DRN-3522705

The complaint

Ms L has complained that Mobile Money Limited ("MML") was irresponsible to have agreed to lend to her.

What happened

MML agreed five loans for Ms L between 2015 and 2018. Some of the information MML provided is shown in the table below (all figures rounded to the nearest pound). Some of the capital borrowed for the last four loans was used to repay the previous one.

Loan	Start date	End date	Principal	Monthly repayments	Term (months)	Total repayable
1	26/09/2015	05/08/2016	£2,000	£238	12	£2,852
2	05/08/2016	16/03/2017	£3,581	£284	24	£6,811
3	16/03/2017	27/09/2017	£5,000	£284	24	£10,211
4	27/09/2017	09/04/2018	£5,917	£336	36	£12,084
5	09/04/2018	01/10/2021	£6,522	£335	48	£16,065

These were 'log book' loans, in other words they were granted on the basis that Ms L provided MML with a bill of sale for her car. This meant that if Ms L didn't make her loan repayments MML could potentially recoup any losses through the sale of the vehicle. When Ms L couldn't meet her repayments for her final loan, MML recovered her car, sold it, and offset the sale proceeds against the amount she owed.

Ms L says that MML didn't look into her finances properly before lending to her. She says the first loan was affordable but the rest weren't. Ms L explained that she had personal and financial difficulties throughout the time she borrowed from MML and didn't have the capacity to make decisions on her finances. Ms L also told us that she has several children and was left without the means to transport them to school when her car was taken.

MML didn't agree that it had been irresponsible in lending to Ms L. It says that it carried out an affordability assessment for each loan and found them to be affordable for her. It says Ms L made her payments on time, apart from when she had a change in her circumstances after taking out her final loan. Due to a lack of payment and contact her car was repossessed and the proceeds applied to the loan. MML offered a payment of £675 as a gesture of goodwill to resolve her complaint.

Ms L declined this offer and brought her complaint to us. One of our investigators looked into what had happened when each of Ms L's loans were agreed. They found that MML hadn't carried out proportionate affordability checks and, had it done so, would have learnt that Ms L would not be able to afford the repayments for her second and subsequent loans. Our investigator recommended that MML refund all payments Ms L made (including what MML received for her car) above the capital she borrowed on loans 2 to 5 inclusive, along with compensatory interest.

MML considered our investigator's recommendations alongside Ms L's bank statements from the time, which we'd provided. It accepted that there was a need to carry out further checks on Ms L's ability to sustain repayments towards her final loan (loan 5 in the above table) and so it said it would be willing to provide redress for this loan.

MML also said "Whilst we appreciate the bank statements you have been provided show a poor financial situation, the information MML obtained at the time of the lending would not have led to MML asking the customer for further information, especially given the fact it appeared that Ms L's position was improving when reviewing her credit file. We therefore don't believe that a further assessment of Ms L's bank statements was necessary at the time of lending."

MML asked for the complaint to come to an ombudsman to review and resolve and it came to me. As it seemed the first and last loans were no longer in dispute, I focused my decision on what happened when Ms L applied for loans 2, 3 and 4. I found that MML was irresponsible when it agreed these loans for her. I sent out a provisional decision on 13 May 2022 explaining my findings and proposing that MML compensates Ms L for lending to her on these occasions. I included compensation for loan 5 in my proposals as MML had accepted that there was a need to carry out further checks when Ms L applied for her final loan. I also included an amount of £400 to compensate Ms L for the distress and inconvenience she experienced when MML recovered and sold her car.

I allowed both parties two weeks to respond to my provisional conclusions. Ms L has accepted these. MML acknowledged my decision and didn't provide any further comment or information for me to consider.

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 considered this matter again and having received no further comments or new information to consider from either party, I've found no reason to depart from my provisional conclusions. I will set out my reasons again in this final decision.

As I'd said in my provisional decision, MML will be familiar with the regulations in place at the time so I will summarise its main obligations. MML needed to check that Ms L could afford to meet her repayments sustainably before agreeing each loan. It needed to check that she could meet her repayments out of her usual means without experiencing undue difficulty or adverse consequences, for example while meeting her existing commitments and without having to borrow or realise assets. The necessary checks needed to take into account both the nature of the credit (its type, amount, term etc.) and Ms L's particular circumstances.

The overarching requirement was that MML needed to pay due regard to Ms L'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 MML complete reasonable and proportionate checks when assessing Ms L's applications 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 MML make fair lending decisions?

As shown in the above table, Ms L took out her first loan with MML in September 2015. I understand from its customer contact records that Ms L had enquired about borrowing again in January 2016 but was told it was too soon after her previous loan. Ms L was later declined for a loan in March. When Ms L applied again for a loan in August 2016, she gave her income as £1,866 and provided proof of this by way of benefit letters confirming her awards. Ms L said her monthly expenses came to £1,417 which included £426 of existing debt repayments (excluding her first MML loan).

MML says that it checked Ms L's credit file and provided a copy. This shows several defaulted accounts, including a utility account, and three county court judgements. MML says that Ms L's credit file showed that her finances had improved since it had last checked it (about a year prior when she'd applied for her first loan). I can see that Ms L was making payments to some debts, but she'd incurred one of her county court judgements in the intervening months. I've also noted that she was up to the maximum of £850 on her main current account overdraft and had been at this level for about two years. So while MML might consider that Ms L's credit file showed an improving picture, I think it shows that Ms L was having ongoing difficulties managing her money.

