

## The complaint

Miss J said that Creation Consumer Finance Ltd irresponsibly lent to her.

## What happened

Creation provided the following loan to Miss J:

Date taken	Loan status	Number of monthly instalments	Loan amount	Approximate monthly repayment*
March 2018	Outstanding	48	£10,000	£286.38

Miss J told us that when she applied for this loan, she also had a number of other loans in place and she had only recently been released from an 'IVA' (an individual voluntary arrangement – this is a formal debt solution to repay money owed to creditors). She said she was still struggling financially and doesn't feel Creation checked if she could afford the loan or review her spending habits at the time which included gambling. She's unhappy that Creation registered a default when she ran into payment problems and sold the loan to a third party - and that it has now sold the loan again after it was returned to the lender.

Our investigator didn't uphold Miss J's complaint.

Miss J disagreed with our investigator's view. She mainly said that whilst she understands that on the surface it appeared she could afford the repayments, if Creation had checked her bank statements (like responsible lenders tend to) it would've seen the issues she had, especially after having completed an IVA not long before. She told us that if Creation had asked a question about gambling she would have answered honestly but it failed to do that in her opinion.

Miss J has sent us bank statements and an up to date credit report in support of her complaint.

Miss J asked for an ombudsman to review her complaint so it comes to me to decide.

## 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 when deciding Miss J's complaint. I'd like to reassure Miss J that I've looked at the complaint afresh – and I've independently reached the same conclusions as our investigator. I'll explain why I say this.

Before agreeing to lend, lenders must work out if a borrower can afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation. A lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out.

For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account things like the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

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 (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).

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

I've thought carefully about what this all means for Miss J's complaint.

When Miss J applied for this loan, Creation asked her for information about her finances and carried out some credit checks. It has sent me a summary of the results it obtained.

Creation recorded Miss J's salary was around £2,025 per month and I think that was broadly about right. I can see from the bank statements Miss J has provided that there was some variation in her pay from month to month but her salary in the three months running up to her taking out this loan was never less than £1,981. After making allowance for her normal monthly spending, including what it saw she owed her other existing creditors, Creation felt that the amount of disposable income she had available was ample to cover the monthly repayments on its loan.

The credit checks Creation carried out showed that Miss J had no active county court judgements registered within the previous six years and no defaults on her record within the last four years.

It noted that, at worst, she had been three payments in arrears over the course of the previous four years but she wasn't currently in arrears or default – and that had been the position for at least the last twelve months.

Miss J says Creation should've known she was in financial difficulties at the time it lent to her. But I think it's fair to say that all the information Creation had gathered tended to suggest that Miss J seemed to be managing her credit without any signs that she had ongoing money problems or a serious debt problem. It wouldn't be unusual for someone applying for this type of lending to have other debt – and sometimes even an impaired credit history. And these wouldn't necessarily be fair reasons not to lend. I don't think the amount of debt shown on Miss J's credit checks was excessive having regard to her income or that anything else revealed in the credit checks Creation carried out was enough for me to say that a responsible lender should've realised it needed to find out more before lending or that it should have refused the loan application.

I'd expect Creation to decide Miss J's lending application based on the information it was reasonably entitled to rely on at the time. When a lender carries out a credit search, the information it sees doesn't usually provide the same level of detail that a person's own credit search will. And it isn't necessarily up to date – that can depend on when other creditors have reported information and when it's been recorded by the credit reference agency. A lender might only see a small portion of a borrower's credit file, or some information might be missing or anonymised. I'm also aware that not all payday and short term lenders report to the same credit reference agencies. This means that some information Miss J might expect to see reflected on a credit check may not have been identified by a credit check done by Creation when she applied for this loan.

To sum up, I don't think it was unreasonable for Creation to lend here – especially as there wasn't anything obvious, in the information it had, to suggest Miss J wouldn't be able to repay the loan in a sustainable way. And I don't think proportionate checks would've required Creation to probe any more deeply into Miss J's finances or ask Miss J to prove what she was declaring (by requiring her to send in her bank statements for instance) or check other information sources to verify what she had told them (or omitted to say) about her financial circumstances.

I have no reason to doubt Miss J when she says she would have responded honestly to a direct question about gambling, but this wasn't something I would necessarily expect a responsible lender to enquire into if there was nothing to suggest this might be a particular concern. I don't think anything Creation saw in the information it had in front of it would have alerted a responsible lender to think that Miss J's spending on gambling (or anything else) was out of control or that her use of credit showed hallmarks of someone struggling to gain control of her debt. And I think it's fair to say that Miss J was fully engaged in the application process and there would have been an opportunity for Miss J to mention this to the lender had she wished to alert it to her gambling spending.

I have also kept in mind that Miss J told Creation that she intended to use this loan for 'debt consolidation' – in other words, to pay off other debt. I think in these circumstances Creation was reasonably entitled to take a view that this suggested Miss J was borrowing specifically to help her manage her finances more responsibly – and it looked like she ought to be able to afford to do that on the figures it worked out.

I can't fairly say in this situation that Creation is responsible for adding to Miss J's debt problems if she didn't use the loan for its stated purpose. I think she *could* have used the loan to help her improve her financial situation.

In particular, she could've saved on credit card interest as it looks like she might have been making only minimum monthly repayments to her cards which adds very significantly to the long term cost of that credit – repayments at that level are insufficient to make any meaningful inroads into card balances.

I'm sorry that Miss J has an ongoing problem with debt and that repaying this loan has proved difficult for her. I accept that Miss J's actual circumstances possibly weren't fully reflected either in the information she provided, or the other information Creation obtained. But in order to uphold this complaint I have to be able to say a lender did something wrong. In this case, I don't think that Creation did anything wrong in deciding to lend this loan to Miss J. And I haven't seen enough to make me think that Creation acted towards Miss J in any other way that wasn't fair and reasonable. Creation seems to me to have responded fairly and reasonably when Miss J had problems keeping up with the loan monthly repayments. And I can't fairly say it wasn't entitled to sell her debt or that it acted unfairly or unreasonably when it chose to do this.

I appreciate that my decision will likely come as a disappointment to Miss J and I'm sorry. But I hope my explanations help her understand why I've reached these conclusions.

I expect Creation to continue to work constructively with Miss J and to treat her positively and sympathetically as long as she is continuing to experience financial difficulty. I would encourage Miss J to provide full details of her financial situation to the new debt owner if she still needs time to pay the outstanding balance on the loan. And if Miss J would like help to manage her finances there's more information about how to get free debt advice and other support on our website – or we can provide contact details if she gives us a call.

### **My final decision**

For the reasons given above, I don't uphold Miss J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 4 January 2022.

Susan Webb  
**Ombudsman**