

The complaint

Miss R has complained that Christian Paul Gachet trading as Easylogbookloans.tv ("ELBL") was irresponsible to have agreed credit for her.

What happened

ELBL provided Miss R with a loan of £1,000 in May 2017. The total amount of £2,050, including interest and charges, was to be repaid in 18 instalments of £114 (figures rounded).

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

It seems Miss R made two payments for the loan and then fell into sustained arrears. By mid-November 2017, about six months after taking out the loan, ELBL recovered Miss R's car. I understand she then made three payments totalling almost £1,800 that month to repay the loan in full and retrieve her car.

Miss R says that the loan was completely unaffordable for her because she was a compulsive gambler and spent virtually every penny she earned. She says this would have been obvious from her bank statements. Miss R also says that she had no prior knowledge that her car was to be recovered because ELBL had been sending letters to the wrong address. She says this caused her a great deal of stress to the extent it seriously impacted on her health.

One of our investigators looked into Miss R's complaint and recommended that it be upheld because they concluded that ELBL had lent irresponsibly. They recommended that ELBL refund all interest and charges paid on the loan to Miss R, along with compensatory interest, and that all adverse information relating to it be removed from Miss R's credit file.

Miss R 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 28 January explaining why I planned to uphold Miss R's complaint. Miss R agreed with my provisional decision but ELBL didn't respond. This is my final decision on the matter and will be legally binding on both parties if Miss R 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 having had no comment or new information from either party to consider, I see no reason to depart from my provisional conclusions and so I am upholding Miss R's complaint. I'll set out again my reasons for doing so.

As I'd said in my provisional decision, ELBL will be familiar with the regulations that were in place at the time so I will summarise these. ELBL needed to check that Miss R could afford to meet her repayments sustainably before agreeing credit for her. In other words it needed to check that Miss R could meet her repayments out of her 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 to Miss R's circumstances.

The overarching requirement was that ELBL needed to pay due regard to Miss R's interests and treat her fairly. The regulations (see 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 Miss R's application to satisfy itself that she would be able to make her repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did ELBL make a fair lending decision? I've also considered whether ELBL acted unfairly in any other way.

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, copies of Miss R's payslips from several weeks prior to the lending and a recent credit card bill of hers. ELBL accepted the figures Miss R gave about her monthly net income and expenditure, £2,500 and £1,198 respectively, and calculated that this left her with a monthly surplus of £1,302.

As set out in the regulations at the time (see CONC 5.3.1G(4)) if a business takes income or expenditure into account in its assessment it is generally not sufficient for it to rely solely on a statement of those matters made by the customer. Although ELBL verified Miss R's income, I can't see that it took steps to independently verify what she'd said about her outgoings. Miss R would need to meet her repayments for 18 months and the consequences of not doing so were potentially serious in that she might lose her car. Furthermore, it seems odd to me that Miss R would have had such a relatively high surplus each month, considering she was prepared to take out an expensive loan for less than this amount. Altogether, I don't think ELBL took sufficient steps here to check that this loan would be sustainable for Miss R over the term.

In addition, I've noted that the credit card statement Miss R provided to ELBL showed that she had taken cash advances and exceeded her credit limit of £200. The statement said that she needed to pay £46 immediately to bring her account under its limit. I think this information ought to have raised concerns about how Miss R was managing her money and prompted further checks by ELBL. CONC 5.3.7R stated that a lender must not accept an application for credit under a regulated credit agreement where it knows or ought reasonably to suspect that the customer has not been truthful in relation to information supplied. I think ELBL ought to have investigated the apparent inconsistency between Miss R's declared monthly surplus and her management of credit.

Miss R has provided some information about her financial circumstances at the time by way of bank statements. I am not suggesting this is the information ELBL ought to have gathered but I think it's a reasonably proxy for what it was likely to have found out through proportionate checks. The statements show that Miss R was spending significantly large amounts on gambling. For example, Miss R spent over £3,000 in February 2017 and over

£2,000 in March; there were gambling-related withdrawals shown on her bank statements for 15 days in March, and the numbers of transactions per day often reached double figures. I think this pattern of spending would have raised serious concerns for ELBL about the suitability of a loan for Miss R and the risk to her of not managing to meet her repayments sustainably over the term of the loan.

