

complaint

Mr M complains that The Car Finance Company (2007) Ltd (“TCFC”) irresponsibly gave him a hire purchase agreement he couldn’t afford.

background

In January 2016, Mr M acquired a used car using a hire purchase agreement from TCFC. The cash price of the car was £4,799. Mr M paid a £99 deposit and the rest was financed through the hire purchase agreement. The total repayable was £8,334 over 36 months. The monthly repayments were around £229.

Mr M says the car developed a number of faults soon after he took possession of it. He says asked the dealership to take the car back but they refused to do so. TCFC says it tried to contact Mr M on several occasions because all but his first monthly repayment had been missed. It said due to Mr M not getting in contact it repossessed the car and terminated the agreement in August 2016. TCFC sold the car at auction and used the sales proceeds towards the outstanding balance. It said Mr M still owed them £5,781.25.

In 2019, Mr M complained to TCFC to say that it had irresponsibly lent to him. He said the agreement wasn’t affordable and that the dealership had altered his expenditure figures by halving his rent commitment to make it look more affordable. He said he had an active County Court Judgment (“CCJ”) against him as well as a number of defaults for other credit and it should have been clear to TCFC he couldn’t afford the agreement.

TCFC didn’t think it had done anything wrong. It said that there wasn’t any evidence to suggest the dealership had halved Mr M’s rent on the application form. It said it had carried a thorough affordability assessment and while it had seen that Mr M had a CCJ and five defaults recorded against him, it said these were all historic and his open credit accounts were being managed well. It said the income and expenditure form Mr M completed showed he had sufficient disposable income to meet the hire purchase repayments.

I sent Mr M and TCFC my provisional decision on 15 February 2021. I explained why I thought the complaint should be upheld. I said:

Did TCFC complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the borrowing in a sustainable way?

Before granting credit, TCFC were required to carry out a reasonable and proportionate assessment of Mr M’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 M 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 amount repayable under the hire purchase agreement was £8,334 with monthly repayments of around £229. The APR on the agreement was 49.6%. This was therefore a relatively expensive commitment and my starting point is that any reasonable and proportionate assessment of affordability ought to have been more thorough than for a cheaper and lower value loan.

TCFC says it asked Mr M to complete an income and expenditure form, it completed a credit check and verified his income and expenditure using bank statements Mr M provided. On the face of it, it therefore appears as if TCFC carried out a fairly thorough assessment in that it tried to gather and verify information about Mr M's income and expenditure.

However, there are a number of things within the checks TCFC carried out that ought to have raised concern and prompted it to carry out further checks before lending.

The credit check it carried out showed that Mr M had a CCJ recorded against him less than two months earlier. I think this highlighted that Mr M was likely to be in financial difficulty if he was unable to meet credit commitments so recently. TCFC says the CCJ was for a low amount and Mr M's income and expenditure form suggested he had enough disposable income to pay this amount. But if the information on the form was accurate, it wouldn't make sense for Mr M to have had a CCJ recorded against him. While it's possible Mr M simply chose to not pay a debt despite having the money to do so, I would have expected TCFC to apply much closer scrutiny to this, which it didn't do.

Further to this, the credit report showed Mr M had five defaulted credit accounts which had outstanding balances exceeding £2,000. The income and expenditure form made no allowances for repayment towards these debts or the outstanding balance of the CCJ. Clearly, this ought to have told TCFC that the income and expenditure information it had wasn't reliable.

TCFC says it is a 'sub-prime' lender and it therefore will lend to consumers with adverse information on their credit file. While that is a matter for TCFC's own lending criteria and risk appetite, if it knows a customer has adverse information, and in particular, recent adverse information this ought to highlight that it's likely the consumer may be in financial difficulty. It therefore is required to ensure its affordability assessment is proportionate and reasonable and that it has taken into account the consumer's individual circumstances.

I've also considered that a large amount of the expenditure Mr M declared on the form wasn't evident on the bank statements he provided. So TCFC couldn't have verified this information. It was clear from the statements that Mr M did have another current account as he was regularly transferring money between these accounts. Given the concerns around financial difficulty showing on Mr M's credit file and the lack of information about his expenditure on the statements, I think TCFC should have requested to see the statements from Mr M's other account.

Lastly, Mr M says that the dealership told him to halve his rental figure to make the agreement appear more affordable. TCFC there is no evidence that this happened. However, I've listened to a call between Mr M's partner and TCFC when she raised the complaint on Mr M's behalf.

TCFC says in the call that it is standard practice for them to half the rental figure on applications. Mr M's partner then says to TCFC that she wasn't employed at the time and therefore wasn't contributing to the rent. TCFC told her this wouldn't make a difference and they would still automatically half the rental figure as it was standard practice. Mr M has been consistent in his recollections that the dealership told him to halve the rental figure despite him telling them he was responsible for the full amount. Given the content of this call, I'm persuaded, on balance, this is likely to have happened. Therefore, I don't think TCFC gave proper consideration to Mr M's specific personal circumstances before lending to him.

Overall, I'm not persuaded TCFC carried out reasonable and proportionate checks. It ought to have realised Mr M's expenditure figures weren't accurate and it should have done more to verify what these were.

