

Complaint

Mr W has complained about a loan Creation Consumer Finance Limited (“Creation”) provided to him to purchase a television. He’s said the finance was unaffordable and that Creation didn’t help him once he got into difficulty with his payments.

Background

Creation provided Mr W with a loan for £469 in December 2016. The total amount of £505.44, including interest of £36.44 was due to be repaid in 9 instalments of £36.44.

One of our investigators reviewed what Mr W’s complaint and she thought that although Creation didn’t do anything wrong when initially providing the finance, it failed to demonstrate that it exercised forbearance and due consideration once Mr W ran into difficulty with his payments. So she thought that Mr W’s complaint should be partially upheld. Creation didn’t respond and so the case was passed to an ombudsman for a final decision.

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 explained how we handle complaints about unaffordable and irresponsible lending and complaints where borrowers say there weren’t treated fairly when in financial difficulty on our website. And I’ve considered all of this information when deciding Mr W’s complaint.

Having considered everything, I’m partially upholding Mr W’s complaint. I’ll explain why in a little more detail.

Creation needed to make sure it didn’t lend irresponsibly. In practice, what this means is Creation needed to carry out proportionate checks to be able to understand whether Mr W could afford to repay any credit it provided. Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

As I understand it, this was Mr W’s first agreement with Creation. And it’s fair to say Mr W was being able to make relatively low monthly payments over short period of time. In these circumstances, it could be argued that a more lighter touch check could have been proportionate. This is especially as Creation’s enquiries into Mr W’s circumstances suggested that he was employed and earning around £3,000.00 a month. That said, I’m also mindful that the credit check Creation carried out showed that Mr W had quite significant outstanding balances on short term loans.

So while Mr W may have had a relatively high monthly salary, Mr W's outstanding balances on short-term loans didn't suggest that the loan payments here were obviously affordable. In these circumstances, I think Creation needed to find out more and reasonable and proportionate checks would have involved finding out more about Mr W's expenditure.

However, the information Mr W has provided about his expenditure suggests that the low monthly repayments for this agreement were affordable – he still had enough left over to make these repayments once his expenditure was deducted from his income. So while Creation should have done more to find out about Mr W's expenditure, I don't think doing this would more likely than not have stopped Creation from lending. As this is the case, I don't think reasonable and proportionate checks would have made a difference here and it wasn't unfair for Creation have agreed to this finance in the first place.

I now turn to what happened from December 2017 onwards.

It isn't in dispute that Mr W got into contact with Creation in December 2017 to explain that he was struggling with his payments because he was experiencing financial difficulty. And once a lender is told that a borrower is experiencing financial difficulty we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations. Ultimately, we'd expect a lender to listen to a borrower, get an understanding of their circumstances and then assess the most appropriate way to move forward.

Creation says it passed Mr W's December 2017 communication onto its customer support team for assistance. But we've not been provided with the details of what actions if any the customer support team took. Furthermore, it's clear that Mr W once again got in contact asking for a repayment plan in May 2018 and the information provided suggests Mr W was told his correspondence had been passed on to the relevant department for response. Despite many requests for this information, Creation has also failed to provide this to us.

Given that there is clear evidence of more than one request for assistance from Mr W and Creation hasn't provided me with anything to demonstrate that it responded to these requests, in line with its CONC 7 obligations, I'm inclined to say that it didn't act fairly and reasonably towards Mr W in relation to this matter. It hasn't provided anything at all to demonstrate it gained an understanding of Mr W's circumstances and assessed an appropriate way to move forward. As this is the case, I'm upholding this part of Mr W's complaint.

Fair compensation – what Creation needs to do to put things right for Mr W

Creation should put things right by reworking Mr W's account so that all interest, fees and charges applied to it from December 2017 are removed. If the effect of removing these interest, fees and charges results in Mr W having paid Creation more than he needed to then any extra Mr W paid should be treated as overpayments and returned to him along with 8% simple interest† on the overpayments from the date they were made until the date of settlement.

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

I know that Mr W wanted all adverse information removed from his credit file. But as Creation didn't unfairly enter into this agreement with him in the first place and providing assistance would always have been reflected in any information Creation reported to credit reference agencies, I'm satisfied that it isn't unfair or unreasonable for any adverse information Creation recorded on Mr W's credit file to remain there.

My final decision

For the reasons I've explained, I'm partially upholding Mr W's complaint. Creation Financial Services Limited should put things right in the way I've set out above.

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

Jeshen Narayanan
Ombudsman