complaint

Miss W complains that Go Car Credit Limited ("GCC") supplied her with a car under a hire purchase agreement which wasn't of satisfactory quality. She also says the agreement was never affordable to her.

Miss W is represented in this complaint by her relative, but for ease I'll refer only to Miss W throughout.

background

In March 2018, Miss W acquired a used car using a hire purchase agreement from GCC. The car was around ten years old and had travelled around 85,500 miles. The cash price of the car was £4,695. Miss W part-exchanged her existing car for £1,200 and the remainder was paid for using the hire purchase agreement. The agreement was for 36 months with monthly repayments of around £170. The total repayable under the agreement was around £6,100.

In July 2018, Miss W complained to GCC about a number of faults with the car. In summary, she said the car was losing power, there was a fault with the rear differential and there was a warning light illuminating. She said there had also been a cracked alloy which had now been repaired under warranty.

The car was returned to the dealership to carry out repairs. The dealership said the warning light related to the anti-lock braking system (ABS) and it noted the mileage on the car was now around 93,000.

At around the same time the manufacturer of the car wrote to Miss W to say there was a safety recall relating to the timing chain within the car. It advised her to arrange for the relevant repairs to be carried out. The dealership says it offered to arrange to have the recall repairs carried out by the manufacturer, but it says Miss W refused this offer as she wanted to arrange it herself. The dealership arranged for Miss W to sign a disclaimer which stated the dealership had advised her not to drive the car until the repair work was carried out.

A few weeks later Miss W contacted GCC to say the car had broken down. GCC says it attempted to contact Miss W on several occasions to find out what had happened, but she didn't get in contact until late August 2018. When Miss W did contact GCC she asked to replace the car because of the number of issues she'd had with it.

GCC didn't agree to replace the car. It said this was because she hadn't carried out the repairs that were required on the car and had continue to drive it. Miss W contacted GCC again around a week later to advise the car had once again broken down and the recovery agent had diagnosed a problem with the hydraulics and clutch. She then asked to reject the car. GCC said it wouldn't allow rejection of the car as it hadn't been given the opportunity to repair the previous faults or diagnose the current issues.

The car was eventually returned back to the dealership who arranged to repair the ABS fault, the timing chain, the rear differential and the power loss fault free of charge. However, the dealership didn't agree to cover the cost of the repair to the clutch. It said the reason this had failed was due to driver misuse and was down to in-service wear and tear rather than any inherent problem with the components.

GCC said it accepted the majority of the faults Miss W had reported did make the car of unsatisfactory quality. However, as those issues had now been fixed, it didn't think it needed to do anything more.

Miss W then raised a complaint with GCC about irresponsible lending. In summary, she said the agreement was unaffordable to her and GCC didn't carry out adequate checks on her ability to repay the borrowing. She also said that her and her partner were vulnerable and this ought to have been obvious to the dealership and to GCC when they arranged the finance agreement. It should have been clear they didn't understand what they were signing up to.

Our investigator didn't recommend the complaint be upheld. He said he was satisfied the faults with the car had now been repaired and he didn't think the issue with the clutch was something that GCC were responsible for. He thought GCC had completed adequate affordability checks and this showed Miss W could afford the agreement. He didn't think there was any reason GCC ought to have known Miss W was vulnerable prior to her entering into the agreement.

Miss W didn't agree, so the complaint has been passed to me 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.

Satisfactory quality

The hire purchase agreement Miss W signed is a regulated consumer credit agreement, so this service can consider complaints relating to it. Under the hire purchase agreement, GCC is also the supplier of the car and is therefore responsible for a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") implies a term into any contract to supply goods that those goods will be of satisfactory quality. Satisfactory is taken to be what a reasonable person would expect, taking into account any description of the goods, the price and all other relevant circumstances. I think in this case those relevant circumstances include – but aren't limited to – the age and mileage of the car and the cash price.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

The car was around 10 years old, had covered around 85,500 miles and had a cash price of £4,695. My starting point is therefore that it would be reasonable to expect for the car to likely need more maintenance than a brand new car and have components which have suffered some wear and tear already.

GCC have appeared to have accepted that the faults to the rear differential, the loss of power, the ABS and the timing chain made the car of unsatisfactory quality as they were likely to have been present or developing at the point of supply or that the components weren't sufficiently durable.

The CRA says where the car isn't of satisfactory quality, the trader (in this case GCC) can have one opportunity to put things right. Here that would be to fix the faults with the car that made it of unsatisfactory quality. It seems those repairs have been carried out and I haven't seen anything to make me think the repairs weren't successful.

However, Miss W has also said the car had a fault with the clutch and hydraulics in around August 2018, which GCC hasn't agreed to repair. However, I don't think these faults are something GCC ought to be responsible for putting right.

I say this because when these issues first materialised Miss W had travelled over 10,000 miles in the car and the car had travelled around 95,000 miles in total. I don't think it's unreasonable to expect these types of faults to appear through normal in-service wear and tear on a car of this age and mileage. Further, it appears Miss W continued to drive the car for several thousand miles without having essential repairs completed. This was after she was advised not to drive the car because it could cause further damage. It's therefore possible her continued usage has caused these new issues to arise.

The dealership has also suggested the issue with the clutch was caused by driver misuse. However, it hasn't provided any supporting evidence to demonstrate why it believes this to be the case. But I've also considered that Miss W hasn't given us anything to demonstrate that the fault was likely to be developing or was present at the point the car was supplied to her or that the clutch and hydraulics have failed prematurely for a car of this age and mileage.

