

Complaint

Mr B has complained that Creative Finance Corp Ltd (trading as “Motorkitty”) provided him with unaffordable logbook loans. He says he had County Court Judgements (“CCJ”) and defaults and this was reflected in his poor credit score.

Background

Motorkitty provided Mr B with a first logbook loan for £1,200.00 in December 2018 and a second one for £750 a couple of months later. Both loans were due to be repaid in six monthly instalments. One of our adjudicators looked at this complaint and thought that Motorkitty shouldn’t have provided either of these loans as it ought to have realised they were unaffordable.

Motorkitty disagreed and asked for an ombudsman to review the complaint.

My findings

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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 Mr 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 Mr B’s complaint. These two questions are:

1. Did Motorkitty complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay his loans without experiencing difficulty or suffering significant adverse consequences?
 - o If so, did it make a fair lending decision?
 - o If not, would those checks have shown that Mr B would’ve been able to do so?
2. Did Motorkitty act unfairly or unreasonably in some other way?

Did Motorkitty complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay his loans without experiencing difficulty or suffering significant adverse consequences?

Motorkitty provided these loans while it was authorised and regulated by the Financial Conduct Authority (“FCA”). The rules and regulations in place required Motorkitty to carry out

a reasonable and proportionate assessment of Mr B's ability to make the repayments under these agreements. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Motorkitty had to think about whether repaying the loan would cause significant adverse consequences *for Mr B*. In practice this meant that Motorkitty had to ensure that making the payments to the loans wouldn't cause Mr B undue difficulty or adverse consequences.

In other words, it wasn't enough for Motorkitty to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr B. 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. 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 Motorkitty's checks reasonable and proportionate?

Motorkitty says that it carried out an income and expenditure assessment with Mr B prior to providing him with both his loans. This information was validated against payslips and bank statements which Mr B provided. Motorkitty says Mr B's income was £1,400.00 a month and he had monthly expenditure of £430. This left Mr B with £970 in monthly disposable income and therefore its checks suggested Mr B had more than enough to cover the payments to these loans.

I've carefully considered what Motorkitty has said. But while it had a recorded expenditure of £430 a month for Mr B, £0 was recorded for credit commitments. And it is immediately evident that there are payments to existing creditors in the bank statements Motorkitty obtained. Secondly the sheer number of returned direct debit payments on Mr B called into question whether Mr B really had almost £1,000.00 in disposable income – after all someone with this level of disposable income is usually able to meet their direct debits. I say this while also mindful that for loan 2 Mr B appears to have been seeking to borrow an amount less than he supposedly had available to him in disposable income but on such disadvantageous terms.

I've seen that Motorkitty has said that it doesn't consider someone's credit score but considers affordability. However, there is more to assessing affordability than simply asking for information and asking a prospective borrower whether the amount that will be lent to them is affordable – especially where a lender clearly ought to see obvious inconsistencies between any declarations and other information obtained.

Bearing in mind these circumstances and the inconsistencies and contradictions present in the information Motorkitty gathered, I think it's reasonable and proportionate to have expected Motorkitty to have taken additional steps to question what it was told. And I think that Motorkitty needed to take additional steps to verify Mr B's actual monthly expenditure.

As I can't see that this Motorkitty did do this, I don't think that the checks it carried out before providing Mr B with these loans were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Motorkitty that Mr B would have been unable to repay his loans?

As reasonable and proportionate checks weren't carried out before 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 proportionate checks would have told Motorkitty that Mr B would have been unable to sustainably repay his loans.

Motorkitty was required to establish whether Mr B could make his loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. So the fact that Mr B made most of the payments to these loans on time, doesn't in itself present a fait accompli that the loans were affordable as Motorkitty appears to be arguing.

I've carefully considered the information provided. Having done so, it's clear that Mr B was struggling to manage his finances. It doesn't take too much probing and digging to see that the reason for Mr B's difficulties and existing impecunious position is because he was gambling unsustainable sums of money. And his ability to repay these loans would in large part be dependent on his success as a gambler, which isn't any reasonable basis for concluding that Mr B could repay these loans without borrowing further or experiencing significant adverse consequences.

So I'm satisfied that proportionate checks would have shown Motorkitty that Mr B was unlikely to be able to repay these loans without borrowing further or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr B would not have been able to make the repayments to his loans 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 Motorkitty to the fact that Mr B was in no sort of position to make the payments on these loans without suffering significant adverse consequences.

Did Motorkitty act unfairly or unreasonably towards Mr B in some other way?

I've not seen anything here to suggest Motorkitty acted unfairly or unreasonably towards Mr B in some other way.

Did Mr B lose out as a result of Motorkitty unfairly providing him with his loans?

As Mr B paid a high amount of interest and charges on loans that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what Motorkitty did wrong.

So I think that Motorkitty needs to put things right.

Fair compensation – what Motorkitty needs to do to put things right for Mr B

Having thought about everything, Motorkitty should put things right for Mr B by:

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

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

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. Creative Finance Corp Ltd needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 March 2022.

Jeshen Narayanan
Ombudsman