

The complaint

Miss B complains NAYLORS FINANCE LIMITED (Naylors) gave her loans which she couldn't afford to repay. Had Naylors looked at her credit report it would've seen defaults and missed payment markers.

What happened

Miss B was advanced six loans by Naylors, and a summary of her borrowing can be found in the table below.

| loan number | loan amount | agreement date | repayment date | number of instalments (weeks) | highest repayment |
|-------------|-------------|----------------|----------------|-------------------------------|-------------------|
| 1 | £100.00 | 02/08/2019 | 12/12/2019 | 27 | £6.00 |
| 2 | £100.00 | 30/10/2019 | 10/02/2020 | 27 | £6.00 |
| 3 | £200.00 | 12/12/2019 | 07/05/2020 | 27 | £12.00 |
| 4 | £200.00 | 10/02/2020 | 10/06/2020 | 27 | £12.00 |
| 5 | £200.00 | 07/05/2020 | outstanding | 27 | £12.00 |
| 6 | £200.00 | 10/06/2020 | outstanding | 27 | £12.00 |

Miss B has had some problems making repayments towards her final two loans and Naylors says an outstanding balance remains due.

The 'highest repayment' column is the cost per week per loan, so where loans overlapped the cost would be greater. For example, when loans 1 and 2 were being repaid at the same time Miss B's weekly commitment to Naylors was £12.

Following Miss B's complaint Naylors wrote to her to in a final response letter (FRL) to explain why it believed it made a reasonable decision to lend the first four loans. However, it did offer redress of £248 but because an outstanding balance remained this would be used to reduce what Miss B owed it.

It's worth saying here, Naylors wasn't clear in explaining what loans this offer applied to or how the redress was calculated. Unhappy with this response, Miss B referred the complaint to the Financial Ombudsman.

The case was then considered by an adjudicator. He said initially he wasn't going to consider loans 5 and 6 because as far as he was aware, Naylors had made an offer to settle those loans. The adjudicator then concluded Naylors had made a reasonable decision to provide loans 1 – 4.

Miss B didn't agree with the adjudicator's assessment. She initially said that she hadn't received any contact from Naylors about an offer. Later on, Miss B explained:

- Naylors could see that she was taking other home collected loans from other suppliers.

- Miss B was also paying a number of other creditors including a rent to buy provider and a credit union.
- Miss B was part of a family of five on benefits – which the agent knew about.
- Naylor's agent knew that each time a loan was repaid Miss B would be contacting them again to borrow as repaying the loans left her with very little to live on.

The complaint was then passed to me. I then issued my provisional decision explaining the reasons why I was intending to uphold Miss B's complaint in part about loan 4. A copy of the provisional findings follows this in smaller type size and forms part of this final decision.

Both Miss B and Naylor's were asked to provide anything further for consideration as soon as possible, but in any event no later than 14 March 2023.

Miss B responded to say she accepted the findings of the provisional decision.

Naylor's didn't respond to or acknowledge the provisional decision.

What I said in my provisional decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

Naylor's had to assess the lending to check if Miss B could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Naylor's's checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss B's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Naylor's should have done more to establish that any lending was sustainable for Miss B. These factors include:

- *Miss B having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- *Miss B having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);*
- *Miss B coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).*

Naylor's was required to establish whether Miss B could sustainably repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss B was able to repay her loans sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Miss B's complaint.

Loan 1

For this loan, Naylor's knew that Miss B lived with her partner, was a tenant and wasn't working at that time. The consequence of this was that Miss B's only income was likely from benefits – which is what she has told us. A customer being on benefits isn't an automatic bar to being approved for credit – but it ought to have put Naylor's on notice that Miss B was on a fixed, modest income that was to support her whole family.

As part of her application, Miss B declared a monthly income of around £1,275 – which was made up of benefits. She also declared monthly outgoings of £743 leaving a monthly disposable income of £532. Based on the income and expenditure form completed by Naylor's it seems to have calculated weekly disposable income of around £122.10. This was more than sufficient for Naylor's to believe that Miss B could afford the weekly repayment of £6.

