2,897 which was almost double her net monthly income. I also don't think £86 per month is a reasonable amount to apportion towards her credit card repayment each month. This is unlikely to make any inroads into sustainably repaying the credit within a reasonable time frame. I also think that as a result of this hire purchase agreement, a large proportion of Miss C's net monthly income would be committed to repaying credit.

Looking at her bank statements, I can see a regular payment for around £50 which looks to be for a mobile phone. However, I accept, as our investigator outlined, that Miss C had limited other committed expenses as she lived with her parents and I can't see she paid rent. So I can see that Miss C had some disposable income after taking into consideration her regular repayments detailed above. However, I'm also mindful that she was taking out a hire purchase agreement for an over £32,000 car. Creation therefore would've needed to allow some monthly expenditure to run the car (such as insuring and taxing a car of that value and petrol costs) and make some reasonable allowances for other expenditure such as entertainment. So taking everything into consideration, I think this agreement would've left her financially stretched each month and increased her indebtedness in an unsustainable way. I therefore don't think the agreement was sustainably affordable over the full life of it and if Creation had completed proportionate checks, it would've seen this. I also note that Miss C went on to have repayment problems very early into the agreement further reinforcing that the agreement was not sustainably affordable.

Has Creation taken appropriate forbearance since being aware of Miss C's wider circumstances?

Miss C has shared some very personal information during the course of this complaint with both Creation and our service. Given our decisions are published I will not repeat the full circumstances here, but as explained this information has been shared with Creation. I appreciate Creation initially had some queries over the information Miss C provided, but I'm satisfied by the evidence I've received. She's told us her abusive ex-partner exercised control over the car and (prior to the agreement being voluntarily terminated) Miss C has said for large periods of the agreement term she had her own separate car. So I think in all likelihood Miss C had limited benefit from the agreement.

I fully appreciate that during the life of the agreement Miss C gave a different account to Creation. I have seen contact notes from Creation which details conversations about the arrears on the account. During these conversations Miss C told Creation she is reliant on the car and so it cannot be repossessed. I don't think it's unreasonable, given her circumstances and the difficult position she was in, that she would have made these statements to Creation. Miss C has told us both of her fear and the control exercised by her ex-partner. And so, from everything I've seen, I think the reality is that Miss C had little to no benefit from the car.

I can see that during the life of the agreement Creation did take some limited steps to support Miss C when she struggled to make the repayments. What I'd like to address is the steps Creation has taken since it found out about Miss C's personal circumstances, specifically relating to her ex-partner. I can see that when Miss C raised her complaint, she told Creation about her relationship history and that she couldn't afford to repay the outstanding debt. I can't see that Creation took any meaningful steps to explore this further, particularly given it would have been clear to Creation from this point that Miss C ought to be treated as a vulnerable customer. So I don't think Creation has taken appropriate forbearance since being aware of Miss C's wider circumstances.

Putting things right

As explained above, I don't think Creation lent responsibly to Miss C. So Creation needs to remove all interest fees and charges applied to the agreement from the outset. Treat all payments made as payments towards the outstanding capital balance (which is the balance after taking the amount recovered at auction from the original cost of the car.) Should Miss C have overpaid then Creation should refund any over payment to Miss C and pay her interest of 8% simple a year on any overpayments, from the date they were paid to the date of settlement.

In the event that there is a capital balance outstanding (which seems likely given everything I've seen) I think Creation should write-off any outstanding balance. I'll explain why below.

I asked Miss C for a copy of her current credit file. I can see from this Miss C had a County Court judgment (CCJ) and two defaults in 2023. Whilst they are marked as satisfied, it's clear that at the time of complaining she's had recent problems managing her finances. In addition, Miss C also currently has a balance of £1,456 outstanding on an electricity account and £1,395 outstanding on a gas account which are essential services. And she also had further defaults in 2021 and 2022, two of which still have balances outstanding of £949 and £823.

I think it's clear from the information Miss C has provided about her more recent financial circumstances that she has little to no capacity to repay any potential outstanding balance on this account. Furthermore, as explained above, Miss C is a vulnerable customer, who had no meaningful benefit from the agreement and Creation has now recovered the asset (making the decision to sell it at auction). In those circumstances, I think there's little realistic prospect of Creation being able to recover the outstanding amount from Miss C in the near future. In addition, I'm persuaded that she was coerced into taking the debt out and largely didn't benefit from use of the car – and it is associated with an abusive relationship she's now looking to put behind her. So I think further attempts to recover any potentially outstanding sums are likely to have a disproportionate impact on her relative to the likelihood of Creation being able to recover the remaining balance. So taking all this into consideration, I think it's fair and reasonable for Creation to write-off the remaining balance as appropriate forbearance in Miss C's particular circumstances.

I also think Creation should remove the loan entirely from Miss C's credit file. Leaving the adverse information on her credit file would have a continual unfair impact on Miss C and marking the debt as satisfied isn't reflective of what's taken place either. This is a loan I believe Miss C should not have been given and which she has derived little to no benefit from, so it adds little value to her credit file. In addition, as I'm intending to write-off the balance this doesn't need to be considered as part of a future affordability assessment should Miss C apply for future credit. So taking everything into consideration, I think the fair and reasonable approach would be to remove the loan from Miss C's credit file.

I asked both parties to provide me with anything further they'd like me to consider before I reached a final decision. In response both parties agreed with my provisional decision and didn't provide anything further.

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 both parties agree with my provisional decision (which forms part of this decision) I see no reason to depart from the findings I reached. So it follows that I uphold this complaint in part. To summarise I don't think Miss C could've sustainably afforded to repay the lending over the life of the agreement. And if Creation had completed proportionate checks, I think it would have realised this. I also don't think Creation took appropriate forbearance since becoming aware of Miss C's wider circumstances.

My final decision

For the reasons explained above (and in my Provisional Decision) I uphold this complaint against Creation Consumer Finance Ltd in part. I require Creation Consumer Finance Ltd to put things right in the way I've described above (in my Provisional Decision).

Claire Lisle
Ombudsman