

## **The complaint**

Miss K complains that Creation Consumer Finance Ltd irresponsibly provided her with a credit account.

## **What happened**

Miss K applied for and was granted a credit account with a limit of £3,500, for a high street retailer, provided by Creation, in June 2018. She took out the credit to fund large purchases from that retailer, in June and November 2018. The first 6 months were interest free and required no payment, thereafter an APR of 19.9% applied. The limit has remained the same throughout the time Miss K has held the credit account. Miss K says that at the time of taking out the credit she was in debt and has struggled to make repayments.

Creation said that it carried out affordability checks including a credit check. It verified that her income fell within the band £25,000 - £29,999. It took into account her outstanding debt from credit cards which amounted to £2,685, her payment of a mortgage and her monthly commitments. It calculated that she had a disposable income of just over £1,000, including any repayments on the new credit account.

On referral to the Financial Ombudsman Service our Adjudicator said that he didn't think Creation had acted fairly. He said that if Creation had verified Miss K's financial circumstances by reviewing bank statements, it would've seen that she was relying heavily on her overdraft facility, getting charged for it and was paying for credit with credit. He said that Creation should rework the account to remove all interest fees and charges.

Creation disagreed. It said that our Adjudicator had confirmed that the information obtained from its checks was accurate. It further said that it was under no obligation to obtain bank statements from customers when conducting checks. And that as far as it is aware bank statements are not something that is generally requested in the finance industry.

The matter has been passed to me for further consideration.

## **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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've taken that approach into account in considering Miss K's complaint.

So, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks a lender is required to carry out, but it needs to ensure the checks are proportionate when considering things like: the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances. As a lending relationship continues over time and the level of credit increases, lenders may need to obtain further information from a borrower to check whether they're lending responsibly and that the repayments are sustainable for the

customer.

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 Creation complete reasonable and proportionate checks to satisfy itself that Miss K would be able to repay the credit advanced in a sustainable way?
- If not, would those checks have shown that Miss K would have been able to do so?

Creation's figures for Miss K's debts at the time of the credit application largely accord with the credit report Miss K obtained, in terms of the overall indebtedness. Creation's figures for monthly expenditure were:

Secured lending	£458
Unsecured lending	£277
Monthly commitments (including the new credit)	£567.95

That adds up to £1,302.95. With a declared net monthly income of £1,982 that leaves a disposable income of around £679, so I'm not sure how Creation calculated its figures to make it over £1,000, even if some figures were counted twice.

I think Creation did carry out proportionate checks, but I have to consider, once it had done those checks, whether they should have alerted it to carry out further checks. And I've taken into account that the credit limit was quite high. Creation points out that it is not required to check bank statements. That is true, but as I've said the Rules don't require any particular checks to be carried out.

Here, Miss K's bank statements showed that she was consistently overdrawn on her current account. Indeed for the last three months prior to her application she had been overdrawn between £1,100 and £1,900 at the end of each month. And although she received payments on a student loan in that time, she soon ran the overdraft up again.

I think it likely that any credit report would have shown the bank account being constantly overdrawn, so should have alerted Creation to carry out more checks. As it's difficult to see any non-essential expenditure on her account, I think it likely that it would have found, whether by looking at bank statements or other means, that because Miss K was regularly spending more than she earned, the credit was unaffordable. I've considered the six-month "free" period, but it's evident that her position was no better after six months, and I don't think Creation factored in any rise in her income.

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

### **Putting things right**

As I don't think Creation ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Miss K should pay back the amounts she has borrowed. Therefore, Creation should:

- Rework the account removing all interest and charges that have been applied.
- If the rework results in a credit balance, this should be refunded to Miss K along with 8% simple interest per year\* calculated from the date of each overpayment to the date of

settlement. Creation should also remove all adverse information regarding this account from Miss K's credit file.

- Or, if after the rework there is still an outstanding balance, Creation should arrange an affordable repayment plan with Miss K for the remaining amount. Once Miss K has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

\*HM Revenue & Customs requires Creation to deduct tax from any award of interest. It must give Miss K a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

### **My final decision**

I uphold the complaint and require Creation Consumer Finance Ltd 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 K to accept or reject my decision before 17 July 2023.

Ray Lawley  
**Ombudsman**