

The complaint

Miss L complains that Creation Consumer Finance Ltd (CCFL) were irresponsible in approving her loan application for £9,900.

What happened

On 5 January 2018 CCFL approved Miss L's online loan application. She was given a loan for £9,900 over a 60-month term at 14.9% APR. At the point of application Miss L's annual gross salary was £23,707 (net £16,448) although she told CCFL it was £18,000 per year net. She was living with her parents. She had no dependants. Miss L said that the purpose of the loan was to consolidate other debt. Miss L told this service that she had long term debt of £18,348 and short-term credit/store card debt of £13,116, that being within her credit limit of £15,450. She feels that in CCFL giving her this loan it made her financial position worse not better and that had CCFL carried out appropriate checks it would have realised that she could not afford the loan.

CCFL said that her application was not met with any 'decline' or 'refer' indicators, and that there were no defaults in the previous four years and no recorded County Court Judgments (CCJs) in the previous six years. CCFL said Miss L comfortably passed their internal application criteria and had a good internal credit score. CCFL assessed the loan as affordable noting that Miss L had one loan elsewhere with an outstanding balance of £17,680 and a £361 monthly repayment, and no mortgage commitment. As such it did not consider that it had behaved irresponsibly and rejected Miss L's complaint.

Miss L was unhappy with CCFL's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that CCFL hadn't carried out sufficient checks and in fact Miss L had been in a significant amount of debt at the time of her application. If proportionate and reasonable checks been carried out, the investigator thought CCFL would have not lent to Miss L. CCFL didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

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.

I invited the parties to let me have any further comments and evidence in response to my Provisional Decision, if they so wished, by 29 September. Miss L responded with nothing further to add. CCFL did not respond. In the circumstances I have received no further evidence or comments which lead me to change my Provisional Decision, which I repeat below.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Miss L's complaint. When someone

complains about irresponsible and/or unaffordable lending, I consider whether the lender completed reasonable and proportionate checks to satisfy themselves that their borrower would be able to repay the loan in a sustainable way. And if reasonable and proportionate checks weren't carried out, I think about whether the loan would've been approved if the checks had been done. I also consider if the lending decision was fair and if the lender acted unfairly or unreasonably in any other way.

The Financial Conduct Authority's (FCA) guidance at the time Miss L took this loan in 2018 can be found in the FCA handbook at the section marked CONC 5.2. This section provides that before making a regulated credit agreement (as was the case here) a business such as CCFL was required to undertake an assessment of the creditworthiness of its customer, meaning that it was required to consider;

- the potential that the loan commitment could adversely impact on Miss L's financial situation taking into account the information of which it was aware at the time, and
- the ability of Miss L to make repayments as they fell due over the life of the loan.

Further, the assessment had to be based on sufficient information from the customer, where appropriate, and a credit reference agency, where necessary. CONC 5.2.4(2) said that a business should consider what is appropriate taking into account the type and amount of the credit and the risks to the customer of the credit not being sustainable. And CONC 5.2.4(3) gives an indication of what a lender *might* (my emphasis) look at in its creditworthiness assessment depending on the circumstances, which could include some or all of the following:-

- its record of previous dealings;
- evidence of income;
- evidence of expenditure;
- a credit score;
- a credit reference agency report; and
- information provided by the customer.

In this complaint CCFL haven't been able to provide a copy of Miss L's full credit file they used from January 2018, but Miss L has been able to supply a copy herself, albeit she obtained that at a later date. Her report does show the large loan which CCFL saw on their report, but it also shows she had five active credit cards with a combined balance of around £13,000 out of a credit limit of £15,450. CCFL have confirmed they knew Miss L had credit card debt. But Miss L didn't disclose this credit card debt when she made her application. In my view this inconsistency ought to have been sufficient to trigger further checks by CCFL because it should have been apparent that they didn't have accurate data.

So, although CCFL's checks showed Miss L had no defaults for the previous four years and no CCJ's recorded in the last six years; that her internal credit score was good, and she passed CCFL's affordability test. And although Miss L had no mortgage commitment and was living with her parents, which necessarily would have meant her disposable income was higher than it would have been had she been living independently, if further checks had been carried out CCFL would have realised that the loan was not affordable for her.

Whilst I acknowledge that there is no obligation for a lender to check an applicant's bank statements, if CCFL had carried out further checks as I feel it ought, and if it had obtained her banks statements, which would have been reasonable and proportionate, it would have seen a lot of regular payments.

These regular payments alone amounted to £1,119.32 as she had the loan payment of £361 per month to Tesco, a car payment of £260 per month, BT £49.48 per month, DVLA £10.06 per month, EJ L £100 per month, Boots £19 per month, Sky £52 per month, Nationwide Credit Card £30 per month, H3G (mobile phone I think) £15 & £19 per month, Creation £28.78 per month, MBNA £40 & £75 per month, Barclaycard £60 per month. In addition, there were multiple direct debits to PayPal of small individual amounts. This must be set against her net monthly income of £1,370.66 and also that she had other day to day expenditure for necessary items.

Miss L has confirmed that she did indeed use the loan to pay off existing debt although it was not enough to satisfy all her debt, and within a few months two of her credit cards had large balances on them again. I know that Miss L maintained payments for 18 months but that doesn't of itself signify affordability. I also note that when CCFL initially responded to Miss L after she had made her application, it was clarifying with her the amount of the loan she was requesting since she had indicated she was interested in a higher value loan of £23,000. Importantly, CCFL told her that if she wanted the higher loan she would need to provide further evidence in the form of her net monthly income and provide a copy of her last wage slip together with a bank statement. This indicates to me that CCFL were clearly alive to the possibility of making further checks in the form of obtaining bank statement should the circumstances require it.

Putting things right

In summary, I agree with our investigator's view that Miss L was in significant debt prior to the grant of this loan by CCFL and that made it appropriate for CCFL to carry out further checks. The checks actually carried out were not proportionate given the value of the loan and its duration. If further checks had been done then the extent of Miss L's debt would have been better understood and CCFL would have been able to see that the loan was not affordable or sustainable given Miss L's high outgoings.

I also agree with our investigator's view as to resolution which I have set out below. I don't think that CCFL should refund the amount borrowed since Miss L has clearly had the benefit of the money in reducing her old debts. As this debt has been sold on CCFL should buy the debt back if that is possible. If it is not then CCFL should liaise with the debt owner to achieve the following outcome.

- Refund all interest and charges applied to the loan. If this refund results in an overpayment to the loan, then it should pay that overpayment to Miss L.
- CCFL should also add 8% simple interest per year on any overpayment amount. This should be calculated from the date Miss L would have repaid the loan (if no interest or charges had been added) to the date of settlement.
- Remove any adverse information recorded on Miss L's credit file.

My final decision

Creation Consumer Finance Ltd should refund all interest and charges applied to the loan. If this refund results in an overpayment to the loan, then it should pay that overpayment to Miss L.

Creation Consumer Finance Ltd should also add 8% simple interest per year on any overpayment amount it pays to Miss L. This should be calculated from the date Miss L would have repaid the loan (if no interest or charges had been added) to the date of settlement.

Creation Consumer Finance Ltd should also remove any adverse information recorded on Miss L's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 1 November 2021.

Jonathan Willis
Ombudsman