

The complaint

Mr P has complained that Creation Financial Services Limited (“Creation”) lent to him irresponsibly when it provided him with a credit card.

What happened

Mr P opened a credit card with Creation in January 2018 with a credit limit of £600. In May 2018 his credit limit was increased to £800, effective from July 2018.

Mr P says that Creation shouldn’t have provided him with the credit. He says the lending made his poor financial position worse

Creation says it didn’t lend irresponsibly to Mr P and that it did all the necessary checks before it lent to Mr P – and when it increased his credit limit.

Our investigator thought that Mr P’s complaint about the opening of the credit card account shouldn’t be upheld but that the part of the complaint about the credit limit increase should.

Mr P didn’t agree with this outcome. Creation didn’t respond. As neither party agreed with the outcome, the complaint has been passed to me to make a decision.

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 unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I’ve taken that into account when I have considered Mr P’s complaint.

Having done so, I have come to the same conclusion as our investigator. I will explain why I have reached this decision.

Creation needed to take reasonable steps to ensure that it didn’t lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr P could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr P’s income and expenditure. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

Creation has provided evidence of the checks it completed before it lent to Mr P. Creation noted that there was no recent evidence of late payments, defaults or County Court Judgments on Mr P's credit file.

I can see that Mr P declared a monthly income of £2,000. Mr P says that must have been his gross income as he was earning less than that after tax and has provided bank statements which support this (although they don't reflect a £24,000 gross salary, either). But Creation was entitled to rely on the monthly income Mr P declared. Mr P says the onus was on Creation to verify his income, but that isn't the case; Creation just had to complete reasonable checks and, at this stage in the lending relationship, and with no other concerns, I think it was reasonable for Creation to accept Mr P's declaration.

Creation calculated Mr P's disposable income by adding together Mr P's credit repayment obligations and his declared expenses for his accommodation. It made an assessment of his living expenses which I think was reasonable – Mr P declared that he was living at home with his parents. From this, Creation established that Mr P had a likely disposable income of £466. On a credit limit of £600, if Mr P used the entire limit, I'd expect Mr P to be paying at least 5% of the balance each month to ensure the debt was sustainably repaid within a reasonable period of time. So his repayments would have been in the region of £30 a month which I think was affordable for Mr P.

Based on the information available to me, I think Creation completed necessary and proportionate checks when it initially lent to Mr P and I don't think it did anything wrong.

In May 2018, Creation agreed to increase Mr P's credit limit by £200 to £800, effectively from July 2018. Our investigator concluded that Creation didn't complete sufficient checks when it agreed this increase. Our investigator noted that in the intervening months from account opening, Mr P had spent to his limit and in at least two of the months he had exceeded his limit. On this basis, our investigator considered Creation should have taken steps to verify Mr P's financial circumstances.

There is no prescriptive list of checks a business should complete. I don't know how Creation would have sought to verify Mr P's circumstances if it had decided to do so. In the absence of any other information, I think it's reasonable to rely on the information provided by Mr P in the form of his bank statements for the months leading up to the decision to increase his credit limit.

Those bank statements show that Mr P was heavily utilising his overdraft, rarely having a positive balance. Overdraft use should generally be for unforeseen emergencies because it is an expensive way to borrow. In Mr P's case he incurred charges of up to £80 a month in overdraft fees alone. Mr P was always spending more each month than he had coming in.

I think this shows that Mr P was unable to repay any further borrowing in a sustainable manner without undue difficulty. I think if Creation had completed reasonable and proportionate checks it would have realised this and wouldn't have increased Mr P's credit limit. So, I think Creation acted unfairly in relation to the credit limit increase. Creation has not disagreed with our investigator's finding and has made no comments on the findings.

I think Mr P lost out as a result of what Creation did wrong.

Putting things right

I think it's fair and reasonable for Creation to refund any interest and charges incurred by Mr P as a result of the credit unfairly extended to him. I don't think Creation should have increased Mr P's credit limit to £800. Therefore, Creation should rework the account and:

- Rework the account removing all interest, fees charges and insurances (not already refunded) that have been applied to balances above £600.
- If the rework results in a credit balance, this should be refunded to Mr P along with 8% simple interest per year* - calculated from the date of overpayment to the date of settlement.
- If after all adjustments have been made Mr P no longer owes any money, then all adverse information regarding this account should be removed from the credit file.
- Or, if an outstanding balance above £600 remains, Creation should look to arrange an affordable payment plan with Mr P for the remaining amount. If any debt was sold to a third party, Creation should either repurchase the debt or liaise with the third-party to ensure the above steps are undertaken. Once Mr P had cleared the balance, any adverse information as a result of the unfair lending should be removed from the credit file.

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

My final decision

My decision is that Creation Finance Company Limited acted unfairly when it increased Mr P's credit limit from £600 to £800. To put things right, Creation Finance Company Limited must pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 May 2024.

Sally Allbeury
Ombudsman