Overall, I'm not persuaded that the issues with the hydraulics and clutch made the car of unsatisfactory quality. Therefore, I don't think GCC has acted unfairly or unreasonably in not repairing those faults. However, I think it has acted fairly in repairing the other issues with the car and doesn't need to do anything more to put things right in relation to the quality of the car.

Irresponsible lending

I've taken into consideration – amongst other things – the rules the and guidance for lenders set out in the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's handbook.

When considering complaints about irresponsible lending I think there are two overarching questions I need to consider. These questions are:

1. Did GCC complete reasonable and proportionate checks to satisfy itself that Miss W would be able to repay the borrowing in a sustainable way?
    a. If so, did it make a fair lending decision?
    b. If not, would reasonable and proportionate checks have shown that Miss W could sustainably repay the borrowing?
2. Did GCC act unfairly or unreasonably in some other way?

If I think Miss W has been disadvantaged in any way by GCC's actions, I'll go onto consider what I think is a fair way to put things right.

Did GCC complete reasonable and proportionate checks to satisfy itself that Miss W would be able to repay the borrowing in a sustainable way?

Before granting credit, GCC were required to carry out a reasonable and proportionate assessment of Miss W's ability to sustainably repay the agreement. 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 Miss W could sustainably afford the borrowing (considering her specific circumstances), rather than how statistically likely she was to repay. The latter, is the risk posed to GCC 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 agreement was around £6,100 with monthly repayments of around £170 over 36 months. While the amount of borrowing and the size of the regular repayments were relatively modest in size, the agreement was expensive. The APR was 49.65%. Given this was a relatively expensive commitment, my starting point is that any reasonable and proportionate assessment of affordability ought to have been quite thorough.

GCC says that as part of the application process it asked Miss W to provide it with details of her income and expenditure. It says it also reviewed copies of her bank statements to verify this information and completed a credit check to understand what her existing credit commitments were and how she had been managing them.

I think GCC therefore carried out a reasonable and proportionate affordability assessment. It gathered enough information to be able to verify Miss W's income and expenditure and I don't think there was anything else it ought reasonably to have gathered.

Did GCC make a fair lending decision?

Although I'm satisfied GCC carried out reasonable and proportionate checks, I still need to consider whether it scrutinised the information and evidence it had appropriately and came to a fair lending decision.

The credit check GCC completed showed that Miss W had only two other existing credit commitments. One was a mail order account, the other a credit card. These had credit limits of £250 and £200. Both accounts had no adverse information recorded against them and had been managed well up to that point. It didn't appear Miss W had ever held any other form of credit before or that there was any adverse information recorded. I don't think there was anything showing on Miss W's credit file that ought to have concerned GCC.

I can see Miss W completed an income and expenditure form as part of the application. It seems the income she declared was broadly accurate with what her bank statements showed. She had supplied GCC with bank statements for the previous two and a half months, I think this would have given a reasonable indication of regular income and commitments. So, I think it was reasonable for GCC to rely on the figure of £1,600 as an indication of what she earnt.

In terms of expenditure, I note Miss W stated very low figures for rent, council tax, food and petrol. However, I can see that GCC noticed this too and asked Miss W further questions about why these figures were so low. It appears Miss W told GCC that her partner covered the majority of these payments and the petrol expenses were low as they only travelled locally. I don't think GCC acted unreasonably in accepting what Miss W told them as I haven't seen any reason they ought to have questioned this further. GCC also added an additional buffer of £300 to account for any unexpected costs. And even with this £300 taken off from her income, it showed the lending was affordable.

Having reviewed the bank statements Miss W provided GCC, I can see the majority of what she'd declared as her expenditure was broadly accurate with what the bank statements showed. The only significant discrepancy was that she'd declared £17 per month for tv, broadband and mobile when it appears her statements showed her expenditure for this was around £100. It also appears her petrol and food costs may have been slightly higher than she declared, but I don't think these appeared to be significantly different.

In any event, even taking into account the higher figures showing on her bank statements this still showed Miss W had more than enough disposable income to cover the costs of the hire purchase agreement. For this reason, I don't think GCC acted unfairly or unreasonably in lending to Miss W.

Miss W has since provided us with a revised income and expenditure assessment. She says this shows after the hire purchase agreement is taken into account – and it's increased associated costs (such as petrol) – the agreement is unaffordable. However, I've seen that some of the expenses Miss W has listed are discretionary and it appears when taking only essential costs into account the lending still appears affordable. But even if I was to accept the hire purchase agreement is actually unaffordable to Miss W, I don't think GCC would or should have been reasonably aware of that at the time she applied for it.

Did GCC act unfairly or unreasonably in some other way?

Miss W says her and her partner are vulnerable and this ought to have been immediately obvious to the dealership and to GCC. She says had further questions been asked of their circumstances it would have become clear that they didn't understand what they were entering into and that it wouldn't be appropriate to lend to her.

I've listened to a call GCC had with Miss W a day before she signed the finance paperwork. The purpose of the call was to go through the details of the purchase and the finance agreement. I don't think there was anything within this call that ought to have made GCC think Miss W was vulnerable in any way or didn't understand what it was she was entering into.

While I can't be sure exactly what was discussed with the dealership, I haven't been provided with anything persuasive to make me think the dealership or GCC ought to have known that Miss W was vulnerable to the extent that lending to her was inappropriate. I'm therefore not satisfied that GCC acted unfairly or unreasonably in some other way.

I understand the agreement is currently in arrears as Miss W is struggling to keep up with the repayments. Miss W should discuss her circumstances with GCC so that it can agree a suitable and fair way to help her.

my final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 12 March 2021.

Tero Hiltunen
ombudsman