

## **The complaint**

Miss M has complained that Creative Finance Corp Ltd trading as Motorkitty was irresponsible to have agreed credit for her.

## **What happened**

Motorkitty provided Miss M with a loan of £1,500 in December 2017. The total amount of £2,737 including interest and charges was to be repaid in 18 monthly instalments of £152 (all figures rounded).

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

I understand that around two thirds of this loan was used to repay a previous logbook loan from another lender. Miss M didn't meet her repayments from the start. Motorkitty recovered and sold her car in May 2018, leaving Miss M with a balance on her account which by then included arrears and late payment charges and recovery fees.

Miss M said that Motorkitty was irresponsible to have agreed credit for her because the repayments were unaffordable. Miss M also complains that Motorkitty didn't treat her fairly when she couldn't meet her repayments, for example it didn't give her time to pay the balance outstanding before recovering her car and she was unable to retrieve some of her possessions from the car before it was taken. Miss M says that she needed her car for work and she ended up losing her job and had to borrow from elsewhere to get by.

Motorkitty says that it carried out the necessary checks before lending to Miss M and that its lending decision was fair. It said it had no option but to recover and sell Miss M's car to recoup its losses when she didn't repay the loan.

Miss M referred her complaint to us. One of our investigators looked into Miss M's complaint and recommended that it be upheld because Motorkitty should have seen from the information and evidence it had gathered from Miss M that the agreement wasn't affordable or sustainable for her. They recommended that Miss M shouldn't repay any more than the original capital she borrowed on this loan and that Motorkitty should remove any adverse information about it from her credit file. They didn't make a finding on the other aspects of Miss M's complaint because the available information didn't confirm the details of what had happened.

Motorkitty didn't agree with this recommendation. Miss M agreed with the investigator's findings but not entirely with their proposals to put things right for her. She says that Motorkitty sold her car for less than it was worth and she would like this point to be considered. In addition, Miss M feels that she should be awarded compensation for the distress and inconvenience caused when Motorkitty recovered her car.

The complaint came to me, as ombudsman, to review and resolve. I issued a provisional

decision on 17 March 2022 setting out my reasons for upholding Miss M's complaint and my proposals for what Motorkitty needed to do to put things right for her. Miss M agreed with my conclusions but Motorkitty did not.

### **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.

I appreciate that this will be disappointing for Motorkitty but having considered the matter again, including what it said in response to my provisional decision, I remain of the view that Miss M's complaint should be upheld. I'll explain my reasons again in this final decision on the matter.

As I'd said in my provisional decision, Motorkitty will be familiar with the regulations in place at the time so I will summarise its main obligations. Motorkitty needed to check that Miss M could afford to meet her repayments sustainably before agreeing each loan. In other words, it needed to check that she 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 take into account both the nature of the credit (amount, term etc.) and Miss M's particular circumstances.

The overarching requirement was that Motorkitty needed to pay due regard to Miss M's interests and treat her fairly. The Consumer Credit (CONC) handbook paragraph 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 Motorkitty complete reasonable and proportionate checks when assessing Miss M'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 Motorkitty make a fair lending decision?

I've started by looking at the information Motorkitty relied on. This included what Miss M said about her finances - she gave her net monthly income as £1,300 and her monthly expenditure as less than £900, which would seem to leave enough disposable income to meet the loan payments of £152.

Motorkitty also relied on Miss M's bank statements covering the period from 18 September to 22 December 2017 and her October 2017 payslip. I think it was right for Motorkitty to take steps to verify what Miss M said about her circumstances, given that she would need to meet her repayments for 18 months and the consequences of not being able to do so could be serious in that she might lose her car.

But this doesn't automatically mean I've concluded that Motorkitty made a fair lending decision. I've reviewed the information Motorkitty gathered from Miss M and I think that the lender ought to have been concerned about inconsistencies in what Miss M said about her finances and what it could see on her bank statements. I've noted that Miss M's wages varied. She was paid £958 in September 2017, £1,304 in October and £1,173 in November. Miss M was also in receipt of tax credits of £242 a week, or over £1,000 a month, so it seems she had more money coming in than she'd said.

However, I've also noted that Miss M:

- was making irregular payments to a logbook lender for example two payments

- of £20 and £80 in October and one payment of £40 in November;
- had most of her direct debits returned each month, including those for her car insurance, her tv licence and utility bills;
- was making direct debit payments to a debt collector of £10 each month, which were also returned;
- was borrowing and repaying money from what appears to be friends and family each month, for example Miss M repaid over £1,000 net in each of October and November 2017 to a family member;
- was transferring money to another account in her name, ranging from hundreds to over a thousand pounds (for example in September 2017); and
- was withdrawing large amounts of cash from her account, for example almost £1,500 in December 2017.

I think that Motorkitty should have realised that it didn't have enough information about Miss M's expenses to be able to check whether she'd be able to meet her repayments in a sustainable manner. It would have been a reasonable response in the circumstances of this case to have asked Miss M more about her expenses - the returned direct debits and borrowing Motorkitty could see ought to have raised serious concerns about how Miss M was managing her money.

