

Complaint

Miss B has complained that Hermes Property Services Limited (“HPS”) provided her with an unaffordable logbook loan.

She’s said that she was struggling at the time and the information gathered ought to have alerted HPS to the fact that she wouldn’t be able to make the monthly payments to this loan.

Background

HPS provided Miss B with a logbook loan for £1,055 in August 2013. This loan had an APR of 397.8%, which meant that the total amount of £3,739.32, was due to be repaid in 104 weekly instalments of £36.66.

One of our investigators looked at this complaint and thought that proportionate checks would have shown this loan to be unaffordable for Miss B and so upheld the complaint. HPS disagreed and asked for an ombudsman to review the complaint.

My findings

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 general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I’ve referred to this when deciding Miss B’s complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Miss B’s complaint. These two questions are:

1. Did HPS complete reasonable and proportionate checks to satisfy itself that Miss B would be able to repay her loan in a sustainable way?
 - o If so, did it make a fair lending decision?
 - o If not, would those checks have shown that Miss B would’ve been able to do so?
2. Did HPS act unfairly or unreasonably in some other way?

Did HPS complete reasonable and proportionate checks to satisfy itself that Miss B would be able to repay her loan in a sustainable way?

HPS provided this loan to Miss B while it held a consumer credit licence from the Office of Fair Trading. The rules and regulations in place at this time required HPS to carry out a reasonable and proportionate assessment of Miss B’s ability to make the repayments under this agreement. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so HPS had to think about whether repaying the loan would cause significant adverse consequences *for Miss B*. In practice this meant that HPS had to check to ensure that Miss B could make the payments to the loan without difficulty or borrowing further.

In other words, it wasn't enough for HPS to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss B and it wasn't enough for HPS to simply lend because the loan was secured on Miss B's vehicle. In fact as there was the possibility of Miss B losing her vehicle, I think it is reasonable to expect a proportionate check to have reflected this.

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. Even for the same customer, a proportionate check could look different for different applications.

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); and
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were HPS's checks reasonable and proportionate?

HPS carried out an income and expenditure assessment with Miss B prior to providing her with this loan. HPS checks suggested Miss B's income was around £1,300.00 a month and her expenditure around £690 based what it saw on her credit file. In HPS' view this left Miss B with over £600 in disposable income which was more than enough to cover the payments to this loan. HPS also obtained two months' worth of bank statements from Miss B.

I've carefully considered what HPS has said. But it's worth noting that there was information in the bank statements which seriously called into question the conclusions reached in the

income and expenditure assessments. Firstly, Miss B was overdrawn, and paid a significant amount in unarranged overdraft fees, which didn't really tally with someone who had very little in the way of expenditure and a monthly disposable income of £600.

Secondly, there were significant amounts of funds which were going out of the account which were marked as savings. The amount that went out in the previous month exceeded the amount Miss B was looking to borrow. And it called into question why Miss B needed to borrow, on such disadvantageous terms if she genuinely had savings of this amount and monthly disposable income which would have provided in excess of what was being advanced in a couple of months.

Finally, there was a significantly amount of gambling on the statement obtained. HPS' agent wrote that this was a fraud payment and referred to a refund from the gambling company as evidence of this. Yet the refund, which I suspect were winnings rather than a fraud payment, came from the gambling company concerned rather than the bank.

So, I think it's fair to say that the contents of the bank statements provided clearly called into question whether Miss B had a monthly disposable income of more than £600. And I would have expected HPS to have found out more about these apparent discrepancies before agreeing to lend. As I can't see that this HPS did do this and instead chose to rely on what appears to have been overly optimistic income and expenditure assessment, I don't think that the checks it carried out before providing Miss B with her loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to HPS that Miss B would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told HPS that Miss B would have been unable to sustainably repay this loan.

HPS was required to establish whether Miss B could make her loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided. Having done so, it is clear Miss B's income was being used to meet commitments to existing short-term creditors. I can see a number of such loans taken out and repaid in the lead up to this loan. It's also apparent that Miss B was regularly incurring unarranged overdraft fees due to her gambling too. So I think she was always unlikely to be able to make the payments she was being asked to commit to without borrowing further or experiencing financial difficulty.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss B would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted HPS to the fact that Miss B was in no sort of position to be able to make the payments on this loan in a sustainable manner.

Did HPS act unfairly or unreasonably towards Miss B in some other way?

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that HPS acted unfairly or unreasonably towards Miss B in some other way. So I don't think HPS acted unfairly or unreasonably towards Miss B in some other way.

Did Miss B lose out as a result of HPS unfairly providing her with this loan?

As Miss B paid a high amount of interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she lost out as a result of what HPS did wrong.

So I think that HPS needs to put things right.

Fair compensation – what HPS needs to do to put things right for Miss B

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Miss B's complaint for HPS to put things right by:

- refunding all interest, fees and charges Miss B paid as a result of being provided with this loan;
- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Miss B to the date of settlement†;
- removing any adverse information recorded on Miss B's credit file as a result of this loan.

† HM Revenue & Customs requires HPS to take off tax from this interest. HPS must give Miss B a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss B's complaint. Hermes Property Services Limited needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 28 February 2022.

Jeshen Narayanan
Ombudsman