MML says it discussed Ms L's debts with her in detail and understood that two of the defaulted accounts had been fully repaid. MML estimated that Ms L would still continue to spend £266 a month on meeting her existing credit obligations which, including the repayment for this loan would amount to about a third (30%) of her income. Ms L told MML that her husband paid the rent, council tax, insurance and telephone/internet costs and contributed to others. This isn't an implausible or unusual situation, but I note MML had no estimate of these costs which Ms L was relying on someone else to pay. The regulations stated that it wasn't generally sufficient for a lender to rely solely on what the customer said about their means in its assessment.

I appreciate that Ms L had met her repayments for her first loan. However, thinking about Ms L's existing debts and how she was managing these, the contact MML had with Ms L regarding further borrowing and the additional cost of a new secured loan with a term of two years, I've found that MML needed to do more here to reasonably check that Ms L would be able to meet her repayments over the loan term.

As mentioned, Ms L has provided her bank account statements and we have shared these with MML, who've acknowledge that they show a poor financial situation. It seems to me most of the household expenses were being paid from Ms L's sole account (including rent, council tax and insurances) and, while there were transfers in from her joint account, as much was transferred out again. Ms L incurred bank charges each month for returned direct debits and unplanned overdraft usage. Examples of returned direct debits include those for insurance and car tax payments, tv licence and media bills. I don't think MML would have agreed another loan for Ms L under these circumstances and so I consider it was irresponsible to have done so.

MML agreed a third loan for Ms L some seven months later in March 2017, and a fourth about six months later that September. As the summary table shows, these were for £5,000 and £5,917 taken over two and three years respectively.

By March 2017 Ms L had been indebted to MML for almost 18 months. Agreeing another loan for her meant she would owe more than she did at the start and potentially be indebted for another two years. I think it would have been reasonable and proportionate for MML to have taken steps to ensure that it had a correct and complete picture about

Ms L's finances before continuing to lend to her. MML's customer records note that Ms L's income hadn't changed in that time, her bank statements confirm this and also confirm that her expenses continued to be more than MML had accounted for. As with the previous loan, I think a proportionate check would have revealed that Ms L was unlikely to be able to meet her repayments without difficulty, and so I think MML was irresponsible when it agreed to lend to her a third time.

In April 2017, Ms L told MML that she and her husband had split up. She's explained to us that the relationship had a serious impact on her health and let me say at this point that I'm sorry things have been so difficult for her. The customer notes record that Ms L struggled to make her repayments for her third loan and that she had told MML her benefits would increase following a reassessment. I can see from Ms L's bank statements that this happened with a back payment in May 2017, which she used to pay her arrears with MML and make a large payment to a housing association and a credit card provider.

So, when Ms L applied for her fourth loan in September 2017, MML knew that her circumstances had changed. The bank statements show that Ms L had more income than she'd had at the time of previous applications yet these payments still weren't enough to take her out of her overdraft. Ms L had been in debt to MML for two years at that point and agreeing almost £6,000 for her potentially committed her to remaining indebted to it for a further three years. Given her circumstances and the circumstances of this loan, I think MML treated Ms L unfairly when it agreed to lend to her again. As it happened, Ms L once again refinanced her debt with MML after six months, eventually losing her car to clear the outstanding balance.

I've also considered what happened when Ms L had problems meeting her repayments and MML collected her car. MML says that it did so because Ms L wasn't meeting her repayments and wasn't contactable. Ms L says that she had a 9-seater car to accommodate her large family and bring her children to school. She says she needed help from a neighbour to transport them and that this had a serious impact on her mental health.

Having considered this point carefully, I don't have enough information to find that MML treated Ms L unfairly after it agreed her fifth loan when she couldn't meet her repayments. However, MML has accepted that it shouldn't have agreed a fifth loan for Ms L and she lost her car as a consequence of this lending decision. I think that Ms L suffered distress and inconvenience when her car was recovered and she had to make alternative transport arrangements for her family. 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

As I've explained above, MML shouldn't have agreed to loans 2, 3 or 4 for Ms L and it has agreed to provide redress for the fifth loan. I think it's fair that Ms L repays the capital she borrowed for these loans as she's had the use of this. However, I don't think she should be liable for any more than the capital she borrowed, in other words she shouldn't be liable for interest payments or charges on the amounts she borrowed, for loans 2, 3, 4 or 5 or have her credit record adversely impacted.

MML needs to compensate Ms L for these overpayments, which in this case includes money that came from the sale of her car. This was an asset which Ms L likely needed to replace and our usual approach is that she should be compensated for this loss, which potentially could have been greater than the price MML obtained for it. An estimation of the market value of Ms L's car at that time put it as less than the value MML obtained for it and so in this case I think the gross proceeds of the sale, which I understand to be £8,460, is the appropriate value to consider.

In order to put things right for Ms L, MML needs to:

a) Refund to Ms L all payments she made above the original capital amounts she borrowed for loans 2, 3, 4 and 5; and
b) Consider that the payments Ms L made include the gross proceeds from the sale of her car; and
c) Add 8% simple interest per annum to these overpayments from the date they were paid to the date of refund; and
d) Pay Ms L an amount of £400 to reflect the distress and inconvenience she experienced when it recovered and sold her car; and
e) Remove any adverse information about these loans from Ms L's credit file; and
f) Revoke the Bill of Sale for Ms L's car if this is still in place and return any relevant documents to her if it hasn't already done so.

*HM Revenue & Customs requires MML to deduct tax from this interest. It should give Ms L 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 Ms L's complaint about Mobile Money Limited in part and require it to put things right for her as outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 15 July 2022.

Michelle Boundy
Ombudsman