

The complaint

Miss N complains NAYLORS FINANCE LIMITED (Naylors) gave her loans she couldn't afford to repay. She also says the information recorded about her income and expenditure, which was given to Naylors' agent is incorrect.

What happened

Miss N was advanced five loans by Naylors, and a summary of her borrowing follows in the table below.

loan number	loan amount	agreement date	repayment date	number of weekly instalments	highest repayment
1	£100.00	06/03/2018	18/07/2018	27	£6.00
2	£100.00	02/05/2018	05/09/2018	27	£6.00
3	£100.00	27/06/2018	02/08/2019*	27	£6.00
4	£100.00	18/07/2018	02/08/2019*	27	£6.00
5	£100.00	05/09/2018	02/08/2019*	27	£6.00

*Miss N has some problems repaying her final three loans, and Naylors said it took the decision to internally write off the balances – which included unpaid capital and interest - on the date in the table above.

In response to Miss N's complaint Naylors wrote to her explaining why it wasn't going to uphold the complaint. Naylors also explained that it had written off the outstanding balance due to be paid on loans 3 – 6. Miss N didn't accept this outcome and disagreed, and instead referred the complaint to the Financial Ombudsman.

After the complaint was referred here, Miss N let us know that she was still being contacted by the agent she dealt with at Naylors. But Naylors had told her that he no longer worked for them – and hadn't done so for about a year.

The complaint was reviewed by an adjudicator, and he didn't uphold Miss N's complaint about loans 1 - 3. He also didn't uphold Miss N's concerns about the contact she had received from the former member of staff. But he thought loans 4 and 5 shouldn't have been granted because the pattern of lending was now harmful for Miss N.

Naylors accepted the adjudicator's assessment. But it said that no redress was due to be paid to Miss N because it had written off more than the refund. The refund would be used to offset the written off balance. But as a gesture of goodwill, it agreed to continue to write off the balances – and so not pursue Miss N further for what is owed. Naylors also agreed to remove the adverse credit file information about loans 4 and 5 from Miss N's credit file.

The adjudicator then put this offer to Miss N and she didn't accept it. I've read her responses in full, and I've summarised them below.

- The agent supplied incorrect information to Naylors about her financial situation.

- While Miss N confirmed she was no longer being contacted by the former agent she says the experience was stressful and this had an impact on her mental health.
- Miss N provided information about why the former agent was dismissed by Naylor's.
- Miss N doesn't agree that the refund should go towards paying down the balance that was written off.
- Miss N says that Naylor's management ought to have realised there was a problem and not advanced loans 3 – 5.

As no agreement was reached, the case has been passed to me to decide.

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.

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 N 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 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 N'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 N. These factors include:

- Miss N 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 N 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 N coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Miss N.

Naylor's was required to establish whether Miss N 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 N 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 N's complaint.

Loan 1

It does seem that for all the loans Miss N was granted, Naylor's carried out the same sort of checks. For this loan, Miss N declared she wasn't working and was a council tenant.

Her income was declared to be £142 per week, which was made up of "*Family Credit*" and "*Other benefits*". Miss N declared her expenditure to be £68 per week – this covered council tax, utilities and housekeeping. As part of this application, Miss N declared that she didn't have any other creditors. Miss N appeared to have more than enough disposable income to afford her weekly repayment of £6.

It doesn't appear a credit search was carried out before this loan was advanced. But there was no regulatory requirement for Naylor's to carry out a credit search. So, the fact that one wasn't carried out isn't a reason for me to uphold this loan and / or conclude further checks needed to be carried out. Considering the income and expenditure information suggested Miss N would have had more than enough disposable income to be able to afford the repayments she was committed to making.

As part of the application, Miss N needed to sign the income and expenditure form, and I've seen that has been done – possibly on a mobile phone or a tablet. But as part of that, Miss N agreed that she wasn't in a debt management plan and confirmed the information she had provided was accurate and I'm satisfied, at this point in the lending relationship it was reasonable for Naylor's to have relied on this declaration.

Naylor's has also provided a copy of the credit agreement – which has also been signed by Miss N and provided details of her loan term, amount borrowed and total to repay.

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

I do not uphold the complaint about this loan being approved.

Loan 2

Naylor's hasn't been able to provide the income and expenditure details for this loan. It says that at the time, the details collected from Miss N would've been uploaded to its system – but for loan 2 this wasn't done, and the information is no longer available.

The only information available for this loan is the statement of account as well as a signed copy of a credit agreement. Which as far as I can tell contains Miss N's signature as well as that of the agent.

But, given the information that Naylor's collected at loan 1 and what I will discuss below about loan 3, it is likely that it did ask Miss N for details of her income and expenditure. I can't be sure exactly what details Naylor's used to carry out its affordability assessment. But if the figures were similar to either what was declared for loan 1 and / or loan 3, Naylor's would've reasonably believed, that the loan repayments were affordable for Miss N.

As I said above, the same sort of checks were carried out by Naylor's before this loan was approved. Loan 1, was still active at the time, which means Miss N's weekly commitment to Naylor's was doubling from £6 to £12 per week. But it is worth saying here, that based on the

statement of account, Miss N had made all her payments for the first loan on time and was up to date with them when this second loan was advanced.

So given, the likely checks that were carried out, this loan would've looked affordable, and for a second modest loan I would consider the checks to have been proportionate.