ELBL says that it isn't fair to include gambling expenditure but to exclude gambling winnings when considering these transactions in relation to affordability. It says if gambling winnings are not guaranteed then neither is gambling expenditure. Even if I were to agree with this viewpoint, I can see that Miss R's monthly gambling spend in the three months prior to the loan always exceeded the gambling-related deposits, for example by over £1,000 in March 2017. So I don't think that consideration of Miss R's winnings alongside her gambling spend would have offered any reassurance to ELBL that the loan would be sustainable for her.

I've noted that Miss R spent ELBL's loan on gambling within a few days, returning her bank balance to about £20. As mentioned, Miss R struggled to meet her repayments and her car was recovered by ELBL with the intent to sell it to recoup its money. Altogether, I've concluded that ELBL was irresponsible to have agreed this loan for Miss R and so it needs to put this right.

I have also considered what Miss R said about the recovery of her car. ELBL said that it sent Miss R a notice of sums in arrears on the 25 September 2017 followed by a default notice on the 2 October. Miss R got in touch a few days later on the 5 October to discuss a repayment plan. When no payments were subsequently made, ELBL sent Miss R a final demand notice.

I've seen copies of these letters, all headed with the same address for Miss R. I think it's reasonable to accept that Miss R saw the default notice as she made contact a few days later. It then also seems reasonable to accept that Miss R saw all of these letters and understood that her car would be recovered to repay the debt. So I haven't concluded that ELBL got something wrong regarding its communications to Miss R about the consequences of not paying her debt.

I understand that Miss R's car was taken on the 13 November 2017. Miss R agreed to pay £200 on the 17th, £800 on the 24th and £798 on the 1 December and did so, and the car was returned to her.

Miss R says that she borrowed money from her family to repay the loan as she needed her car to get to work and that she was able to use a family member's car during the time she was without hers. Miss R also says that she had difficulty with her mental health at the time and the recovery of her car and her subsequent reliance on her family to support her contributed to a serious deterioration in her health and a breakdown in these relationships.

Let me say again that I don't doubt what Miss R has told us about this matter and I'm sorry to hear things have been so difficult for her. I understand she struggled with her finances and her health before taking out this loan, and so I can't reasonably attribute all of her difficulties to this particular lending decision.

That said, I have borne in mind CONC 7.3.10R which states that a business "must not pressurise a customer to pay a debt in one single or very few repayments or in unreasonably large amounts when to do so would have an adverse impact on the customer's financial circumstances." I think Miss R suffered distress and inconvenience when ELBL recovered her car and she had to make alternative arrangements. And, while I

understand from the customer records that Miss R had previously made an offer of a regular payment and didn't manage to put this in place, it seems to me that she felt pressured to repay the loan in a short space of time and, having no other recourse, needed to rely on borrowed money to meet this debt.

Therefore I've concluded that ELBL should pay Miss R some compensation for the adverse impact this action had on her. As set out on our website, an award of £300 or over might be fair where the impact of an action has caused considerable upset and worry and significant inconvenience that needed extra effort to sort out, typically over weeks or months. I've concluded that an award in this bracket would be appropriate here.

Putting things right

I understand that the loan has been repaid. As Miss R had the use of the money she borrowed I think it's right that she has repaid that. However, I don't think she should have paid any interest or fees and shouldn't have her credit file impacted. In order to put things right for Miss R, ELBL needs to:

- a) Refund to Miss R payments she made above the amount of £1,000 she borrowed. To be clear this includes any interest or charges associated with the credit or its collection; and
- b) Add 8% simple interest* per annum to these overpayments from the date they were paid to the date of refund; and
- c) Pay Miss R an amount of £300 to reflect the distress and inconvenience she suffered when ELBL recovered her car; and
- d) Remove any adverse information about this loan from Miss R's credit file; and
- e) Revoke any interest it has in Miss R's car if any is still in place and return the relevant documents to her if it hasn't already done so.

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

My final decision

For the reasons set out above, I'm upholding Miss R'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 Miss R to accept or reject my decision before 29 March 2022.

Michelle Boundy
Ombudsman