It is worth noting here that Naylor's was on notice, that Miss B had other credit as she declared she had loan repayments of £20 per month. But as no credit search was carried out it wouldn't have details of these loans. In any event, Naylor's wasn't required to do a credit search so the fact one wasn't carried out isn't enough of a reason to uphold this loan.

Given it was early on in the lending relationship, I think it was reasonable for Naylor's to have relied on the information Miss B provided about her income and expenditure figures which showed she had sufficient disposable income to afford the repayments. There also wasn't anything else to suggest that Miss B was having financial difficulties or that the loan repayments would be unsustainable for her.

Loan 2

This loan was approved while loan 1 was still running so Miss B's weekly commitment to Naylor's had increased to £12 per week. The same sort of checks were completed for this loan as loan 1. Miss B declared the same income for this loan as she had for loan 1, which wasn't surprising.

However, Miss B's outgoings were significantly different. This time her monthly outgoings were declared as being £447, this is a significant drop even though this loan was only advanced a little under two months after the first loan. This time, Naylor's noted Miss B's commitment for the first loan but her total loan repayment were now noted as £40 per month – which was double what she declared for loan 1. For this loan, Miss B also now declared that she didn't have any rent or council tax payments.

So, although this was a loan for a similar value, Naylor's was on notice that her overall loan repayments – to it and other creditors had increased and she was now not paying rent or council tax – but no notes of explanation appear to have been taken by Naylor's at the time.

However, I do have to consider that this loan was still for a relatively modest sum, Miss B hadn't experienced any repayment problems to date on loan one and even if I had used the expenditure figures Miss B provided to Naylor's for the first loan – loan 2 still would've looked affordable.

Therefore, while I have some concerns about the information Miss B had provided, I'm still minded to conclude that it was reasonable for Naylor's to have approved this loan.

Loan 3

Miss B had repaid loan 1 without any obvious difficulties and returned on the same day that loan was repaid for loan 3. This time, Miss B asked for more money – with her outstanding commitment for loan 2 – her weekly repayments were £18.

Miss B declared a broadly similar income for this loan as she had for previous loans. Her

outgoings against were marginally different. She declared monthly outgoings of £411 – which included her repayment to Nylors for loan 2. This time, however, Miss B declared that she did have council tax payments at £20 per month.

Loan repayments have also been recorded – presumably for loans for other companies. However, these have been recorded that Miss B wasn't responsible for the payments and the cost has been noted as £50 – it isn't clear whether this is per week or per month.

I know Miss B has told us about her partner and her family's situation that its likely she was paying those loan repayments. But as Nylors didn't do a credit search (and wasn't required to do one) it wouldn't have known at this point whether Miss B was or wasn't responsible for these other loan payments.

In addition, the loan still looked affordable, based on the checks that had been carried out. Therefore, like loans 1 and 2, I'm not upholding Miss B's complaint about this loan.

Loan 4

So far, Miss B didn't appear to have had any obvious repayment problems servicing her previous loans. Loan 3 was still outstanding when this loan was approved – which further increased Miss B's weekly commitment to £24. This was now her largest weekly commitment. In addition, this was now the second time a loan had been repaid and then a new loan taken on the same day.

Miss B's overall income had dropped slightly for this loan, with her benefit payments and a contribution from her partner meant a total of just over £1,000 per month.

Her total monthly outgoings were around £152. Mainly because all payments for council tax and housekeeping had been marked as zero – as the application had noted that Miss B "DoesntPay". This time however, £50 payments for 'other' loans were marked as being the responsibility of Miss B.

I don't think Nylors carried out a proportionate check before this loan was approved. I say this because the drop in income, the significant drop in living costs, her pattern of borrowing and the income and expenditure forms appear to be inconsistent as to whether Miss B does or doesn't have other loans. And there was a possibility that Miss B had other lending that needed to be more fully considered.

Instead, I think it needed to gain a full understanding of Miss B's actual financial position to ensure the loan was affordable. This could've been done in several ways, such as asking for evidence of her outgoings, or looking at bank statements and/or Miss B's full credit file. This might've helped verify information provided and revealed whether there was any other information that Nylors might've needed to consider about Miss B's financial position.

