

The complaint

Miss M complained about two guarantor loans granted to her by GeorgeBanco.com Limited (“GBL”). GBL has since been acquired by Everyday Lending Limited. So, for ease, I shall refer to the lender as ELL below.

What happened

ELL agreed two guarantor loans for Miss M. Loan 1 was for £5,000 and taken out in March 2015. The loan was repayable by 60 monthly repayments of £187.93. Miss M kept up her repayments until late 2016. But her financial circumstances changed in August 2016 and she started to face financial problems. ELL, in response, then effectively agreed a long term repayment plan for Miss M in January 2017. The lender restructured the outstanding balance on Loan 1 as a new guarantor loan over ten years for £4,338 with £4,062 interest repayable by monthly repayments of £70 a month. The total amount payable of £8,400 under the repayment plan was a little more than the outstanding balance on Loan 1 of £8,010.99.

Miss M said that she was made redundant in August 2016 and had her first child a few months later. She managed to keep up her repayments on Loan 1 for a little while using her redundancy money. But as she had no income, she couldn’t continue to do so.

In January 2017, Miss M asked ELL if it could reduce her monthly loan repayments on Loan 1. She wasn’t working but was receiving child benefit. She offered to pay ELL £70 per month and was told that the only way the lender could accept this offer was if she took out a new guarantor loan for the balance of her existing loan over a longer term. Miss M felt that she had no choice but to do this.

Miss M said she’d struggled to meet the monthly payments. She felt pressured to enter into the new loan as she’d just had her first baby and was very sleep deprived. She had extreme financial worries and a relative (who was also guarantor for the new loan) had been diagnosed with a serious illness and ELL was chasing the relative for payment. Miss M doesn’t believe that ELL carried out an affordability check or a credit check before the new loan, and is seeking a full refund and any money owing to her in interest. She would also like her guarantor released.

ELL didn’t uphold Miss M’s complaint. It said in its final response letter regarding Loan 1 that its affordability calculation showed that after taking this loan with it, Miss M would have had approximately £270 of disposable income remaining. Therefore, it couldn’t agree that this loan was mis-sold to Miss M, or that it was unaffordable.

Miss M had then told ELL in January 2017 that her circumstances had changed. ELL then completed a rewrite of Loan 1. This lowered the APR of Loan 1, extended the term and reduced the repayments in line with her affordability at the time. ELL says that as no funds were issued, the second loan didn’t need to be subject to the same underwriting processes of a new or top up loan. This meant ELL wouldn’t have completed a credit check, but it did conduct an affordability assessment to confirm the new repayment plan was affordable. Miss M was then provided with a new contract to review and electronically sign to confirm

she had read and understood the new terms and conditions. This contract was signed by Miss M on 9 January 2017.

Our investigator's view

The investigator didn't recommend that the complaint should be upheld. She said that ELL had carried out proportionate checks before Loan 1. She hadn't seen anything from the checks it completed that ought to have prompted further checks or suggested that the loan was unaffordable to Miss M. The investigator also couldn't say that ELL had acted unfairly in providing Miss M with the second loan as it reduced her monthly repayments to give her more disposable income.

Miss M responded to say that she agreed with the investigator's findings on Loan 1. She was in full time work at the time and could afford to pay the monthly instalments. But she disagreed that the second loan was affordable. At the time, her partner was paying the living costs and the only income she had was child benefit of £80 per month. She certainly didn't want to take out another loan that would take ten years to pay off and she believes that ELL should have offered her a reduced payment plan instead of a new loan. She believes that if ELL had done the correct checks, it would have seen that she was only in receipt of £80 per month. And making monthly loan repayments of £70 would only have left her with £10.

As the complaint hadn't been resolved informally, it was passed to me, an ombudsman, to decide.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss M and to ELL on 10 January 2022. I summarise my findings:

I noted that where information was conflicting or incomplete. I needed to make my decision on the balance of probabilities, which was what I did here.

I said that I was sorry to learn of the problems Miss M had experienced as a result of her financial difficulties.

I noted that Miss M had agreed with the investigator's findings about Loan 1. So, I said that I didn't propose to investigate Loan 1 further.

Whilst ELL had provided a formal loan agreement to Miss M in January 2017, I thought it was effectively setting up a long term repayment plan for Loan 1 whereby Miss M paid the monthly amount of £70, which she'd offered to pay, over ten years. So, I said that I proposed to refer to the arrangement as a repayment plan, where appropriate, in the rest of the decision.

Miss M said in her response to the investigator's view that she didn't want to take out a second loan and that the lender ought to have offered her a reduced payment plan. But that was what I thought in effect happened here.

I'd thought about whether ELL had acted fairly in providing the repayment plan to Miss M.

I'd considered whether ELL had acted in line with its regulatory obligations when dealing with Miss M's financial difficulties. I could see that the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's Handbook said the following about arrears and forbearance:-

CONC 7.3.3

Where a customer under a regulated credit agreement fails to make an occasional payment when it becomes due, a firm should, in accordance with Principle 6, allow for such unmade payments to be made within the original term of the agreement unless:

1. (1)
the firm reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties; or
[Note: paragraph 4.7 of ILG]
2. (2)
the firm reasonably believes that terminating the agreement will mitigate such adverse consequences for the customer and before terminating the agreement it explains this to the customer.

CONC 7.3.4

A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

CONC 7.3.5

Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

1. (1)
considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);
[Note: paragraph 7.4 (box) of ILG]
2. (2)
allowing deferment of payment of arrears:
 1. (a)
where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or
 2. (b)
provided that doing so does not make the term for the repayments unreasonably excessive;
3. (3)
accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).

