Financial Ombudsman Service

complaint

Mr W complains that The Car Finance Company (2007) Ltd ("TCFC") approved lending to him when he couldn't afford it.

background

Mr W entered into a hire purchase agreement with TCFC for a second hand car in October 2016. The agreement was for 36 months with repayments of around £300 per month. The total amount repayable was around £11,000.

Mr W got into repayment difficulty almost immediately. He only made his first repayment on time, after that he was almost consistently in arrears. Because he was struggling, he handed the car back through voluntary termination in September 2017. But this still left an outstanding balance to pay of around £3,300.

Mr W didn't think TCFC had done enough to check he could afford the repayments before agreeing to the loan. He also couldn't afford to pay what was left outstanding. He said it was this, along with his other debts that caused him to enter into an individual voluntary arrangement (IVA) soon after terminating his hire purchase agreement.

TCFC said it had asked Mr W to complete an income and expenditure form. It also verified his income by seeing his payslips. They said Mr W had declared his monthly disposable income to be around £1,150 because he lived at home with his parents. This indicated that monthly repayments on the hire purchase agreement were affordable. Mr W said he wasn't actually living at home at the time - he was renting his own place. But despite this, he says TCFC should still have seen that he had several defaults on his credit file which would have shown he couldn't afford the repayments.

I sent Mr W and TCFC my provisional decision on 10 August 2018. I explained why I thought the complaint should be upheld. An extract of what I said is below:

TCFC asked Mr W to declare details of his income and outgoings. They verified his income by looking at recent payslips. TCFC also completed a credit check which showed Mr W's existing credit commitments and this broadly mirrored what he had declared for some of his outgoings. But unlike the investigator, I don't think this was enough in these circumstances.

The finance was for almost £11,000 to be repaid in three years. That is quite a significant commitment for most people. I accept that Mr W's declared disposable income was quite large and would – on the face of it – clearly indicate affordability for this agreement. But there were several entries on the credit check TCFC completed which should have caused them to question whether Mr W could actually afford the repayments.

The credit check showed one outstanding loan, which only had monthly repayments of £13. But it also showed that Mr W had been in arrears on this loan for the past seven months. If he couldn't sustain a loan which had repayments of £13 per month, I don't understand why TCFC thought he could sustain repayments which were nearly £300 per month without asking further questions first.

The credit check also revealed that Mr W held four current accounts. One of these accounts was almost £3,000 overdrawn and in arrears (suggesting he was over his overdraft limit). Another account was seven months in arrears and was only £89 overdrawn. A third account *had been defaulted in the last three months with a balance of only £208. All of this combined strongly suggested Mr W wasn't managing his finances well at all and would quite likely struggle with any further borrowing.*

Had TCFC asked more questions it would likely have found Mr W couldn't afford the repayments on the hire purchase agreement. He was regularly paying rent (and not living with his parents) and in the two months leading up to the agreement he was spending a sizeable chunk of his wages on gambling. On top of this he was struggling to pay off existing debts with other creditors. So I don't think TCFC would or should have lent to Mr W if it had adequately assessed his creditworthiness.

I explained that to put things right TCFC should cancel the hire purchase agreement with nothing further to pay and remove it from Mr W's credit file. Because Mr W had got use of the car it was fair for TCFC to retain some of what he'd paid towards the agreement.

I thought a fair sum was £1,661.31 (this was based on a proportion of the cash price of the car and excluding any interest and charges). But any other money Mr W had paid in excess of that figure (including his £200 deposit) should be returned to him with 8% simple interest per year from the date of payment to the date of settlement.

Mr W accepted my provisional decision, but TCFC didn't. In summary it said:

- TCFC had no reason to question Mr W's declared living situation (or proportionate to) because all the information it checked suggested that what he'd about that was true.
- TCFC also wouldn't have known about Mr W's gambling behaviour as it wasn't provided with any evidence of that – and Mr W had declared £0 for gambling on his expenditure form.
- TCFC's process looks to the future and all the information they had suggested Mr W had sufficient disposable income to comfortably service this loan. TCFC's assessment includes looking at the Standard Financial Statement trigger figures and a further £300 buffer to cover any undeclared expenses. These showed that Mr W's disposable income was more than £750 per month.
- There would have been no need for further questioning as the affordability was clearly evidenced through the information TCFC had available. Had Mr W been more honest about his true outgoings at the point of application, it would have resulted in a different lending decision.

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 outcome as my provisional decision and for the same reasons. But I'll address the additional points TCFC have raised.

I agree it would have been disproportionate to question Mr W's living situation based on the information TCFC had. I also agree they wouldn't have known or needed to ask about gambling based on what they knew and had already asked at the point of application. But I didn't suggest in my provisional decision that TCFC should have questioned those things.

I think the process TCFC went through (credit check, income and expenditure, using trigger figures and applying a buffer) were broadly proportionate and reasonable to this specific situation – in the first instance. But the issue here was that TCFC appears to have ignored a number of concerning entries its credit check picked up.

TCFC says its process looks at the future – and I'd expect it to do that in order to satisfy itself the lending is sustainable. But that doesn't mean past and current situations should be ignored. The credit check (in conjunction with the other checks) gives a good indication of someone's creditworthiness, particularly when looking at current and recent repayment history – and therefore the likelihood that they can afford and sustain further borrowing in the future.

As I said in my provisional decision, at the time of application Mr W was seven months in arrears on a loan which required repayments of only £13 per month. He had also defaulted on a current account three months earlier for a relatively small balance and had other current accounts in arrears – one of which had a large balance. So although Mr W's declared income and expenditure and living situation appeared to support affordability, the credit check completely contradicted that assumption. This should have highlighted that something clearly wasn't right.

For that reason I think TCFC should have asked more questions before agreeing to lend. Had it asked more questions, then I think it's likely it would have found out (at that stage) about Mr W's monthly rental payments and outgoings on gambling. And as TCFC has accepted in its response to the PD – had it known about these things it would have come to a different lending decision. So for these reasons I don't think TCFC did enough to satisfy itself that the lending was affordable. And if it had done, I don't think it would have lent to Mr W.

TCFC or Mr W hasn't raised any concerns about the way I calculated appropriate redress in my provisional decision, so I see no reason to come to a different conclusion about what TCFC should do to put things right.

I understand Mr W is currently subject to an IVA. His IVA practitioner has told us they have an interest in any redress he may be awarded from this complaint. TCFC should pay any redress directly to Mr W, but he needs to be aware of his obligations under the IVA.

my final decision

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

- Refund the £200 deposit Mr W paid, adding 8% simple interest per year from the date of payment to the date of settlement.
- Refund any other money Mr W has paid in excess of £1,661.31 towards the agreement, adding 8% simple interest per year from the date of overpayment to the date of settlement.
- Cancel the hire purchase agreement with nothing further for Mr W to pay and remove all records of it from his credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 October 2018.

Tero Hiltunen
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