complaint

Mr P complains that The Car Finance Company (2007) Ltd ("TCFC") provided him with a hire purchase agreement in January 2015 that was unaffordable.

background

In January 2015, Mr P acquired a used car from a car dealership through a hire purchase agreement provided by TCFC. The cash price of the car was £5,533 and the total repayable under the agreement was £9,693. Mr P was required to pay 36 monthly repayments of £269.25.

Mr P says that the agreement was unaffordable when he got it. He says he had a serious gambling problem and was told by the dealership that this wasn't an issue. He also says that the car had lots of faults. He spent money trying to put it right. He says he struggled to make the monthly payments. He says because he was falling into arrears, TCFC disabled the car preventing him from driving it.

Mr P says that after a period of time struggling to maintain the agreement, he started to get into arrears on his rent and utility bills and he stopped making payments towards the agreement.

In early 2016, TCFC took back the car, sold it and reduced the amount owing on the account by £2,950, leaving Mr P owing £5,231. As I understand it, Mr P hasn't made any further payment on the account. TCFC has since sold this debt to another firm, who have continued to pursue Mr P for repayment.

Mr P complained to TCFC and it responded by saying it had undertaken all relevant due diligence checks, such as a credit check, looking at a copy of his bank statements and completed an income and expenditure form, before the hire purchase agreement was finalised. It said this showed Mr P could afford the agreement, so it wasn't able to uphold his complaint.

Unhappy with its response, Mr P asked this service to continue to look at his complaint. Mr P's complaint about the quality of the car was dealt with under a different complaint so I won't be addressing that again here. This complaint concerns only the affordability of the agreement.

I sent Mr P and TCFC my provisional decision on 8 February 2021. My provisional findings are attached and form part of this final decision.

TCFC had nothing further to add. Mr P agreed in part with my recommendations. I've summarised the points he disagreed with:

- The income TCFC has used wasn't solely his. Some of the income was his wife's and he'd made this clear to TCFC. It used a joint income and outgoings on the application form and he feels as if he's been made out to have lied during the application process. Some of the income on his statements was clearly for his wife as it had her name on it so it shouldn't have been included as part of his income.
- The application process wasn't thorough at all and was all approved within an hour. The credit check didn't go far enough as he had many defaults and county court judgments for thousands of pounds of debt. This should have been picked up.

- At the time of taking out the finance there was 12 people living at his home that he was supporting. They were spending around £250 per week on food.
- He had a gambling problem which was evident from the bank statements and highlighted this to the dealership and during conversations with TCFC after taking out the agreement.
- He never withheld payments for any other reason than he couldn't afford them. The notes TCFC have provided have likely been amended to make their actions look better than they were.
- It was wrong of them to sell the debt to a third party while the case was being investigated.
- The £160 per month fair usage figure isn't reasonable. The car was disabled by TCFC for over eight months during the time he had it in his possession. It isn't fair he pays for usage of a car he couldn't drive. He is no position to pay £620 and it would put him in a worse financial position.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion I reached in my provisional decision, and for broadly the same reasons. I'll however address the additional points Mr P has made.

The income and expenditure details TCFC used do appear to have been taking into account the whole household, not just Mr P's circumstances. I'm sorry that Mr P feels as if it has been made out that he lied on the application, I haven't said this, nor do I think he did. However, I don't think it was unreasonable for TCFC to use all of the income it could see on Mr P's statements. I say this because it was clear all of the household income and expenditure was managed by him through these accounts. It think this therefore gave a good indication to TCFC of what was affordable.

But even taking all of that additional income into account, I still don't think TCFC made a reasonable lending decision. It ought to have seen that Mr P couldn't sustainably afford to make the finance repayments.

Mr P doesn't agree that TCFC carried out reasonable checks. I've explained why I think it gathered enough information about his circumstances. But despite gathering enough information, I don't think it made a fair lending decision based on what it had found out. The additional concerns Mr P has raised about what TCFC did and didn't take into account about his circumstances don't change the outcome I've reached as I've already concluded TCFC should have realised the lending was unaffordable.

In deciding what fair redress should be, I've had in mind the usage Mr P had of the car while it was in his possession. He says the car was disabled for around eight months, out of the fifteen months he had it. I haven't seen anything that supports that to have been the case, but I have no reason to doubt what Mr P says.

However, even if I accept the car was disabled for that period of time, I have seen that Mr P had travelled over 14,000 miles in the car during the time he had it. I think that is significant usage, especially if he says he could only drive it for a total of seven months. His usage of the car will have affected the price that TCFC would have been able to achieve for it at auction when it sold the car. Taking all the circumstances into account, I'm satisfied £160 per month for the time the car was in his possession is a fair amount for Mr P to pay for his

usage of the car. This takes into account the overall usage he had of it during that time.
I understand Mr P says he will struggle to repay the outstanding balance, but I'm required to be fair to both parties and it's fair he pays for the reasonable usage he had of the car.

