

The complaint

Ms K complains that Creation Consumer Finance Ltd failed to act responsibly or properly assess affordability when deciding whether to lend to her. She also believes she was scammed by the provider of the goods associated with the loan.

Background to the complaint

I recently issued a provisional decision setting out the events leading up to this complaint and how I was minded to say matters were best resolved. I've reproduced my provisional decision here, which forms part of this final decision.

"My Provisional Decision"

What happened

In December 2016 Creation approved a loan application from Ms K. The loan was arranged through a third party "E". The loan funds – just under £5,000 – were paid directly to E, who provided Ms K with a 'Magic Box' product to improve the efficiency of her central heating. The loan repayment term was 10 years, with a monthly repayment of £69.01, giving a total amount payable of £8,531.20.

Ms K subsequently complained to Creation (and us) about its decision to approve the finance, as well as the way in which E sold the Magic Box product. She felt she'd been scammed by E and that Creation hadn't properly considered her financial position when approving the loan.

Creation says it undertook an affordability assessment based on information submitted in Ms K's application, her stated income and her existing credit commitments, which it obtained from a credit bureau check. It felt this was enough to ensure the borrowing was affordable.

Our investigator was satisfied with Creation's explanation of the steps it took to assess Ms K's creditworthiness. The investigator also felt she couldn't uphold a claim in misrepresentation on E's part, noting the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75"). She considered what E had said was supported by information she found on the Magic Box manufacturer's website, and that E hadn't said anything incorrect about the condition of Ms K's radiators.

Ms K didn't accept the investigator's conclusions. She sent further information about her financial position at the time of taking out the loan, as well as querying inaccuracies in the information submitted to Creation. Our investigator felt this was a matter between Ms K and E, who ceased trading in 2019. She wasn't persuaded to reach a different outcome, and so the matter has been passed to me for review and determination.

Creation's assessment of Ms K's creditworthiness

The Financial Conduct Authority ("FCA") Handbook makes provisions in relation to responsible lending activity. At the material time, section 5 of the Consumer Credit

Sourcebook ("CONC") set out, among other things, the requirement for a lender to undertake an assessment of a customer's creditworthiness. This said that a creditworthiness assessment must be based on sufficient information obtained from the customer, where appropriate, and a credit reference agency, where necessary.

CONC 5.2 also said that a creditworthiness assessment must consider the customer's ability to make payments under the credit agreement, as well as the potential for the commitments under the agreement to adversely impact the customer's financial situation. The scope of the assessment should be based on sufficient information.

Additional guidance at CONC 5.2.3G said that the extent and scope in a given case should be dependent on and proportionate to a range of factors. Those factors included (but weren't limited to) the type, amount and cost of the credit, the customer's financial position and credit history, and their existing financial commitments including repayments due in respect of other credit agreements, rent payments, council tax, utilities and other major outgoings known to the lender.

Other relevant CONC guidance applicable at the material time said:

"CONC 5.3.1G

(1) In making the creditworthiness assessment or the assessment required by CONC5.2.2R(1), a firm should take into account more than assessing the customer's ability to repay the credit

(2) The creditworthiness assessment...should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences..."

...(4) If a firm takes income or expenditure into account in its creditworthiness assessment or its assessment required under CONC 5.2.2R (1):...

...(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer"

I've noted the basis of Creation's assessment and the method it says it used for establishing Ms K's disposable income. I don't think it's necessary to set out that methodology here; suffice to say that Creation hasn't sought to suggest that in establishing Ms K's ability to meet the payments under the credit agreement it took into account anything other than the statement of her income and her known existing credit commitments, being £15.

That resulted in the questionable conclusion that Ms K's monthly outgoings including the proposed finance totalled £84 and left her with disposable income of £1,350. I appreciate that a proportionate creditworthiness assessment did not require Creation to take into account all the factors listed in CONC 5.2.3G. But I don't think I could properly conclude that a reasonable assessment would have little to no regard for asking about the sort of regular expenditure most of us have, such as utilities, council tax, and groceries.

I note Creation also used the income figure supplied without verification. Ms K has questioned this amount, saying it wasn't an accurate reflection of her income. She has supplied account statements that show her net income was around £1,070 per month, almost £400 lower than the figure Creation used.

While I appreciate Creation's comments around the accuracy of the information provided to it, in my view the other inaccuracies in the application information lend credence to Ms K's

assertion that it was E rather than her that completed the application. I might have expected Creation to recognise the risk of relying solely on the stated information, given the way CONC 5.3.1(4)(b) was worded.

Based on what I've seen, the individual circumstances of this case ought to have suggested to Creation that a proportionate assessment would involve more enquiry about how Ms K was managing her finances in order to ensure the lending was affordable and sustainable. I therefore intend to conclude that Creation hasn't done enough to demonstrate that it undertook a suitable assessment of Ms K's creditworthiness.