Therefore, I am not upholding Miss N's complaint about loan 2.

Loan 3

Loans 1 and 2 were still outstanding when this loan was advanced. So, although the capital amount Miss N was borrowing hadn't increased compared to previous loans, as a result of the previous loans still being outstanding, her commitment to Naylor's had now increased to £18 per week.

As before, Miss N's repayments were up to date for loans 1 and 2 and she'd not missed any. This may have given Naylor's confidence that she was managing her repayments well and could afford to take on additional borrowing.

Miss N once again declared she wasn't working and was a council tenant. She declared weekly income of £334. According to Naylor's application form Miss N's income derived from three sources of benefits.

Her outgoings remained the same at £68 per week for housekeeping, council tax and utilities. But of course, Naylor's also was aware she already owed another £12 per week to it as a result of having loans 1 and 2 outstanding. So, in fact, her weekly outgoings were already at least £80 per week.

Now, at this point in the lending relationship, Miss N had three loans outstanding (once it was approved) and paying Naylor's £18 per week. Miss N had declared (and signed to confirm the accuracy of the statement) that she didn't have any other creditors which needed repaying. It also doesn't seem a credit search was carried out and as I've said, there wasn't a requirement for Naylor's to have carried one out. And so, Naylor's wouldn't have been aware of any other creditors Miss N may have had.

I do have some concerns at this point about the relatively low level of weekly expenditure Miss N was declaring and the fact, her income had increased between loans 1 and 3. But given the relatively modest sums advanced, her loans to date had been repaid without any obvious problems and the length of the current lending relationship. I do think at this point it was just about reasonable for Naylor's to have advanced this loan without carrying out any further checks, such as either doing a credit search and / or obtaining evidence of Miss N's income and expenditure.

I therefore don't uphold Miss N's complaint about this loan.

Loans 4 and 5

I won't be making a finding about these two loans because the adjudicator who reviewed the complaint upheld them and Naylor's agreed to settle them.

Naylor's has agreed to refund the interest Miss N paid towards these loans (along with 8%) and then use the refund to offset the total outstanding balance which Naylor's took the decision to write off in 2019. It agreed to continue to not collect the outstanding balance that remained due (after the refund had been applied) and finally it agreed to remove adverse information from Miss N's credit file about these loans.

What Naylor's has now agreed to do, is in line with what I would direct Naylor's to do if I had found in favour of Miss N for these loans. To be clear, I've not needed to make a finding because Naylor's has accepted, following the adjudicator's assessments that these loans ought not to have been provided.

I appreciate Miss N feels the refund should be paid directly to her. But I also have to consider that Naylor's has written off the balances of these loans which included capital Miss N owed it. And I don't believe that would be a fair way to resolve the complaint considering this write off. Naylor's has written off capital that Miss N borrowed and which, as a starting point the Financial Ombudsman would usually expect to be repaid.

For example, in Miss N's complaint, she borrowed £100 for loan 5, but at the point the debt was written off, she had repaid Naylor's a total of £30. So, at a minimum she would still owe Naylor's £70 for that loan. And I don't think it would be fair to ask Naylor's to pay a refund to Miss N when there is clearly still unpaid capital even though it has since been written off.

So, what Naylor's has agreed to do in order to put things right for Miss N is in my view is fair and reasonable and I wouldn't ask it to do any more for loans 4 and 5.

Contact from the former member of staff

I am sorry to hear what has happened with the contact from the former member of staff. I can understand why this would've been unsettling for Miss N. I have no reason to doubt what Miss N has told us about the impact on her mental health and this is completely understandable.

I appreciate what Miss N has told us about the circumstances of the member of staff leaving Naylor's. But Naylor's has said something different – that there hadn't been any previous complaints raised against the staff member. And, it isn't really for me to comment on why a member of staff is no longer working for Naylor's as well as what happened after their employment ended. This falls outside of the Financial Ombudsman's remit, and therefore I can't ask Naylor's to pay compensation for the distress and inconvenience Miss N says she's been caused.

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 not lent loans 4 and 5 to Miss N, 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 N may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, she may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, she 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 she had done that, the information that would have been available to such a lender and how she 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 N 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 N 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.

Naylor's shouldn't have given Miss N loans 4 and 5 and it should do what it has agreed to do in response to the adjudicator's assessment. But for completeness I've outlined what it needs to do below.

- A. Naylor's should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss N as though they had been repayments of the principal on all outstanding loans. If this results in Miss N having made overpayments then Naylor's 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.
- B. If there is still an outstanding balance then the amounts calculated in "A" should be used to repay any balance remaining on any outstanding loans and any principal Naylor's has already written-off. If this results in a surplus then the surplus should be paid to Miss N. As agreed, Naylor's shouldn't pursue outstanding balances made up of principal it has already written-off.
- C. Naylor's should remove any adverse information recorded on Miss N's credit file in relation to loans 4 and 5.

*HM Revenue & Customs requires Naylor's to deduct tax from this interest. Naylor's should give Miss N a certificate showing how much tax has been deducted, if she asks for one.

My final decision

For the reasons I've explained above, I am not upholding Miss N's complaint about loans 1 – 3.

But NAYLORS FINANCE LIMITED should put things right as it has agreed to do as outlined above for Miss N in relation to loans 4 and 5.

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

Robert Walker
Ombudsman