Miss M has provided copies of her bank statements for the bank account she was transferring money to, along with a copy of her credit file. I am not suggesting this is the information Motorkitty should have asked for but I think it's reasonable to rely on it as a proxy for the information it would likely have found out had it enquired further into Miss M's expenses and any financial difficulties she might have been experiencing.

I can see from these that Miss M was spending the money she transferred into her other account on gambling, for example she spent over £500 in the 30 days prior (to 22 December 2017) across a dozen or more transactions. Miss M's credit file showed four accounts with default dates in the previous six months; missed payments on a guarantor loan with payments of almost £300 a month; sustained arrears on telecoms account and a current account, and an arrangement to pay on another.

I think it's clear from this information that Miss M was in financial difficulty and wasn't likely to be able to meet her repayments sustainably. I think Motorkitty would have understood this had it carried out proportionate checks and it wouldn't have agreed to lend to her. I've concluded that it was irresponsible to have done so and needs to put things right.

In response to my provisional decision, Motorkitty said that Miss M could easily afford the repayments for the loan and that it was not its fault if she chose to do things with her money other than paying down her debts. As I've explained, Motorkitty needed to check Miss M would be able to meet her payments sustainably not simply whether they were affordable for her on a pounds and pence basis. There were strong indications in the information it had that Miss M might not have been able to meet the loan repayments without difficulty, which a proportionate check would likely have confirmed.

Motorkitty also commented that it carries out its affordability analysis on a customer's current income and not on their past mistakes. Of course it is for Motorkitty to decide how to carry out its customer analysis but it needed to take steps to ensure that the information it had was complete and correct. In this case, the information it had suggested Miss M had current money problems. Had it enquired further into her finances I think it would have understood that she was having difficulty managing her existing debts, and so it was likely she'd struggle to meet repayments on further borrowing.

I also considered what happened when Miss M had problems meeting her repayments and Motorkitty collected her car. Miss M says that the lender didn't provide her with an explanation of her account arrears and wouldn't accept a lump sum payment to allow her to keep her car, although it had agreed to this the day before. Miss M says that a family member had provided the money to enable her to do this. In addition, Miss M says that she wasn't given enough time to remove all her possessions from the car before it was collected.

I understand that Miss M managed to recover her car by buying it back at the auction sale from Motorkitty with money borrowed from a family member. Motorkitty provided the seller's invoice which shows the car was bought for £2,000.

Miss M has been consistent in what she's told us about that day. I don't know what conversations she had with Motorkitty after the loan inception and I haven't seen any customer contact records. Motorkitty says that Miss M didn't make any payments to the loan and the only payment came from the sale proceeds. Altogether, I don't have enough information to be able to find that Motorkitty treated Miss M unfairly after the loan was agreed. I also don't know if Miss M managed to recover any missing items along with her car.

However, I've found that Motorkitty shouldn't have agreed to lend to Miss M. She lost her car as a consequence of this unfair lending decision. I think that Miss M suffered distress and inconvenience when her car was recovered and she had to borrow money and make arrangements to get it back. As set out on our website, an award of over £300 and up to £750 might be fair where the impact of a mistake has caused considerable upset and worry and significant inconvenience that needed extra effort to sort out, typically over weeks or months. I think that an award in this range would be appropriate here.

### **Putting things right**

I think it's fair that Miss M repays the capital she borrowed (£1,500) as she's had the use of this. However, I don't think she should be liable for any interest or charges on this amount, including any late fees or recovery charges, or have her credit record adversely impacted.

As mentioned, Motorkitty recovered and sold Miss M's car at an auction for £2,000 and offset the proceeds of the sale against the account balance. Miss M says that her car was worth more than this at the time it was sold. Had Miss M needed to replace her car by purchasing one from elsewhere, then I would consider the value or potential value of the replacement in my redress. However, in this case I understand that Miss M was able to recover her car by paying the auction price for it. Therefore, my proposals to put things right for her reflect this value and Motorkitty should consider this £2,000 as a payment made towards the loan.

In order to put things right for Miss M, Motorkitty needs to:

- a) Consider everything Miss M paid above £1,500 as an overpayment and refund these monies to her; and
- b) Add 8% simple interest per annum to these overpayments from the date they were paid to the date this complaint is settled; and
- c) Pay Miss M an amount of £300 to reflect the distress and inconvenience the recovery of her car caused her; and
- d) Consider the account settled and remove any adverse information about this loan from Miss M's credit file; and

- e) Unwind any interest it has in Miss M's car and return any relevant documents to her if it hasn't already done so.

\*HM Revenue & Customs requires Motorkitty to deduct tax from this interest. It should give Miss M 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 M's complaint about Creative Finance Corp Ltd trading as Motorkitty and it needs to put things right as I've said.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 May 2022.

Michelle Boundy  
**Ombudsman**