DRN-3204023

Complaint

Ms B has complained that CarCashPoint Limited ("CCP") provided her with an unaffordable logbook loan. She's said that she'd had bad credit all her life and couldn't afford the payments.

Background

CCP provided Ms B with a logbook loan for £1,860.00 in February 2019. This loan had an APR of 310.31%, which meant that the total amount of £4,538.82, was due to be repaid in 78 weekly instalments of £58.19.

One of our adjudicators looked at this complaint and thought that proportionate checks would have shown this loan was unaffordable for Ms B and so upheld the complaint.

CCP 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 Ms 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 Ms B's complaint. These two questions are:

1. Did CCP complete reasonable and proportionate checks to satisfy itself that Ms B would be able to repay her loan without difficulty or experiencing significant adverse consequences?

    o If so, did it make a fair lending decision?
    o If not, would those checks have shown that Ms B would've been able to do so?

2. Did CCP act unfairly or unreasonably in some other way?

Did CCP complete reasonable and proportionate checks to satisfy itself that Ms B would be able to repay her loan without difficulty or experiencing significant adverse consequences?

CCP provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required CCP to carry out a reasonable and proportionate assessment of Ms 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 CCP had to think about whether repaying the loan would cause significant adverse consequences *for Ms B*. In practice this meant that CCP had to ensure that making the payments to the loan wouldn’t cause Ms B undue difficulty or adverse consequences.

In other words, it wasn’t enough for CCP to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Ms B and it wasn’t enough for CCP to simply lend because the loan was secured on Ms B’s vehicle. In fact as there was the possibility of Ms 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 CCP’s checks reasonable and proportionate?

CCP carried out an income and expenditure assessment with Ms B prior to providing her with this loan. CCP checks suggested Ms B’s income was around £1,600.00 a month with a further £460 in benefits and her expenditure around £1,380.00 In CCP’s view this left Ms B with over £350 in disposable income, once her discretionary spending was taken into account, which was more than enough to cover the payments to this loan. CCP also obtained bank statements from Ms B.

I’ve carefully considered what CCP 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, CCP knew that Ms B’s expenditure was significantly higher than it had calculated.

Secondly, there was a significant amount of gambling on the statement obtained. And finally Ms B was making payments to at least one debt collector and a high cost lender. So the other information obtained clearly contradicted the notion that Ms B had a monthly disposable income of the amount CCP relied on.

And I would have expected CCP to have found out more about these apparent discrepancies before agreeing to lend. As I can’t see that this CCP did do this and instead chose to rely on what appears to be overly optimistic income and expenditure assessment, I don’t think that the checks it carried out before providing Ms B with her loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to CCP that Ms 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 CCP that Ms B would have been unable to sustainably repay this loan.

CCP was required to establish whether Ms 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 Ms B’s income was being used to meet her extensive existing commitments as well as payments to high-cost creditors. Further checks would also have shown that the reason Ms B was struggling was because she was gambling significant sums. 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 Ms 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 CCP to the fact that Ms B was in no sort of position to be able to make the payments on this loan in a sustainable manner.

Did CCP act unfairly or unreasonably towards Ms B in some other way?

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

Did Ms B lose out as a result of CCP unfairly providing her with this loan?

As Ms 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 CCP did wrong.

So I think that CCP needs to put things right.

Fair compensation – what CCP needs to do to put things right for Ms B

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

- terminating the bill of sale and transferring the ownership of Ms B's car back to her;

- removing all interest, fees and charges applied to the loan from the outset. The payments made should be deducted from the new starting balance – the £1,860.00 originally lent. CCP should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments should be refunded to Ms B;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Ms B to the date of settlement†;

- removing any adverse information recorded on Ms H's credit file as a result of this loan.

† HM Revenue & Customs requires CCP to take off tax from this interest. CCP must give Ms B a certificate showing how much tax it has taken off if she asks for one.
I'd also remind CCP of its obligation to exercise forbearance if it intends to collect on an outstanding balance, should one remain after all adjustments have been made to the account, and it's the case that Ms B is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Ms B's complaint. CarCashPoint 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 Ms B to accept or reject my decision before 24 March 2022.

Jeshen Narayanan
Ombudsman