

The complaint

Mr L is complaining that The Asset Exchange Ltd trading as The Car Loan Centre (TCLC) shouldn't have lent to him – he says the lending was unaffordable. A representative has brought his complaint to us but for ease I've written as if Mr L's dealt with us directly.

What happened

In October 2019, Mr L took out a conditional sale agreement with TCLC to finance the purchase of a car. He paid a deposit of £50 and borrowed £7,148 – the cash price of the vehicle including an extended warranty was £7,198. The agreement required Mr L to make 48 monthly repayments of around £316. Mr L struggled to make his payments almost from the start of the agreement. The car was then written off in February 2020 following an accident. TCLC recovered £2,975 from the insurance, leaving a shortfall of over £5,000 on the account.

In June 2023, Mr L complained to TCLC, saying that he thought TCLC had failed to conduct appropriate checks before lending to him. He said he'd been in arrears with his rent at the time and only basic questions had been asked about his income and outgoings.

In response, TCLC said they'd carried out appropriate checks before lending to Mr L, including a credit reference agency (CRA) search and a review of his bank statements. They said they'd determined Mr L had an excess of £12.18 per month after allowing for both the cost of the new finance and a buffer of £25 per month.

Mr L was unhappy with TCLC's response and brought his complaint to our service. At this stage TCLC made an offer which Mr L didn't accept, and Mr L made a counteroffer which TCLC didn't accept. So one of our investigators looked into the matter.

Our investigator upheld the complaint, saying although he thought TCLC had done enough to check that the lending was affordable for Mr L, he didn't think their decision to lend to him had been fair. Our investigator said TCLC should refund all amounts Mr L had paid over an amount of £540 for fair usage, together with interest at 8% per year on any overpayments.

Mr L accepted our investigator's view but TCLC didn't respond. So the complaint's been passed to me for a decision.

What I've decided – and why

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

Having done so, I'm upholding Mr L's complaint for broadly the same reasons as our investigator. I'll explain below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did TCLC carry out proportionate checks?

TCLC said they reviewed Mr L's credit file and checked his income and bank statements. They used this information to complete an income and expenditure assessment and determined the loan was affordable on this basis.

I can't fairly say TCLC should have done anything more to assess whether Mr L would be able to make the repayments needed under the agreement in a sustainable way.

Did TCLC make a fair lending decision?

Having concluded that TCLC did proportionate checks, I have to think about whether they made a fair lending decision.

TCLC found Mr L had only been in his job for a few months. They assessed his income taking the last five weeks of pay from his payslips and calculated his monthly average income was around £1,150.

TCLC then estimated Mr L's expenditure using a combination of statistical data and Mr L's stated figures, as well as looking at the figures in his bank statements. They assessed his total non-discretionary expenditure as around £800 per month and added £25 as a buffer. I note that the figure of £800 included all rent, utilities, council tax, phone bills, and motor expenses, as well as food, for which only £80 a month was included. On the face of it, these figures appear to be on the low side, so a buffer of £25 seems insufficient.

Deducting the repayments under the new agreement of £315 and the expenditure of £825 from the income, TCLC determined Mr L had a surplus of £12.18 per month. I'm not satisfied this, together with the buffer of £25, is enough to cover emergencies and unexpected living costs, particularly bearing in mind the four-year term of the agreement.

Putting things right

As TCLC shouldn't have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mr L had use of the vehicle for four months so it's fair he pays for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Mr L's case I've thought about the amount of interest charged on the agreement, Mr L's overall usage of the car, and what his costs to stay mobile would have likely been if he didn't have this car. In doing so, I think a fair amount Mr L should pay is £135 for each month he had use of the car, so a total of £540. To settle Mr L's complaint, TCLC should do the following:

- End the agreement with nothing further to pay.
- Refund all the payments Mr L himself has made in excess of £540 (including the deposit), adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr L's credit file regarding the agreement.

If TCLC consider tax should be deducted from the interest element of my award they should provide Mr L a certificate showing how much they've taken off so that Mr L can reclaim that amount, assuming he is eligible to do so.

My final decision

As I've explained, I'm upholding this complaint. The Asset Exchange Ltd trading as The Car Loan Centre need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 April 2024.

Clare King
Ombudsman