

complaint

Mr G complains that a loan given to him by Creation Consumer Finance Ltd to buy a car was unaffordable.

background

Our adjudicator recommended that the complaint be upheld. He concluded that Creation had enough information to have seen that the loan might have been unaffordable to Mr G but had ignored this. As a result, he found that Creation's affordability assessment was inadequate and that the loan was unaffordable to Mr G. He recommended that Creation arrange for the car to be collected from Mr G; reduce Mr G's outstanding liability to the amount remaining on his previous finance agreement; refund all payments made by Mr G after the car was declared SORN, plus interest; refund his deposit, plus interest; remove any adverse information from Mr G's credit file; and agree a suitable repayment plan for the outstanding debt.

Creation did not accept those conclusions so the matter was referred to me for review and determination.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I uphold this complaint.

First, I regret that it has taken so long for this complaint to be considered by me and I apologise to both parties for this.

Mr G bought a used car from a local dealership in July 2010. He paid for this with a five year fixed-sum loan from Creation. Repayments to the loan were £99 per month for the first 12 months, then £525.78 per month for the remaining four years.

Mr G says that the dealership told him he would be able to change his car after 12 months so would not have to make these higher repayments. Given Mr G was paying around £150 per month for his existing car, and his most recent salary was around £500 per month, I find this entirely credible. However, at the end of the first 12 months Mr G was unable to exchange his car with the dealership so his monthly repayments increased, making the loan unaffordable.

Creation says that "*we do not have documents displaying [Mr G]'s income/expenditure information at the time of sale*". However, the finance proposal Mr G completed at that time gives his net weekly income as £184.67 – this means his net monthly income was approximately £800. So Mr G clearly provided the dealership with salary information that, given repayments would increase to over £500 after 12 months, should have raised concerns about whether the loan was sustainable.

In fact, Mr G was unemployed and receiving jobseeker's allowance when he bought the car, although he had written confirmation of a new job beginning the following month. The salary he gave the dealership was based on expected full-time earnings from his new employer. As

it turned out, he was given fewer hours than anticipated so his earnings were considerably less than this.

Creation argues that *“a certain onus rests on the consumer to ensure that they can afford the monthly obligations they are agreeing to”*. Whilst I wouldn't disagree with this, this does not absolve Creation from its responsibility to conduct a *“sound and proper credit assessment”*, as required by the Finance and Leasing Association's Lending Code. I am satisfied that Mr G provided sufficient information that should have prompted a more thorough assessment of whether he could afford the loan.

Furthermore, the Office of Fair Trading's irresponsible lending guidance requires lenders to *“take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner”* (sustainable meaning *“over the life of the credit agreement”*). I find that, in this case, Creation failed to meet these requirements.

It follows that Creation should unwind the agreement and arrange for the car to be collected at no further cost to Mr G.

Mr G owed £4,639.19 under his previous finance agreement when he bought the car. This was included in the new Creation loan and it would not be fair for me to ignore this. Creation should reduce Mr G's liability to that amount, less the price Mr G got in part-exchange for his old car. This brings the outstanding amount for that previous agreement to £2,139.19. Creation should agree a suitable and affordable repayment plan with Mr G so that he is able to repay this.

Mr G has provided us with evidence that he declared the car SORN from 1 August 2011 and has not used the car since then. I consider it reasonable for Creation to refund any payments Mr G has made to the loan in the time he has not been using the car, plus interest. Creation should also refund the £100 deposit he paid for the car, again plus interest.

Finally, Creation should remove any adverse information it has registered on this account with any credit reference agencies.

my final decision

My final decision is that I uphold this complaint and order Creation Consumer Finance Ltd to:

- arrange for the car to be collected from Mr G, at no further cost to him;
- reduce Mr G's outstanding debt to £2,139.19;
- agree a suitable and affordable repayment plan with Mr G for the outstanding debt;
- refund all Mr G's payments to the account after the car was declared SORN on 1 August 2011, plus interest calculated at 8% simple per year from the date each payment was made to the date of settlement;
- refund Mr G's £100 deposit, plus interest calculated at 8% simple per year from 27 July 2010 to the date of settlement; and
- remove any adverse information it has registered about this agreement with any credit reference agencies.

If Creation considers that tax should be deducted from the interest element of my award, it should provide Mr G with the appropriate tax deduction certificate so that he is able to claim a refund if appropriate.

Simon Begley
ombudsman