

## **The complaint**

Mrs S complains that Creative Finance Corp Ltd trading as Motorkitty ("Creative") lent to her in an irresponsible manner.

## **What happened**

Mrs S was given one loan by Creative. She borrowed £1,000 in December 2018 and agreed to repay the loan in 36 monthly instalments. The loan was secured against Mrs S's vehicle. Mrs S has found it difficult to repay the loan and her vehicle has now been repossessed. I understand that it has been passed to an auction house to be sold.

Mrs S's complaint has been assessed by one of our adjudicators. She didn't think the checks Creative had done before agreeing the loan had been sufficient. And she thought that better checks would have led to Mrs S's loan application being declined. So she didn't think Creative should have agreed to lend to Mrs S and asked the lender to pay Mrs S some compensation.

Creative didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mrs S accepts my decision it is legally binding on both parties.

## **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/irresponsible lending complaints on our website and I've kept this in mind while deciding Mrs S's complaint.

The rules and regulations at the time Creative gave this loan to Mrs S required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Creative had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mrs S. In practice this meant that Creative had to ensure that making the repayments wouldn't cause Mrs S undue difficulty or adverse consequences. In other words, it wasn't enough for Creative to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mrs S.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

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 repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given 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 Creative did what it needed to before agreeing to lend to Mrs S.

Creative gathered some information from Mrs S before it agreed the loan. It asked her for details of her income, and her normal expenditure. And Mrs S was asked to provide some bank statements so Creative could check the information she'd provided.

Mrs S was entering into a significant commitment with Creative. She would need to make monthly repayments for a period of three years. So I would expect that Creative would want to gather, and independently check, some detailed information about Mrs S's financial circumstances before it agreed to lend to her. Although Creative did look at some of Mrs S's bank statements I don't think that the checks it did were enough. I think it needed to ensure that the information Mrs S had provided allowed a full review of her true financial circumstances. The bank statements she provided appear to have only covered a limited number of the transactions going through her account at that time and seem to have been only intended to show her monthly salary being received.

But although I don't think the checks Creative did before agreeing the loan were sufficient, that in itself doesn't mean that Mrs S's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Creative that Mrs S couldn't sustainably afford the repayments. So I've looked at full copies of Mrs S's bank statements, and what she's told us about her financial situation, to see what better checks would have shown Creative.

At this stage I want to be clear that I am not suggesting that this is the exact check that Creative should have carried out. I do think Creative needed evidence to give a full picture of what was happening with Mrs S's finances. And looking at a full set of her bank statements is one way of achieving that although there are of course many other ways that level of detail could be established. But I think that by looking at Mrs S's bank statements I can get a good idea of what better checks might have shown.

Mrs S's bank statements show that she wasn't managing her money particularly well. She was borrowing from a number of other lenders. And she was using that money to support what appears to be a large amount of online gambling expenditure. In the month before the loan her gambling expenditure exceeded more than half of her normal income.

I don't think it would be reasonable for a responsible lender to think that a consumer evidencing this sort of spending pattern would be likely to be able to afford to repay any borrowing in a sustainable manner. I think that spending pattern would have been identified

if Creative had done what I consider to be proportionate checks. So I don't think this loan should have been agreed, and Creative needs to put things right.

### **Putting things right**

I don't think that Creative should have agreed to lend to Mrs S in December 2018. As I said earlier, the loan was secured against Mrs S's vehicle, and that car has now been repossessed. I don't know whether or not the auction house has yet completed the sale of the vehicle so below I will provide redress directions for either scenario.

#### *If the vehicle sale has not yet been completed*

To put things right Creative should;

- Add up the total amount Mrs S has repaid on this loan, and deduct that sum from the capital amount of £1,000 that she borrowed.
  - If this results in Mrs S having paid more than she received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement) †.
  - If any capital balance remains outstanding, then Creative should attempt to arrange an affordable/suitable payment plan with Mrs S.
- Return the car to Mrs S and cancel the bill of sale, returning the V5 document.
- Refund any repossession fees and storage fees Mrs S has paid with simple interest at 8% per year†. Or remove any unpaid repossession/storage fees from the outstanding balance if any.
- Arrange for Mrs S's possessions that were in the car when it was repossessed to be returned to her home address immediately.
- Remove any negative information recorded on Mrs S's credit file regarding the loan.

† HM Revenue & Customs requires Creative to take off tax from this interest. Creative must give Mrs S a certificate showing how much tax it's taken off if she asks for one.

#### *If the vehicle sale has now been completed*

To put things right Creative should;

- Establish the true market value of the car using an industry standard guide. I would generally expect this value to be higher than the sale price achieved at the auction.
- Add the total amount Mrs S has repaid on the loan to the market value of the car, and deduct the total from the capital amount that she borrowed.
  - If this results in Mrs S having paid more than she received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement) †.
  - If any capital balance remains outstanding, then Creative should attempt to arrange an affordable/suitable payment plan with Mrs S.
- Refund any associated fees paid by Mrs S (e.g. repossession fee, storage fee, auction fee, etc.) with simple interest at 8% per year†. Or remove any unpaid fees from the outstanding balance if appropriate.
- Arrange for Mrs S's possessions that were in the car when it was repossessed to be returned to her home address immediately.
- Remove any negative information recorded on Mrs S's credit file regarding the loan.

† HM Revenue & Customs requires Creative to take off tax from this interest. Creative must give Mrs S a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

My final decision is that I uphold Mrs S's complaint and direct Creative Finance Corp Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 5 February 2021.

Paul Reilly  
**Ombudsman**