DRN-1975051

The complaint

Miss K has complained that Mobile Money Limited irresponsibly provided her with an unaffordable loan.

What happened

Miss K was given a logbook loan by Mobile Money in April 2018 for £4,000. The loan was secured against a vehicle that she owned.

Miss K's loan was to be repaid in 30 monthly instalments of around £288. The total amount due to be repaid over the loan term, including interest, was just over £8,600. I understand the loan is still outstanding.

One of our adjudicators has looked into the complaint. She didn't think Mobile Money should have provided Miss K with the loan and she asked the lender to put things right. Mobile Money didn't agree with the adjudicator's assessment, and so the complaint has been passed to me to make a final decision about the matter.

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.

We've set out our approach to unaffordable and irresponsible lending on our website and I've considered this approach when deciding Miss K's complaint.

Mobile Money needed to take reasonable steps to ensure that it didn't lend to Miss K irresponsibly.

The lender was required to carry out a borrower focussed assessment - sometimes referred to as an "affordability assessment" or "affordability check". The checks had to be "borrower" focussed – so Mobile Money had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Miss K. In other words, it wasn't enough for Mobile Money to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Miss K.

Mobile Money had to carry out reasonable and proportionate checks to satisfy itself that Miss K would be able repay the loan sustainably. There was no set list of checks that Mobile Money had to do, but it could take into account a number of different things such as the loan amount, the length of the loan term, the repayment amounts, and the borrower's overall financial circumstances.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for any particular application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Mobile Money did what it needed to before agreeing to give the loan to Miss K.

Mobile Money says it asked Miss K for information about her income and expenditure and it carried out some credit checks. Mobile Money says that Miss K's credit report showed no arrears and there were no signs that she was struggling financially. It doesn't believe that the information it gathered at the time should have led it to ask for any further information.

But Miss K's credit report did show that she had 18 'active' accounts and had a substantial outstanding credit balance, aside from her mortgage. It also showed that Miss K had regularly been taking short term loans in the year prior to applying to Mobile Money – all of which could reasonably have indicated that this consumer might be having difficulties managing her finances. I accept that there were no defaults on her credit report but Miss K was applying to Mobile Money for an expensive loan, repayable over a long period. In the circumstances I would expect Mobile Money to have wanted to gather and independently check more detailed information about Miss K's financial situation before agreeing to lend to her.

I appreciate that Mobile Money had acquired a credit report and pay slips from Miss K but it seems to me that it relied heavily on information she provided about her expenditure. The rules and regulations say that where a lender takes income or expenditure into account, it is not generally sufficient for it to rely solely on a statement of those matters made by the customer. As I explained above, I think Mobile Money ought reasonably have sought a more detailed understanding of Miss K's financial position in order to assess whether she'd be able to sustainably repay her loan over the extended loan term.

So as well as asking Miss K about her income and expenditure, I think Mobile Money should have carried out more detailed and independent checks into Miss K's financial circumstances – for example by asking to see her bank statements.

Miss K has provided us with copies of her bank statements leading up to her application to Mobile Money, so I can determine what better checks might have shown Mobile Money at that time. And I have considered this information in light of what I've set out above. Of course, different checks might show different things. But I think if Mobile Money had carried out what I consider to be proportionate checks, I think it's likely it would have discovered more about Miss K's financial position. In particular I think it more likely than not Mobile Money would have realised that Miss K was regularly gambling considerable amounts of money and was most likely financing her gambling by borrowing from a number of other short-term lenders.

Mobile Money says that Miss K was able to transfer funds from another account where necessary and that gambling '*does not render credit inappropriate or unaffordable, especially when the consumer is able to continue to meet their non-discretionary expenditure'*.

But from what I've seen, that Miss K was transferring money between three different bank accounts, and regularly borrowing from other short-term lenders, to support her gambling. Mobile Money thinks that Miss K only began to struggle financially when she was called upon to make repayments on another loan in 2019 as the loan guarantor. But it seems to me that Miss K was already having serious difficulties managing her finances when she applied for her loan with Mobile Money. And as I've already explained, Mobile Money was required to establish whether Miss K could *sustainably* make her loan repayments. I think if Mobile Money had carried out more detailed, independent checks on Miss K's finances it ought reasonably to have realised that she was having serious difficulties managing her finances and that she was most likely borrowing as a result of her gambling – and would also most likely need to borrow elsewhere to repay her loan from Mobile Money. I would have expected Mobile Money to realise that it was unlikely that Miss K would be able to sustainably repay her loan. So it ought reasonably to have concluded that it was not appropriate to lend to her.

Putting things right

The statement of account provided by Mobile Money suggests that Miss K has already repaid more than the capital she borrowed. I think it is fair and reasonable for Miss K to have repaid the principal amount that she borrowed, because she had the benefit of that lending.

But she has paid interest and charges on a loan that shouldn't have been provided to her. So I think Miss K has lost out and Mobile Money should put things right for her.

Mobile Money should:

- Remove all interest, fees and charges still outstanding on the loan and treat all the payments Miss K made as payments towards the capital.
- If reworking Miss K's loan account results in her having effectively made payments above the original capital borrowed, then Mobile Money should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking the account leaves an amount of capital still to be paid, then Mobile Money should try to agree an affordable repayment plan with Miss K, bearing in mind its obligation to treat her positively and sympathetically in these discussions.
- Cancel the bill of sale and return the V5 document.
- Remove any adverse information recorded on Miss K's credit file in relation to the loan.

*HM Revenue & Customs requires Mobile Money to deduct tax from this interest. Mobile Money should give Miss K a certificate showing how much tax it's deducted, if she asks for one.

My final decision

My final decision is that I uphold Miss K's complaint and direct Mobile Money Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 13 October 2020.

Sharon Parr
Ombudsman