CONC 7.3.6

Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.

CONC 7.3.7A

1. (1)
If a customer is in default or in arrears difficulties, the firm should, where appropriate:
 1. (a)
inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies; and

2. (b)

refer the customer to a not-for-profit debt advice body.

2. (2)

A firm may refer the customer to a not-for-profit debt advice body by, for example, providing the customer with a copy of the current arrears information sheet under section 86 of the CCA, or with the name and contact details of a not-for-profit debt advice body or the Money Advice Service; or directly transferring the customer's call to a not-for-profit debt advice body.

3. (3)

In addition, the firm may provide the customer with the name and contact details of another authorised person who has permission for debt counselling, provided that to do so is consistent with the firm's obligations under the regulatory system.

CONC 7.3.8

An example of where a firm is likely to contravene Principle 6 and CONC 7.3.4 R is where the firm does not allow for alternative, affordable payment amounts to repay the debt due in full, where the customer is in default or arrears difficulties and the customer makes a reasonable proposal for repaying the debt or a debt counsellor or another person acting on the customer's behalf makes such a proposal.

I'd noted that CONC 7.3.3 allowed for a repayment plan period to be longer than the original loan term unless the lender had reason to believe that by doing so the amount repayable would be unsustainable or cause the customer to be in financial difficulties. As Miss M had offered repayments of £70 per month and said that all her household bills were being met, I didn't think ELL had acted inappropriately in proposing the longer repayment period at the time.

I'd noted that ELL's final response letter said that it had conducted an affordability assessment to confirm that the repayments of £70 would be affordable. I'd asked the investigator to ask ELL for details of the affordability assessment, but ELL said that due to the age of the case it had been unable to obtain the original affordability assessment. I'd noted that Miss M had said that she'd told ELL her former partner paid all the household bills and that she received child benefit.

In addition, in Miss M's circumstances I would have reasonably expected ELL to be able to show that it had signposted her to free impartial debt advice when she was having financial difficulties. The signposting to impartial debt advice is guidance contained in CONC 7.3.7A. I'd asked the investigator to ask ELL for evidence that it had done this. ELL said it had no evidence from the notes available that Miss M was signposted to free impartial debt advice when she was having financial difficulties. ELL said it may have been mentioned on a call, but the calls were too old to obtain.

I'd asked the investigator to ask Miss M for more information, including her bank statements from 2016 and 2017, about whether she could afford the repayments on the repayment plan. I'd also wanted to know why Miss M had offered ELL £70 per month. She said that she knew she could meet that. She said that her former partner met all the household bills and shopping. From Miss M's answers to my request for more information, it seemed that the repayments were affordable until Miss M split up from her partner in 2019. She hadn't supplied bank statements from 2017, so I was unable to check her financial situation to consider what further checks by ELL might have revealed.

Miss M said that ELL hadn't suggested that she should seek independent advice. But she also said that she didn't seek independent help as she was worried they would go to her

mother who was her guarantor. Her mother was retired, and suffering ill-health and Miss M felt she had to find a way to pay ELL.

I didn't think I had enough information to be able to say that ELL shouldn't have agreed to the repayment plan. So, overall and on balance, I didn't think ELL had acted unfairly in agreeing the repayment plan in January 2017 with Miss M. It seemed that Loan 1 hadn't been unfairly provided and Miss M was able to make her repayments to that loan until there was a change in her circumstances. Miss M then offered to pay reduced monthly payments of £70 (which she told us she knew she could meet) and ELL agreed to her proposal after conducting an affordability assessment.

So, subject to any further representations by Miss M or ELL, I said that I didn't intend to uphold Miss M's complaint. I appreciated that what I'd said was going to disappoint Miss M and I was sorry to have to do that, but I hoped that setting out the reasons as I'd done would help explain how I'd reached my decision.

I did note that ELL's final response letter had said that no funds were issued by the second loan agreement. But I noted that ELL's loan account statement for Loan 1 showed £8,010.99 due from Miss M, but the second loan agreement showed a total amount of £8,400 due. I'd asked the investigator to ask ELL to clarify why the total amount due on the second loan agreement was higher than the balance due of £8,010.99 shown on ELL's loan statement for Loan 1. ELL said it had reviewed the second loan and its processes had changed since it was made with the amount of £389.01 being added when it shouldn't have been. ELL said that it had requested that the balance outstanding be reduced by £389.01 and that this would take place regardless of the outcome of my investigation.

I noted that Miss M had said that she was experiencing financial difficulties. She said she was now a single parent with two young children, living on benefits. She said she had no savings, she had debts and she wasn't in a good financial position at all. She said she was trying really hard to straighten herself out but struggling immensely.

I'd noted from ELL's loan account statement dated October 2021 that Miss M had missed most of her loan repayments since September 2020. She had made two repayments in that time totalling £120. As of 8 October 2021, there was £5,550 outstanding on the account. But I didn't have enough information to say that there wasn't a realistic prospect of Miss M being able to repay the debt.

Miss M responded to my provisional decision to say she disagreed with the outcome but had no further information to provide.

ELL acknowledged receipt of my provisional decision but didn't provide any further information.

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.

Given that Miss M and ELL have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I don't uphold this complaint.

If Miss M is still experiencing financial difficulties, I would remind ELL of its responsibility to treat Miss M in a positive and sympathetic manner about the amounts she should repay.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 15 March 2022.

Roslyn Rawson

Ombudsman