Lastly, he's said TCFC shouldn't have sold the account to the third party while it was investigating and the complaint was ongoing. However, I understand TCFC sold all the accounts it held at that time, not just Mr P's. So, I'm satisfied the ongoing complaint and investigation had no impact on its decision to sell the account to the third party. I'm not persuaded the sale of the account was unfair in any way in the circumstances of this case or that it caused any additional loss to Mr P.

my final decision

For the reasons given above and in my provisional decision, I uphold this complaint and direct The Car Finance Company (2007) Ltd to:

- Reduce Mr P's outstanding liability with the current owner of the debt to £620.
- Remove any adverse information it has recorded on his credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 April 2021.

Tero Hiltunen
ombudsman

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:

1. *Did TCFC complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay his loan in a sustainable way?*
    - *If so, did it make a fair lending decision?*
    - *If not, would those checks have shown that Mr P would've been able to do so?*
2. *Did TCFC act unfairly or unreasonably in some other way?*

If I determine that TCFC didn't act fairly and reasonably in its dealings with Mr P and that he has lost out as a result, I will go on to consider what is fair a way to put things right.

<u>Did TCFC complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay his loan in a sustainable way?</u>

Before granting credit, TCFC were required to carry out a reasonable and proportionate assessment of Mr P's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Mr P could sustainably afford the borrowing (considering his specific circumstances), rather than how statistically likely he was to repay. The latter is the risk posed to TCFC as the lender, or its 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- *The amount of credit;*
- *The total repayable and the size of the regular repayments;*
- *The duration of the agreement;*
- *The cost of the credit; and*
- *The consumer's individual circumstances.*

What this means is that there isn't a one-size-fits-all approach to what is considered proportionate as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

The total repayable on the credit agreement was nearly £10,000 over 36 months. This was not an insignificant financial commitment over a three year period. So, I think any reasonable and proportionate assessment of affordability ought to have been relatively thorough.

TCFC says that it completed a credit check, reviewed copies of Mr P's bank statements from his two current accounts and asked him to complete an income and expenditure form. It said based on this it concluded that the hire purchase monthly repayments were affordable to Mr P.

It seems the bank statements Mr P provided corroborated the income he had declared on his income and expenditure assessment. Given Mr P had declared he wasn't employed, I think it was important for TCFC to have some certainty about Mr P's income. The credit check would have provided TCFC with information about Mr P's existing credit commitments and I can see the income and expenditure form asked about other non-discretionary expenditure. TCFC would also have been able to verify some of this information using the bank statements Mr P provided.

Overall, I think TCFC obtained a reasonable and proportionate amount of information and evidence about Mr P's circumstances before agreeing to lend. I've therefore gone onto consider whether I think TCFC made a fair lending decision based on what it knew about Mr P's circumstances.

<u>Did TCFC make a fair lending decision?</u>

It's clear that TCFC did conduct a number of checks before lending to Mr P. And it appears the amount of information and evidence it gathered was relatively thorough. Although it undertook what on the face of it appears to be a comprehensive set of checks, I don't think that TCFC provided proper or reasonable scrutiny to what those checks revealed. I'll explain why.

First, the credit check it carried out revealed a number of concerning entries about Mr P's financial stability. There were three defaulted credit commitments, two of which still had outstanding balances on them. Most concerning of all, there was a County Court Judgement ("CCJ") issued against Mr P for non-payment of a debt just one month prior to entering into the agreement with TCFC. I think this indicated Mr P was likely to be in financial difficulty and not in a position to be able to sustainably repay further credit.

TCFC says it works in the 'sub-prime' market, meaning its customers generally will have adverse credit recorded on their credit file. While TCFC might choose to lend to consumers whose credit history shows adverse information, this doesn't change its obligations on ensuring the lending is affordable and sustainable. If it knows a consumer has shown signs of financial difficulty, it ought to apply more rigour and scrutiny to its lending decision than it might with a consumer who hasn't had adverse credit information recorded, to ensure it can be repaid in an affordable and sustainable way.

The income and expenditure information Mr P filled in at the point of application suggests he had around £1,300 in disposable income each month. TCFC has therefore said the lending was clearly affordable. However, TCFC also had sight of Mr P's bank statements to corroborate that information as well as getting a more detailed insight into his financial circumstances through his credit file.

As Mr P had a CCJ recorded against him the month before entering into this agreement, it ought to have led TCFC to question how reliable the disposable income figure was. If Mr P had so much disposable income each month, it wouldn't make sense that he'd have a CCJ for non-payment of debt, unless there was something else about his circumstances which meant he would struggle to repay his debts.

TCFC says it carried out a manual underwriting process. In doing so it reviewed Mr P's bank statements for two of his current accounts. From this it was evident that the income Mr P had declared was broadly accurate, so I think TCFC acted reasonably in using the figure Mr P had given.

Mr P says some of the income wasn't his but his partners. However, I don't think this would have been clear to someone reviewing the statements. And in any event, I don't think this makes any material difference to the outcome I've reached, as even taking into account all of the income on his statements, I still don't think TCFC made a fair lending decision.

