

## **The complaint**

Mrs D complains that The Enterprise Fund Limited trading as GC Business Finance (GCBF) was irresponsible to lend to her.

## **What happened**

GCBF agreed a loan of £13,000 for Mrs D in March 2019. The total amount owed was £15,136.28 to be repaid over five years. The first repayment of £297.25 was due in June 2019, followed by 58 repayments of £251.52 plus a final payment of £250.87.

I understand that Mrs D met her payments on time until early 2021. She didn't make payments for three months and wasn't charged interest in this time. Following this Mrs D made reduced payments and GCBF stopped charging interest on the loan in late 2021. As of December 2022 Mrs D had repaid almost £5,800 and was making monthly payments of £41.71.

In October 2021, Mrs D complained to GCBF about a letter she'd received which showed via the envelope window that the enclosed content was regarding a defaulted debt. She said the information was clearly visible to third parties and this had a serious impact on her mental health. Mrs D also complained that GCBF's assessment of her ability to meet her loan repayments hadn't been robust enough, given the financial difficulties she was having.

GCBF didn't uphold Mrs D's complaint. It told her that its letters had been correctly addressed and that it had responded positively to her when she explained her circumstances by putting her payments on hold. GCBF didn't comment on the affordability of the loan in its response.

Mrs D referred her complaint to us. Our investigator looked into the complaint and didn't recommend that it be upheld. They found that GCBF had carried out a reasonable assessment prior to lending to Mrs D which didn't raise any concerns about her ability to afford the repayments. They also found that GCBF wasn't responsible for the incorrect formatting of the letter sent to Mrs D which resulted in her information being visible to third parties.

Mrs D didn't agree with these conclusions and asked for her complaint to come to an ombudsman to decide and it came to me. I sent out a provisional decision on 26 June 2023 explaining why I thought Mrs D's complaint should be upheld. I shared my reasoning and the information I'd relied on and allowed some time for either party to provide further comments or information they wished me to consider when making my final decision. Mrs D agreed with my decision and I've had no response from GCBF.

## **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 the matter again, and having no comment or new information to consider, I see no reason to depart from my provisional conclusions. I'll set out again in this final decision my reasons for upholding Mrs D's complaint.

The complaint concerns a personal loan taken out in Mrs D's name to be used to set up a business. Mrs D needed to complete a personal budget as part of her application. The Enterprise Fund Limited website<sup>1</sup> explains that: "This budget is designed to help us determine whether or not you will be able to meet your monthly Start Up Loan repayments. As a responsible lender, it is important that we believe you can afford a loan before offering you one" and "a Start Up loan is a personal loan that you invest in your business, you are ultimately responsible for making the monthly loan repayments, regardless of the state of your business."

Mrs D intended to use the loan to purchase a franchise and provided GCBF with the franchise agreement, a business plan and budget. As Mrs D was ultimately responsible for the loan repayments irrespective of how her business performed I've started by reviewing how GCBF assessed the affordability of the loan for her.

We've set out our general approach to complaints about personal lending - including all of the relevant rules, guidance and good industry practice - on our website. In summary, GCBF needed to treat Mrs D fairly and with due regard to her interests when making its lending decision. It would not be lending fairly if "it targeted 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."

GCBF was required to carry out a creditworthiness assessment and to pay proper regard to the outcome of that assessment in respect of affordability risk. In other words, GCBF needed to check that Mrs D could afford to meet her repayments for the term of the loan, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The regulations weren't prescriptive about what checks should be carried out but GCBF needed take into account the nature of the credit (for example the amount borrowed or the term) and Mrs D's particular circumstances.

GCBF recorded Mrs D's monthly net income from employment as £1,766 and checked this against her recent payslip. It also recorded that she received child related benefit of £136 a month and child maintenance payments of £898. GCBF recorded Mrs D's expenses as £1,965 and estimated that she had £835 spare each month.

GCBF also checked Mrs D's credit file but couldn't provide a copy of the information it gathered. It explained that it graded credit file information into four bands – one for declines, one for good credit not requiring additional information and two for applications where additional information was required before making a lending decision. GCBF considered that it would need additional information from Mrs D before deciding to lend to her based on what it saw on her credit file. I understand it checked Mrs D's bank statements for the period 20 September 2018 to 19 January 2019 before accepting her for credit.

It seems to me that on the face of it GCBF carried out a reasonable creditworthiness assessment. It asked Mrs D about her income and expenses and gathered evidence of these. However, I don't think it paid proper regard to the outcome of that assessment in Mrs D's case.

