

The complaint

Mr G complains that Creation Consumer Finance Ltd mis-sold him a £20,000 loan without checking that he could afford it.

What happened

In December 2018 Mr G borrowed £20,000 from Creation. He was to repay £438 a month for five years. He made one repayment, and then said he could not afford to keep up the repayments. He made token repayments until the debt was sold to a third party. He complained that his credit history should have shown Creation that he was already heavily indebted, having borrowed £78,000 over nine previous loans with other lenders during the previous two years. That figure significantly exceeded his annual income. He also said that his outgoings (including loan repayments) had already exceeded his income. He said that Creation would have realised this if it had asked for payslips and bank statements, but it hadn't. He also said that Creation would then have realised that he had a serious gambling addiction, and that it should never have lent to him. He later said that one of the previous lenders had upheld a similar complaint, and had written off the loan and refunded his payments.

Creation said that it had checked Mr G's credit file with one of the credit reference agencies ("CRAs"), but many of Mr G's debts had not been reported there. But he had had no defaults or court judgements against him, and had never been in arrears. There had been no indication of financial difficulties. Mr G had told Creation that the purpose of the loan was to consolidate his debts. Creation had not asked for bank statements or payslips because his stated income and outgoings had been plausible, and so it had taken him at his word. It had calculated that after making his monthly payments to Creation, Mr G would still be left with a disposable income of £415 a month.

Our investigator did not uphold this complaint. She said that on the information provided to Creation at the time, it had been reasonable of Creation not to ask for bank statements, and to conclude that Mr G could afford the loan. She agreed that on the information since provided to her by Mr G, the loan had not in fact been affordable after all, but she didn't think that Creation could have known that, or that it should have realised he had a gambling addiction.

Mr G did not accept that opinion, and he asked for an ombudsman to review his case. He made a lot of detailed submissions in support of his complaint, but in summary he maintained that Creation ought to have known that his outgoings were higher than they had taken them to be when he applied for the loan.

What I've decided – and why

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have noted that the lender who sold Mr G his last loan before he approached Creation agreed with him that it had mis-sold that loan. But it does not necessarily follow that Creation must have mis-sold his next loan. The previous lender may have not carried out the same checks as Creation, or it might have stricter criteria. So I have confined my attention to what Creation knew and what Creation did.

Under rules made by the regulator, a lender has a duty to carry out proportionate and reasonable checks to ensure that Mr G could afford to make his loan repayments without undue difficulty. Provided it does that, each lender may decide for itself what checks to carry out, although they will usually consider information provided by a CRA. But a lender is also entitled to take into account what its customer tells it about his finances. It doesn't have to doubt everything he says, and ask for supporting evidence, if what he tells it seems plausible on its face. The customer has a duty to provide accurate, complete and truthful information, and the lender is entitled to believe him. So my starting point is that Creation was entitled to rely on what Mr G told it. Just because that information later turns out to be wrong or incomplete doesn't automatically mean the loan was mis-sold. I would only uphold a complaint in such circumstances if I thought that the information provided was so clearly implausible or contradictory that Creation ought to have investigated it further.

Mr G declared a monthly income of £2,830. That figure fell within Creation's parameters for accepting it at face value, so it didn't ask for proof. I think that was a reasonable approach, but I am strongly reinforced in that view by the fact that Mr G stands by that figure even now. If it was the right figure all along, then it wouldn't matter that Creation didn't ask to see evidence of it, even if I thought it was supposed to.

According to Creation's contact notes, Mr G told Creation that he paid £275 a month towards his mortgage. (I have noted that this was missed by the credit broker, but it appears that Creation asked its own questions.) Creation also took into account six unsecured loans, which it saw on his credit file. The total repayments on those loans added up to £1,702 a month. Mr G has provided our Service with another copy of his credit file which he obtained from a different CRA: that shows £1,810 of monthly repayments before he took the loan with Creation (including mortgage payments of £602 a month). There are three CRAs in the United Kingdom, and they each receive different information from different lenders (because lenders don't all have to report their data to all three CRAs). So different information will show depending on which CRA is used, but in this instance I don't think that the difference of £108 is significant, because it is still smaller than the disposable income figure calculated by Creation. (That was £2,830 – £1,702 – £275 – £438 = £415.)

I accept that the figures Mr G provided to our investigator show that he couldn't afford the loan, and that he had no disposable income. But Creation didn't know that then, although Mr G must have. Mr G argues that Creation should have known, because it should have checked other sources, like the monthly turnover on his current account, for example (which was available through the CRA Mr G used).

But balanced against that are the following facts which Creation did know. Mr G had not been in arrears, nor had a default. He had been managing his existing loans well. He said he was taking out the Creation loan in order to consolidate his existing payments (and I note from the credit file that Mr G provided to us that two of his prior loans were settled in December 2018, the same month in which he applied for the Creation loan). I think Creation was entitled to believe him, and not to ask him for proof of what he was going to do with it. So for the above reasons, I do not agree that this loan was mis-sold.

My final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 July 2020.

Richard Wood
Ombudsman