

## **The complaint**

Miss N says East End Fair Finance Limited, trading as Fair Finance, irresponsibly lent to her.

## **What happened**

Miss N took out a 12-month loan for £800 on 27 February 2023. The monthly repayments were £105.14. Miss N cancelled her direct debit on 22 March 2023 and on 15 April 2023 she told Fair Finance her circumstances had changed and she could no longer afford the repayments. It seems a reduced payment plan was agreed but never set up as there was an error in the bank details the lender provided.

Miss N says the loan was never affordable and had Fair Finance done better checks it would have known this.

Fair Finance's final response letter to Miss N said that its affordability and credit checks had shown Miss N had sufficient disposable income to sustainably repay the loan. So Miss N brought her complaint to this service asking for the debt to be written-off.

In the meantime, Fair Finance changed its position and refunded/removed all interest and charges from Miss N's loan account and removed any adverse information from her credit file. It also agreed a revised payment plan that was affordable for Miss N.

Our investigator said that Fair Finance's settlement offer was in line with what this service would have recommended had it found the lending to be irresponsible.

Fair Finance asked that the complaint be dismissed as it had already settled it in line with the approach this service adopts for complaints about irresponsible lending that are upheld.

Miss N asked for an ombudsman's review saying she wanted the debt to be written-off as Fair Finance already knew she was in debt when she applied and she had a lot of other credit accounts open.

## **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 complaints about irresponsible lending is set out on our website and I have followed it here.

First I want to address Fair Finance's request that Miss N's complaint be dismissed. Whilst I note it changed its position from its final response and offered to settle the complaint in line with our approach to such complaints, this was not all Miss N had asked for on her complaint form. She felt there were grounds for the debt to be written-off and for that reason there is a valid complaint to consider here.

I am inferring from Fair Finance's change in position that it decided to agree with Miss N's claim of irresponsible lending, although it has not confirmed this. But irrespective of its

motivation for changing its position, as it has offered the redress we would instruct in such cases the only thing that remains in dispute is whether it must also write off the remaining balance.

Typically this is not what we instruct a lender to do in cases of irresponsible lending. Where we find that a business did something wrong, we'd usually expect it – in so far as is reasonably practicable – to put the consumer in the position they would be in now if that wrong hadn't taken place. But when it comes to complaints about irresponsible or unaffordable lending this isn't straightforward.

The complainant has received the funds in question and used them. So, in these circumstances, we can't undo what's already been done as things have significantly moved on. And it's simply not possible to put the consumer back in the exact position they would be in if the lender hadn't lent to them.

So the approach we take is that whilst all interest, fees and charges must be removed and /or refunded, as the complainant has had the benefit of the money it is fair they repay the capital. And I have not seen any exceptional circumstances that mean this is not the approach I find to be right in this case.

It follows I am not instructing Fair Finance to write-off the outstanding capital balance. I have considered all of Miss N's comments as to why the loan was irresponsibly given but they do not change my conclusion. This is because the redress she has already received is in line with the redress we order when loans have been given irresponsibly.

I understand Fair Finance has already reworked Miss N's loan account to refund/remove all interest and charges; agreed a reduced payment plan and removed any related adverse data from Miss N's credit file - so it need take no further action.

### **My final decision**

I find East End Fair Finance Limited's, trading as Fair Finance, settlement offer to be fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 5 March 2024.

Rebecca Connelley  
**Ombudsman**