

The complaint

Mr K has complained that Christian Paul Gachet trading as Easylogbookloans.tv ("ELBL") was irresponsible to have agreed credit for him.

What happened

ELBL provided Mr K with a loan of £2,200 in April 2018. The total amount of £7,744, including interest and charges, was to be repaid in 36 instalments of £215 (figures rounded).

This was a 'log book' loan, in other words it was granted on the basis that Mr K provided ELBL with a bill of sale for his car. This meant that if Mr K didn't make his loan repayments ELBL could potentially recoup its losses through the sale of the vehicle.

It seems Mr K missed payments in 2019 and fell into sustained arrears. I understand the loan was repaid in August 2020 with a lump sum payment from Mr K's insurers when his car was written-off.

Mr K says that he doesn't believe ELBL took reasonable steps to ensure the loan was affordable for him. He says when he fell behind with his payments the lender repeatedly threatened to take his car, and he ended up with a small amount left from the insurance payment with which to purchase a new car. Mr K says ELBL didn't behave responsibly and that it has profited from the loan.

One of our investigators looked into Mr K's complaint and recommended that it be upheld because they concluded ELBL had lent irresponsibly. They recommended ELBL refund all interest and charges paid on the loan and remove adverse information relating to it from Mr K's credit file.

Mr K accepted the recommendation, but ELBL didn't agree with it. The case came to me, as an ombudsman, to review and resolve. I issued a provisional decision on 4 February 2022 explaining why I thought Mr K's complaint should be upheld. Mr K agreed with my provisional conclusions but ELBL haven't responded. This is my final decision on the matter and will be legally binding on both parties if Mr K accepts it.

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.

Having done so, and as neither party has provided any further comment or new information for me to consider, I see no reason to depart from my provisional conclusions. I'll set out my reasoning again below.

As I'd said in my provisional decision, ELBL will be familiar with the regulations in place so I will summarise. ELBL needed to check that Mr K could afford to meet his repayments sustainably before agreeing credit for him. In other words it needed to check that he could

meet his repayments out of his usual means without having to borrow further and without experiencing financial difficulty or other adverse consequences. The necessary checks needed to be proportionate to the nature of the credit and Mr K's circumstances.

The overarching requirement was that ELBL needed to pay due regard to Mr K's interests and treat him fairly. CONC 2.2.2G gave an example of contravening this requirement as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did ELBL complete reasonable and proportionate checks when assessing Mr K's application to satisfy itself that he would be able to make his repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did ELBL make a fair lending decision?

ELBL provided this Service with the information it relied on in making its lending decision. This included a record of its income and expenditure analysis and copies of Mr K's payslips from several months prior to the agreement. ELBL accepted the figures Mr K gave about his monthly net income and expenditure, £2,215 and £1,309 respectively, and calculated that he had a monthly surplus of £906.

ELBL says that it agreed to enter into the agreement only on the understanding that this information was correct, and that Mr K had signed a legally binding loan agreement. ELBL also said that it was confident the loan was affordable for Mr K and that it had satisfied its regulatory obligations.

As set out in the regulations at the time (see CONC 5.3.1G(4)) if a business took income or expenditure into account in its assessment it was generally not sufficient for it to rely solely on a statement of those matters made by the customer. Although ELBL verified Mr K's income by checking some of his payslips, I can't see that it took steps to independently verify what he'd said about his outgoings. Mr K would need to make his repayments for three years and the consequences of not doing so were potentially serious in that he might lose his car. Furthermore, it seems odd to me that Mr K would actually have had such a relatively high surplus each month, considering he was prepared to take out an expensive loan for about twice the amount. Altogether, I don't think ELBL took sufficient steps here to check that this loan would be sustainable for Mr K over the term.

ELBL mentioned a legally binding loan agreement and I note that the terms and conditions of this agreement (Section 3 Your Obligations) stated that by signing it Mr K confirmed that he was not "a debtor under any proceedings in bankruptcy" and had "no intention to file a petition for relief under the Insolvency Act 1986 or grant a trust deed or enter into any other arrangement with your creditors..." ELBL says that it wasn't obliged to check Mr K's credit file and this is true – the regulations in place at the time were not prescriptive about how a lender might gather information. As ELBL were relying on Mr K's statement of his solvency however, it seems to me it might have been proportionate to take steps to verify his position in this regard given such information is publicly available.

Mr K has provided some information about his financial circumstances at the time by way of bank statements and a credit file. I am not suggesting this is the information ELBL ought to have gathered but I think it's a reasonably proxy for what it might have found out through proportionate checks.

The information I've reviewed showed that Mr K had:

- understated some of his expenses, for example his monthly child maintenance

payments were £300 (not £150) and it seems his share of household expenses (including rent, bills and food) could come to over £1,000 (not £560) in any one month;

- borrowed money from his parents and occasionally repaid them, for example by an amount of £300 in February 2018;
- almost £15,000 of debt across ten accounts which had defaulted in the previous six months, about a third of which defaulted in the previous three;
- a defaulted debt which was owned by a debt collector specialising in bankruptcy and other insolvency arrangements;
- taken out three short term loans in the previous six months, two of which had defaulted;
- entered into a Trust Deed with some of his creditors in October 2017.

ELBL was required to do more than assess Mr K's ability to repay the credit – it needed to check whether there was a risk to him in being able to do so without experiencing financial difficulty or adverse consequences. I think the information the lender would likely have seen through proportionate checks would have shown that Mr K potentially couldn't afford to meet his repayments and wasn't managing his existing debt levels without difficulty. I think these circumstances together with Mr K's recent use of expensive short term credit were likely indications of an ongoing financial need. So there was a risk that he would not manage to repay this loan and any further credit would simply add to his indebtedness. I think ELBL was irresponsible to have agreed this loan for Mr K and I think he's lost out because of this.

I can see from the statement of account that Mr K had difficulty maintaining his loan repayments from the beginning. I can also see from his credit file that he continued to default on debt after taking out this loan with a further £3,500 defaulting in the months afterwards. Mr K has ended up paying interest and charges, and this loan potentially had a negative impact on his creditworthiness. I think ELBL needs to redress this and I've set out below the steps it should take to put things right for Mr K.

Putting things right

I understand that the loan has now been repaid. I think it's fair that Mr K has repaid the capital he borrowed as he's had the use of this money, but he shouldn't have paid interest and charges on this. So, in order to put things right for Mr K, ELBL needs to:

- a) Refund to Mr K payments he made above the amount of £2,200 capital he borrowed;
- b) Add 8% simple interest per annum to these overpayments from the date they were paid to the date of refund; and
- c) Remove any adverse information about this loan from Mr K's credit file; and
- d) Revoke any interest it has in Mr K's car if any is still in place and return the relevant documents to him if it hasn't already done so.

*HM Revenue & Customs requires ELBL to deduct tax from this interest. It should give Mr K a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons set out above, I am upholding Mr K's complaint about Christian Paul Gachet trading as Easylogbookloans.tv and direct it to put things right as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 28 March 2022.

Michelle Boundy
Ombudsman