Would reasonable and proportionate checks have shown that Mr M could sustainably repay the borrowing?

TCFC gathered copies of Mr M's bank statements to verify his income and expenditure. As I think it ought to have realised he had another account, and given the concerns around his expenditure that I've mentioned above, a reasonable and proportionate check ought to have included reviewing statements from his other account too.

Mr M says that he was responsible for the full rent payments. His other account statements do show he paid the full amount out of his account. However, it appears his partner was contributing something towards the household expense. There are payments coming into his account from his partner but they aren't consistent in amounts or timing, it appears to be ad-hoc small amounts, rather than a regular, sizeable contribution. So, I think it would have been reasonable for TCFC to have concluded Mr M was responsible for all of the rent had it conducted a reasonable assessment of affordability. Particularly because I'm satisfied this is what Mr M declared at the point of application.

Taking into account the information on the income and expenditure form, TCFC concluded that Mr M had around £130 in disposable income after taking into account the hire purchase payments to TCFC. However, this only included half of Mr M's rent commitment. The additional half added a further £325 to his monthly outgoings and would have made this agreement unaffordable.

Even if I thought it would have been reasonable for TCFC to assume Mr M was only responsible for half the rent (which I don't), it's clear TCFC didn't take into account Mr M's credit commitments. These were likely to be much higher than the £9 per month TCFC had recorded. Further, it seems unlikely that the figure of £100 per month for food that Mr M had declared was realistic and his bank statements appear to support that. By applying more realistic figures for these expenses it's clear Mr M wouldn't have been able to afford the borrowing even by using half the rent figure.

I therefore think had TCFC completed reasonable and proportionate checks, it would have likely discovered Mr M couldn't afford to repay this agreement. It therefore needs to put things right.

Did TCFC act unfairly or unreasonably in some other way?

Mr M says the car had several faults with it soon after he acquired it. As the supplier of the car under the hire purchase agreement, TCFC are responsible for complaints about the quality of the car. The Consumer Rights Act 2015 sets out that any goods should be of satisfactory quality.

However, Mr M hasn't provided anything to demonstrate what might have caused those faults. This means it isn't possible for me to determine whether the problems with the car made it of unsatisfactory quality when it was supplied to him. It may just as likely been issues that were normal age related wear and tear for a used car, which is something TCFC wouldn't be responsible for putting right.

I've reviewed the MOT history for the car. It passed with no advisories in January 2016 and in September 2016 which covered the time in which Mr M had possession of the car. Mr M has described problems with the engine. I think if there had been issues with the engine it would have likely been picked up in the MOT. While a MOT won't pick up everything that might be wrong with the car, it does demonstrate the car was likely roadworthy and capable of being driven. On balance, I'm therefore not persuaded that the car wasn't of satisfactory quality when it was supplied to Mr M.

It seems that TCFC also didn't get in touch with Mr M about the outstanding balance on the agreement for a long period of time after the car was repossessed. However, as Mr M hasn't been in a position to pay off any of the outstanding balance, nor does it appear he's made any payments, I don't think he's suffered any material loss, upset or inconvenience as a result.

Putting things right

As I don't think TCFC should have lent to Mr M, I think it should now refund everything he's paid under the agreement minus a deduction for the fair use he's had of the car.

There isn't an exact formula for working out what fair usage might be. In deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, Mr M's overall usage of the car (including the mileage covered) and what his likely costs to stay mobile would have been if he hadn't entered into this agreement. Having done so, I think a fair amount for TCFC to retain would be £100 per month for every month that he had been in possession of the car. This means the total amount TCFC can retain is £700 for fair usage.

I understand Mr M has paid less than £700 towards the agreement, meaning he will still have something to repay. TCFC has since sold the outstanding debt to a third party. It should therefore arrange to reduce Mr M's outstanding liability with the third party by the appropriate amount so that all Mr M would have been required to pay under this agreement is £700 in total (including the deposit of £99 he paid).

Lastly, TCFC should remove any adverse data it has recorded against Mr M's credit file in relation to this agreement.

TCFC responded to say it had nothing further to add. Mr M said that as well as the first monthly repayment of £228.75 and the £99 deposit, he paid a further £550 to the new owner of the debt. This means they had already paid in excess of the £700 I said in my provisional

decision was fair usage. Mr M asked if this meant he should now be due a refund from TCFC instead.

my findings

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

Mr M has provided evidence to show he paid £550 to the new owner of the debt at the end of 2019. This means he has paid a total of £877.75 towards the fair usage of the car. As this is more than the £700 I said is fair and TCFC hasn't raised any arguments or objections to that figure, this means it would be fair and reasonable for TCFC to refund the overpayment to Mr M. Mr M overpaid in December 2019 by £177.75. Therefore, TCFC should add 8% simple interest per year on that overpayment from the date of payment to the date of settlement.

my final decision

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

- Refund Mr M £177.75, adding 8% simple interest per year from 19 December 2019 to the date of settlement.
- 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 M to accept or reject my decision before 22 April 2021.

Tero Hiltunen
ombudsman