

Complaint

Mr S complains that The Car Finance Company (2007) Ltd ("TCFC") provided him with an unaffordable hire-purchase agreement and refused to help when he had difficulties making his payments.

Background

In February 2015, TCFC entered into a hire purchase agreement with Mr B to finance the purchase of a used car. The purchase price was £6,118.00. Mr S paid a deposit of £100 and the remaining £6,018.00 was funded through a hire purchase loan from TCFC. The loan had an annual percentage rate ("APR") of 49.56% and was due to be repaid in 36 monthly instalments of £292.82. This meant interest of £4,513.52 was payable and the total to be repaid under the agreement was £10,641.52.

In November 2015, the vehicle was voluntarily surrendered to TCFC after a number of missed payments and the parties were unable to reach agreement on a repayment plan. TCFC sold the vehicle and reduced the remaining balance before selling the outstanding balance to a third-party debt purchaser. The amount owing had been in dispute but I understand that it has now been reduced to the voluntary termination amount due under the agreement.

Mr S made a complaint about TCFC's actions when entering into the agreement and in relation to its actions when he wasn't able to make payments. TCFC didn't uphold Mr S' complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend. It also said that as it wasn't able to reach an agreement on a repayment plan with Mr S it decided to collect the vehicle as Mr S requested it to. Mr S was dissatisfied at TCFC's response and referred the complaint to our service.

Mr S' complaint was considered by one of our investigators. He didn't think that TCFC had done anything wrong or that it had treated Ms S unfairly. Mr S disagreed so the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr S' complaint.

TCFC needed to make sure that it didn't lend irresponsibly. In practice, what this means is that TCFC needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr S before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as an impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Having carefully thought about everything I've been provided with, I'm not upholding Mr S' complaint. I'd like to explain why in a little more detail.

The information I've seen suggests that TCFC proceeded with this application and agreed to lend after an income and expenditure calculation was carried out with Mr S. From what I can see Mr S' income was verified and TCFC also carried out a credit check on him. It says the income information Mr S provided together with most of his existing commitments being up-to-date showed that he'd be able to comfortably make the repayments he was committing to. And in these circumstances, it was reasonable to lend. On the other hand, Mr S says the payments were unaffordable and this would have been apparent from his bank statements.

I've carefully thought about what Mr S and TCFC have said. The first thing for me to say is that TCFC wasn't required to obtain bank statements from Mr S before lending to him. What it needed to do was request enough information to get an understanding of his income and expenditure and determine whether he could make his payments. Nonetheless it looks a partial bank statement was obtained from Mr S in order to verify his income, a credit check was carried out and relatively detailed income and expenditure assessment was conducted. This all suggested that Mr S would be able to make the payments.

I accept it's possible that if TCFC carried out even more checks and requested even more bank statements this might have shown the repayments were unaffordable. But I think what TCFC saw was enough for it to have met its obligations here – namely determine whether Mr S' income and living expenses (his credit commitments were already validated by the credit search) were broadly in line with what he declared? – and crucially there wasn't anything in the information gathered that was contradictory or which indicated that further checks should be carried out.

Furthermore, it seems to me that Mr S started to experience difficulty with the payments when his circumstances changed and his living expenses unexpectedly increased as a result. But Mr S says that this happened a couple of months after he purchased the car and I don't think that TCFC can fairly be expected to have anticipated this, or that this means the payments were unaffordable at the outset.

So overall and having carefully considered everything, I'm satisfied that TCFC's checks before entering into this hire purchase agreement with Mr S did go far enough. And as they appear to have suggested that Mr S could make the repayments, I don't think that it did anything wrong or treated Mr S unfairly when it entered into this hire purchase agreement with him.

I've also thought about what Mr S has said about how he was treated once he started having difficulties making his payments in July 2015. The notes and copies of emails provided suggest there was a discussion about the arrears at this stage and Mr S discussed the possibility of the car being handed back. It looks like Mr S' account remained in arrears and in September 2015 Mr S asked for the car to be collected as it had been immobilised by TCFC – for non-payment – and he couldn't drive it back. TCFC eventually took possession of the car in November 2015.

A lender does have an obligation to exercise forbearance should a borrower say they're experiencing financial difficulty. Generally speaking, we'd expect a lender to listen to a borrower, get an understanding of their circumstances and discuss what help is appropriate. It does look like TCFC did try to reach an accommodation with Mr S to repay the arrears due

on his account and it didn't immediately seek to repossess the vehicle. But Mr S wasn't able to meet this commitment and was moving further and further away from the terms of the initial agreement.

I've given careful thought to what Mr S has said about the fairness of his car having been immobilised. I don't know what if anything Mr S was told about this possibility at the time he bought his car. But given what he's said about wanting and needing a car in order to secure a promotion at work and having unsuccessfully attempted to obtain finance elsewhere, I don't think I can say that Mr S would have declined to go ahead with the sale if he was told more about this at the time.

Turning now to TCFC's actions when immobilising Mr S' car, I agree that a lender using such a tactic in order to force a borrower who may be struggling financially to make payments to its debt ahead of other priority ones would be unfair. But I don't think that's what happened in this case. I say this because I can't see that Mr S did make any payments once the car was immobilised. He instead asked for TCFC to collect the car and for him to be able to exit the agreement.

So, in this case, I don't think that TCFC did unfairly leverage Mr S into paying its debt ahead of other perhaps more pressing ones. And while it might have added repossession fees onto the balance, I understand that these have since been removed and Mr S has been placed in the position of voluntarily terminating the agreement. As this is the case, I don't think that TCFC treated him unfairly in relation to this matter.

Overall I don't think that TCFC has treated Mr S unfairly in relation to his hire purchase agreement. Although I'm not upholding this complaint, I'd like remind TCFC of its obligation to exercise forbearance if it intends to collect the outstanding balance remaining on the account and it's the case that Mr S is experiencing financial difficulty.

My final decision

My final decision is that I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 March 2021.

Jeshen Narayanan
ombudsman