

The complaint

Miss B complains that Bank of Ireland (UK) Plc trading as Post Office Financial Services (Bol) lent her money that she was unable to afford to repay.

What happened

Bol provided Miss B with a personal loan of £18,000 on 24 November 2017. The loan was repayable over 84 months at the rate of £337 a month. She advised that she was coerced into getting the loan by her ex-partner whose credit rating was rock bottom and was a gambling addict. She said the funds were for home improvements (though she lived at home with her parents) though in reality all the loan funds were transferred to her ex-partner to pay off his debts. She has struggled to make the payments and she had to take on further borrowing. She believes that Bol didn't carry out proper assessments of her circumstances the time. She has provided copies of her bank statements from around the time of the application.

Bol says it carried out all the relevant affordability checks. Miss B had said in her application she was living at home with her parents, paying no rent. It assessed that the loan was affordable, as she had a good credit record and sufficient disposable income. On referral to the Financial Ombudsman our investigator said that Bol had made a fair lending decision to offer Miss B a loan and the checks it carried out were sufficient in the circumstances.

I issued a provisional decision. In it I said that I thought that Bol hadn't made a fair lending decision. This was taking into account the amount of the loan, the period of repayment, Miss B's high income to debt ratio, and the fact that she had requested a loan for home improvements for a property she didn't own.

Miss B accepted my provisional findings.

Bol disagreed with my provisional findings. It said that:

"The regulatory requirement is to carry out an affordability assessment and not rely on risk based measures, if the affordability assessment passes then the ratio or loan purpose do not become a key issue.

CONC rules do not prescribe specific guidelines for Debt to Income Ratio.

In regard to the points around loan purpose, we would say that is more of a risk decision..... What the customer chooses to spend the money on has no bearing on the assessment of affordability. The fact that they are a non-homeowner borrowing for home improvement has no influence over a customer's affordability. Also, many customers may use funds for multiple purposes so we can't read too much into the loan purpose declared, we have no control or influence on how a customer uses the funds.

On the overdraft piece, we should see this included in the unsecured debt data we get from the bureau. But to say we're not lending responsibly because someone has an overdraft

doesn't seem right. If this was the case we would never lend to customers looking to consolidate existing debt (incl. overdrafts) into a more affordable loan.

This loan was affordable and each payment has been made on time each month since 2017. Whilst we are sorry to learn Miss B has said she was coerced into applying for the loan, we know from the adjudicator that her ex-partner has paid her £338 each month to cover the repayments so there has been no financial loss. Your suggestion to refund the interest would only benefit the ex-partner as they would no longer need to repay the borrowing in full.

There evidently is an agreement between Miss B and her ex-partner as payments are being kept up-to-date, we would question interrupting this. Should there be any changes and Miss B needs help with her repayments the Bank is willing to assist with alternative solutions such as an affordable repayment plan. Miss B did knowingly apply for and accepted the loan.

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.

The following were my provisional findings:

"Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- *Did Bol complete reasonable and proportionate checks to satisfy itself that Miss B would be able to repay the loan in a sustainable way?*
- *If not, would those checks have shown that Miss B would have been able to do so?*

The rules and regulations in place required Bol to carry out a reasonable and proportionate assessment of Miss B's ability to make the repayments under the agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Bol had to think about whether repaying the loan would be sustainable. In practice this meant that Bol had to ensure that making the repayments on the loans wouldn't cause Miss B undue difficulty or significant adverse consequences. That means she should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her financial situation.

In other words, it wasn't enough for Bol to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Miss B. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications. I think that such a check ought generally to have been more thorough:

- *The lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income).*
- *The higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income).*
- *The greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).*

Miss B was provided with a very substantial loan (which was an unsecured loan), repayable over a long period of 7 years. I think that Bol should have carried out a very thorough assessment of Miss B's financial circumstances.

I've noted that this application went through entirely online, i.e. without any human oversight. No doubt the process will flag up any problems that may need investigating further. Nevertheless as will be clear from what I have said the rules and guidance do require the business to carry out an objective appraisal when assessing affordability. I'm not sure that that is what happened in this case.

Bol hasn't been able to show us the details of the credit search it did at the time of the application. I would expect it to be able to produce that evidence.

I have relied on what Bol told about Miss B's circumstances, that she was employed and living at home with her parents. She had said she was paying no rent although this wasn't true. From what Miss B says, I think it likely that she did minimise her outgoings on the application at the request of her ex-partner. Nevertheless Bol noted that she had an income of £1,494 a month and existing credit commitments of £303. I think that figure includes car finance. She had no outstanding credit card balance, but she did have outstanding credit with an online payment service. She had an overdraft with her bank, of about £1,400, which remained about the same from month to month.