I'll begin by saying that I don't think GCBF should have automatically relied on Mrs D's maintenance payments as forming part of her income for the loan term. These payments

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<sup>1</sup> <https://www.startuploans.co.uk/personal-survival-budget-template>

were being paid to Mrs D directly and there was no guarantee that they would continue to be paid at this level throughout the loan term even if Mrs D's children were eligible. Mrs D told us her two children were in their mid-teens when the loan was taken out, and I can see evidence of this on later bank statements. It was entirely possible that Mrs D could lose a third of the money she had coming in before the loan had been repaid.

As the loan was for business purposes, it may be that Mrs D could supplement any loss of her existing income with income derived from her new business. However, I don't think GCBF could fairly rely on the performance of the business to mitigate the affordability risk to her of not managing to meet her loan repayments over five years. After all, she was responsible for meeting the loan repayments irrespective of the status of her business.

GCBF's assessment of Mrs D's expenses included transfers of £1,150 and £600 into shared accounts for bills, loan repayments and other expenses. Mrs D was also making payments from her account for regular costs such as food shops, petrol, child-related expenses and credit repayments amounting to upwards of £400 a month. Disregarding Mrs D's maintenance payments means the loan repayments were unaffordable from the beginning.

Mrs D provided a recent copy of her credit file and I can see from this that she had considerable existing debts when this loan was agreed. These included a hire purchase agreement, two loans, four credit cards and three mail order accounts. The hire purchase and loan repayments amounted to £525 a month and Mrs D was paying approximately £150 to £200 towards her revolving credit. Agreeing this credit potentially committed Mrs D to spending £1,000 a month on debt repayments – more than half her income from employment. I don't think GCBF treated Mrs D fairly or with due regard to her interests when it agreed to lend to her under these circumstances.

I've concluded that GCBF was irresponsible when it agreed this loan for Mrs D.

As mentioned Mrs D had problems meeting the loan repayments. Her credit file shows she took on more debt in the years after this loan but was unable to sustain her level of borrowing and by mid-2022 Mrs D had defaulted on almost £17,000. I think agreeing this loan for Mrs D impacted adversely on her financial situation and I've set out below what GCBF needs to do to put things right for her.

Mrs D also complained about communications she'd received from GCBF regarding her account. She's provided evidence by way of a video and photo that a letter she received showed via the envelope window that the enclosed content was about a defaulted debt. Part of her address wasn't visible in the envelope window and the missing detail had been handwritten on the envelope.

GCBF provided copies of two letters sent to Mrs D (in June and October 2021) regarding her account being defaulted which are correctly addressed. It said that the formatting of the address was correct and that it sends its letters to another company for printing and posting. GCBF said that there may have been a formatting issue after it sent the letters externally for printing and posting which caused the misalignment of the letter contents within the envelope window.

A letter which isn't correctly formatted for the envelope in which it is actually sent may give rise to problems with delivery and/or potential data protection breaches. It seems in this case that the letter was delivered to Mrs D and I'm unaware that anyone else acquired or made use of the content. Nevertheless, Mrs D explained that she and her husband have separate finances and he was unaware of her situation in its entirety. She said that the state of the letter had a massively detrimental effect on her wellbeing and caused damage to her marriage. She said "I feel like I'm currently in a crisis situation which is spiralling out of

control, and as a direct result I am also experiencing some severe mental health difficulties which I am getting professional support with.”

As GCBF will know it needed to ensure that it didn't act in a way likely to be publicly embarrassing to Mrs D and should have taken reasonable steps to ensure that third parties did not become aware that she was being pursued in respect of a debt. I appreciate that it used the services of another company in its communications process but it remained responsible for its communications and the impact of these. Mrs D wouldn't have received these communications but for the loan, which I've found to have been unfairly agreed.

There isn't a specific calculation for awards to compensate for the emotional impact of errors. We have an approach which I've borne in mind alongside everything else when making this decision. This approach (which is set out on our website) says that an award between £100 and £300 might be fair where there has been a mistake which results in an impact that lasts a few days, or even weeks, and cause either some distress, inconvenience, disappointment or loss of expectation. I think an award in this range would be appropriate here.

### **Putting things right**

I've concluded that GCBF was irresponsible to have agreed this loan for Mrs D. As Mrs D had the use of the money she borrowed I think it's fair that she repays this but she shouldn't have to pay any interest, fees or premiums associated with the loan.

To put things right for Mrs D, GCBF should:

- Cap the amount she needs to repay at the capital amount she borrowed, this being £13,000;
- Consider all payments she's made as payments towards this capital amount;
- Remove any adverse information about this loan from Mrs D's credit file, once settled;
- Pay Mrs D an amount of £200 to compensate her for the distress and inconvenience its communications have caused.

If GCBF sold this debt it needs to work with the current debt owner to carry out the above steps.

### **My final decision**

For the reasons I've explained above I'm upholding Mrs D's complaint against The Enterprise Fund Limited trading as GC Business Finance. It now needs to put things right for her as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 22 August 2023.

Michelle Boundy  
**Ombudsman**