I think it was clear from the bank statements that Mr P made a lot of transactions in cash, so it was difficult to cross check all of the expenditure he had declared on the application. However, it seems his estimates for food and utility bills don't seem to have been unreasonable based on his household make up.

Most of his credit commitments were taken into account, although there were some additional loans, some of which were short term ones that Mr P hadn't declared. It seems his mobile phone bill was also significantly higher than he'd stated, and he had a number of subscription based services he was paying for regularly – such as TV. Although most of the income and expenditure Mr P declared was accurate, his outgoings were quite a bit higher than had been declared and this ought to have been clear from reviewing the bank statements.

But assessing affordability and whether a consumer can sustainably repay a credit commitment isn't just a pounds and pence financial calculation. It is about looking at the overall picture – including what the business knows about the consumer's financial standing.

The bank statements showed that Mr P regularly had direct debits returned unpaid due to lack of funds in his account. On top of this, he spent substantial amounts of money with a gambling website. In response to our investigator, TCFC told us it had calculated this to be over £2,400 in the space of around 13 weeks.

TCFC said it wouldn't have expected its staff to have picked up on any vulnerability that Mr P may have had. And it said that in any event in the same 13 week period he had around £1,450 in winnings. It said based on this his disposable income was still sufficient to cover the cost of the hire purchase agreement.

I don't think it's reasonable for TCFC to say it wouldn't have realised the volume of gambling on Mr P's bank statements. The frequency of the transactions and the overall amount he was gambling was significant in comparison to any other spending on the statements that TCFC reviewed. The gambling transactions were clearly having a significant impact on Mr P's ability to sustainably manage his financial commitments and I think this ought to have been immediately obvious to anyone reviewing the statements.

It's also clear Mr P was sustaining heavy losses over a relatively short period of time. While I accept he did also have some winnings, this wasn't guaranteed income. TCFC were also aware Mr P had been unable to sustainably repay other credit commitments and had in the previous month been issued with a CCJ. Coupled with the returned direct debits on his current account, this ought to have reasonably indicated to TCFC that Mr P was unlikely to be able to sustainably repay the borrowing.

For these reasons, I don't think TCFC made a fair lending decision when granting the hire purchase agreement to Mr P.

<u>Did TCFC act unfairly or unreasonably in some other way?</u>

Mr P says he told TCFC about his gambling and his financial problems when he fell into arrears on the agreement. As well as disclosing it to the dealership when he applied for the finance. He says TCFC unfairly disabled the car when payments weren't made. He said this caused him to fall further behind on other priority bills because he needed to make payments to TCFC.

It's not clear whether the dealership was aware of Mr P's gambling. But as I've said above it ought to have been clear to TCFC when it reviewed his bank statements. I've reviewed the contact notes from TCFC. From everything I've seen it appears that when Mr P was in arrears, he told TCFC this was because he was withholding payments in dispute because TCFC wouldn't repair the car, rather than because he was in financial difficulty. Given Mr P didn't tell TCFC that he was financially struggling at this time, I don't think it acted unfairly in disabling the car until payments were made.

It seems he did eventually tell TCFC that it was actually due to his gambling and financial difficulty, but this was after the car had already been taken back and TCFC had stopped adding interest and charges to the outstanding balance. It doesn't appear Mr P has made any further payments to TCFC since that date, so I don't think TCFC have needed to do anything differently when dealing with his financial difficulty.

I understand the debt has since been sold on to a third party to collect, and I can't hold TCFC responsible for the actions the third party may have taken.

<u>Putting things right</u>

As I don't think TCFC should have lent to Mr P, I think it now needs to put him back in the position he would have been in – or as close as possible – had the lending not been granted. It should therefore refund everything he has paid under the agreement, minus a deduction for the fair usage he had of the car.

There isn't an exact formula for working out what fair usage should be. However, in deciding what's fair and reasonable, I've thought about the amount of interest that was charged under the agreement, the usage Mr P likely had of the car and what his costs to stay mobile might have been had he not entered into this agreement. In doing so, I think a fair amount he should pay is £160 for every month he had use of the car. It seems Mr P had the car for around 15 months before it was repossessed by TCFC and sold at auction. Therefore, I think it would be fair and reasonable for TCFC to retain £2,400.

I understand Mr P has paid less than this to TCFC, around £1,780, meaning he will still owe £620. The debt has been sold to a third party and the outstanding balance they are pursuing Mr P for is significantly more than this. TCFC should arrange to pay any outstanding balance on Mr P's behalf, except for £620. Mr P can then arrange a suitable repayment plan with the third party for the remaining amount. Alternatively, TCFC can buy the debt back from the third party and reduce the balance accordingly.

Lastly, as TCFC shouldn't have granted the lending it isn't fair for it to record adverse information in relation to the hire purchase agreement on his credit file.

my provisional decision

For the reasons given above, I'm planning to uphold this complaint and direct The Car Finance Company (2007) Ltd to:

- *Reduce Mr P's outstanding liability with the current owner of the debt to £620.*
- *Remove any adverse information it has recorded on his credit file.*