Bearing in mind that the loan was supposed to be for home improvements, the cost of the new loan repayments would be added to her existing credit, more than doubling her commitments. These would then have been about 43% of her income and would tie up her income for potentially seven years. My view is that any figure above 25%, especially one as high as this and for such a long period, would be an indication that the loan was unaffordable.

Whilst Miss B was living at home with her parents, she was nevertheless asking for £18,000 for home improvements for a house she didn't own or (on the face of it) have any interest in. I don't know what she would have answered if she had been asked about it, but I think it would have been difficult to explain, especially as the money clearly wasn't going to be used for home improvements.

Additionally she had an overdraft she wasn't able to pay off, which may have indicated that her outgoings were higher than she declared. She has shown us her bank statements from around the time of her application. If Bol had asked to see those statements, my view is that they were inconclusive, in that they don't show any rent or utilities being paid by her. They do show substantial sums being transferred to another account, which we haven't seen the details of.

According to Bol's figures Miss B would have had a disposable income, taking into account the new loan repayment, of about £360 a month. But it's not just the pounds and pence figures we look at. From the information Bol got from its checks I don't think it's been shown that the loan was sustainable.

So, I don't think that Bol made a fair lending decision.

As regards the remedy, this does depend to some extent on whether Miss B was coerced into taking out the loan, and more importantly whether Bol should have known about it. The evidence does show that all the funds from the loan were transferred to her ex-partner, so it does seem likely that he persuaded Miss B to apply for the loan in her name. I am sorry that Miss B suffered difficulties because of her ex-partner. I appreciate that this must have been very difficult for her, especially admitting that she had those difficulties. However I don't think that Bol was aware or could have been aware of this. When it was told (in her letter of complaint) I think it took the appropriate action, by advising her of organisations that could help her with support for her situation.

I've already found the loan was mis-sold because Bol didn't carry out proper checks and had it done so it would have found the lending to be unaffordable. I've set out below what I think it needs to do to put that right – to refund the interest and fees Miss B had to pay on a loan she should never have been lent. I've also thought about whether it's fair and reasonable to still expect her to have repaid the capital – despite what she's said about the coercion. I'm satisfied that it is.

I say that because I can see that Miss B has made all the payments required to date, and she's told us she's been able to make those payments because her ex-partner has been paying her back each month. It's likely that once Bol makes the calculation I've set out below, Miss B will have already paid back all the capital. So even if the loan was taken out for the benefit of her ex-partner, he has now repaid all the capital, via Miss B, and it wouldn't be fair and reasonable to expect Bol to refund those payments to Miss B.

Miss B is concerned that if her ex-partner stops paying her back in the future she won't be able to keep up with the payments. But given that the capital has now been repaid, I don't think that's going to be an issue if Miss B accepts my proposed redress.

So I think that Bol should refund the interest and charges as I've set out below, but I don't propose to require it to take any other action."

As regards Bol's comments, affordability doesn't just consist of a pounds and pence assessment of an ability to pay. As I've said Bol had to think whether repaying the loan was sustainable. To that extent I think the debt to income ratio is entirely relevant especially when it was so high as in this case. Whilst the CONC (Consumer Credit) rules don't provide specific guidelines for this, nevertheless our approach on this is that any figure above 25% should be considered as a potential for unaffordability.

I commented in my provisional findings that this application was entirely an online one. Bol's comments about the purpose of the loan serve to reinforce that if Miss B had applied for a loan of £18,000 for home improvements for a property she didn't own, nor, on the face of it, paid any rent for, a telephone conversation with an adviser would in my view have flagged this up. And whilst I understand that Bol has no control over how the consumer spends the funds that doesn't mean that the purpose of the loan isn't relevant.

I would agree that the issues of the bank overdraft alone wouldn't preclude the provision of the loan.

I've considered Bol's comments about how the loan is being repaid. And whilst any reduction may benefit her ex-partner, nevertheless I think the loan shouldn't have been provided, and Miss B has the sole responsibility for repaying the loan. She has spoken of her anxiety that her ex-partner may stop paying the loan, and I think that a decision which would leave her in the position of potentially having to go back to Bol wouldn't be right in her circumstances.

So I remain persuaded that my provisional findings were right in this case. Those findings are now final and form part of this final decision.

Putting things right

Miss B has had the capital payment in respect of the loan, so it's fair that she should repay this. So far as the loan is concerned, I think Bol should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Miss B as payments towards the capital amount.
- If Miss B has paid more than the capital, refund any overpayments to her with 8% simple interest* from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, Bol should come to a reasonable repayment plan with Miss B
- Remove any adverse information about the loan from Miss B's credit file.

*HM Revenue & Customs requires Bol to deduct tax from this interest. It should give Miss B a certificate showing how much tax it's deducted if she asks for one.

My final decision

I uphold the complaint and require Bank of Ireland (UK) Plc trading as Post Office Financial Services to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 November 2022.

Ray Lawley
Ombudsman