However, that isn't the end of the matter. For me to be able to uphold the loan, I have to be satisfied that had Nylors carried out what I consider to be a proportionate check it would've likely discovered that Miss B couldn't afford it.

Miss B has supplied screen shots of her credit file from around the time this loan was approved and so I don't think it's unreasonable to consider these as it provides an overview of what Miss B's actual financial position was at the time.

The credit file shows that in October 2019, so only a few months before this loan she had defaulted on two credit accounts – one unsecured loan and one mail order account with the defaulted balances totalling around £1,000. This to me is a clear sign that Miss B was already struggling to manage the financial commitments she had because ultimately, she couldn't keep up with her existing credit commitments which led to two accounts defaulting.

This information would've been apparent to Nylors had it carried out a proportionate check and knowing this I don't think it would've lent to Miss B because it was clear she was having

current and immediate financial difficulties.

Loans 5 and 6

In the FRL Naylor's made an offer to pay compensation for what I believe was the interest levied on these loans – at the time Naylor's says this came to £248. However, it isn't clear from this offer whether any adjustments to Miss B's credit file would be made.

After the complaint was passed for a decision, I made further enquiries with Naylor's about the offer it had made in the FRL. Having done so, Naylor's reviewed what it previously offered, and it said it would add 8% simple interest – and then deduct tax at the standard rate. This amount, added to the offer it made in the FRL equates to £263.87. Naylor's also confirmed, this offer related to the interest fees and charges for these two loans. Although, Naylor's didn't mention it again, I understand as there is an outstanding balance this will be used to reduce what Miss B owes.

So, it seems to me, that Naylor's accepts loans 5 and 6 shouldn't have been provided, and it has now made an offer to cover the interest that has been paid as well as adding 8% simple interest. I consider this offer to be broadly fair and reasonable because it puts Miss B as far as possible, back into the position she would've been in had the loans not been granted.

Given what Naylor's has said, these loans no longer appear to be in dispute, so I don't need to make a finding on whether these loans ought to have been lent.

However, the Financial Ombudsman Service – following our standard approach to redress would expect there to be some adjustments to the credit file. I've seen nothing in this case that suggests the standard redress approach shouldn't be applied here. Therefore, for completeness, I've outlined what Naylor's needs to do which is broadly in line with what it has said it would already pay.

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.

As neither party had anything new for me to consider and Miss B accepted the findings of the provisional decision, I see no reason to depart from what I previously concluded.

I still think Naylor's made a reasonable decision to grant loans 1 – 3. However, I do think further checks ought to have been carried out before loan 4 was advanced and had those further checks been conducted by Naylor's it wouldn't have advanced loan 4 to Miss B. Naylor's had already accepted something went wrong with loans 5 and 6 were granted and had made an offer of compensation.

I've therefore outlined below what Naylor's needs to do in order to put things right.

Putting things right

In deciding what redress Naylor's should fairly pay in this case I've thought about what might have happened had it stopped lending to Miss B from loan 4 as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Miss B may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Miss B in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Miss B would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Naylor's liability in this case for what I'm satisfied it has done wrong and should put right.

Naylors shouldn't have given Miss B loans 4 - 6. If Naylors has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If Naylors is not able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

- A. Naylors should add together the total of the repayments made by Miss B towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.
- B. Naylors should calculate 8% simple interest* on the individual payments made by Miss B which were considered as part of "A", calculated from the date Miss B originally made the payments, to the date the complaint is settled.
- C. Naylors should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss B as though they had been repayments of the principal on all outstanding loans. If this results in Miss B having made overpayments then Naylors should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. It should then refund the amounts calculated in "A" and "B" and move to step "E".
- D. If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus, then the surplus should be paid to Miss B. However, if there is still an outstanding balance then Naylors should try to agree an affordable repayment plan with Miss B.
- E. Naylors should remove any adverse information recorded on Miss B's credit file in relation to loans 4, 5 and 6.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Miss B's complaint in part.

NAYLORS FINANCE LIMITED should put things right for Miss B as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 14 April 2023.

Robert Walker
Ombudsman