I don't think there's anything to suggest from Ms K's account statements that she wasn't in control of her financial situation. The way she was dealing with her income and expenditure was broadly sustainable. Ms K wasn't borrowing money in order to meet repayments for existing debt, and her overdrawn position wasn't getting worse. Nevertheless, she was regularly using her overdraft facility to maintain her monthly expenditure, which might have suggested to Creation that the additional cost of the ten-year loan could cause Ms K financial difficulty or have significant adverse consequences for her.

Against that, I have to bear in mind that Ms K did meet the monthly payments between loan inception and the point at which she cancelled her direct debit, which appears to have been shortly after she sold her property. While I accept that as a result Ms K no longer has the benefit of the Magic Box, I don't think that provides good reason to say that Creation should not have provided the loan.

But in the circumstances, I consider Creation could – and should – have done better in assessing Ms K's application, and that its actions put additional pressure on Ms K's limited finances. It follows that I'm inclined to require Creation to take steps to recognise its responsibility in this respect.

Creation's responsibility for E's actions

Our investigator referenced the provisions of section 75 in her assessment. I must also recognise that section 56 of the Consumer Credit Act 1974 ("section 56") is also relevant, in that it has the effect of making E the agent of Creation in respect of any negotiations between E and Ms K relating to the transaction financed by the credit agreement. For the purposes of section 56, negotiations include any representations made by E to Ms K and any other dealings between them.

It's not quite correct, then, to say that Creation's potential liability towards Ms K extends only to whether she has a claim against E for misrepresentation. Indeed, she may have such a claim; I'm not persuaded that information on the Magic Box manufacturer's website means that E made no representation or assertion in the course of the sale that could not subsequently be shown to be false. But I must also acknowledge that Ms K's recollection of what E told her about the Magic Box system might not be enough to support such a claim.

What isn't in doubt, however, is that while Ms K raised with Creation the question of whether she'd been the victim of a scam, Creation's response to her complaint didn't address this aspect. Bearing this in mind, I don't consider Creation has had due regard for its responsibilities under section 56 for the actions of its agent E, either in the way it presented the Magic Box as the solution to Ms K's heating problem or in the way it dealt with the application. Again, I think that's a shortcoming on Creation's part that has caused Ms K unnecessary distress and inconvenience, which should be recognised when deciding how best to resolve Ms K's complaint.

Putting things right

I appreciate Ms K had her reasons for cancelling her direct debit. However, I don't think I can say that makes it reasonable to treat her payments as not being due, or that I can rightly direct Creation to remove any missed payment information it recorded on Ms K's credit file as a result.

However, I am minded to say that Creation's handling of the loan application and its failure to engage with Ms K's concerns over its agent's actions should be reflected by way of compensation. There's no hard and fast rule as to what's appropriate in this respect. Having carefully considered all that's happened, I think a fair way to reflect this would be for Creation to reduce the remaining balance on Ms K's loan by £750.

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

Response to my provisional findings

Creation accepted my intended conclusions and had no further comments to make.

Ms K noted the proposed balance reduction, but felt this was merely a drop in the ocean for Creation. She thought it was wrong that I had sided with the lender when I was supposed to be an advocate for the consumer's side.

In addition, Ms K reiterated the inaccuracies in the information Creation had taken into consideration when approving the finance. And she emphasised that she'd incurred overdraft costs in sustaining the loan repayments.

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.

I should make clear, in light of Ms K's comment, that we aren't set up as a consumer champion, and we don't act for either party to a dispute. Rather, we take an independent view on the complaints referred to us, and set out how we think matters are best resolved.

I've considered what Ms K said in response to my provisional decision, and while I appreciate her strength of feeling, she hasn't said anything new or that I didn't take into account in my provisional decision.

I noted in my provisional conclusions the extent to which Ms K was making use of her overdraft and the potential for detriment to her financial position that arose from its decision to approve the lending. That was part of the reason for the balance reduction I proposed; if there had been no impact on Ms K, I wouldn't have found it necessary to make such an award.

Our awards aren't intended as a fine or to punish a firm, and they aren't based on the size of the firm or its financial position. Rather, they're intended to reflect what we consider suitable compensation based on any material loss, distress and/or inconvenience a complainant has suffered as a result of the firm's actions.

I don't see that what Ms K has said provides me with a reason to change my provisional findings and so I adopt them in full in this final decision, along with the compensation I originally proposed.

My final decision

My final decision is that to settle this complaint, Creation Consumer Finance Ltd must reduce the balance of Ms K's loan by £750.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 16 April 2024.

Niall Taylor
Ombudsman