

Complaint

Miss P has complained about a loan that Link Financial Outsourcing Limited (trading as “Asset Link Capital (No.9)”) is now responsible for. She says that the loan was unaffordable and should never have been provided to her in the first place.

While Asset Link Capital (No.9) is now responsible for this loan, it didn’t originally provide it. Miss P’s loan was part of a book of loans that were originally provided by Future Finance before it subsequently entered into administration. As a result, Future Finance sold its legal and beneficial title in the loans to Asset Link Capital (No.9).

For ease of reference, as this complaint is about the provision of the loan and the decision to collect full repayments and Future Finance was the party that did this, I will refer to Future Finance in this provisional decision.

Background

Future Finance provided Miss P with a loan for £11,750.00 in September 2018. £3,250.00 of the loan was to cover Miss P’s tuition and the remainder (£8,500.00) was to cover living expenses while Miss P completed a full-time study course.

Miss P’s loan had a variable APR of 19% and a term of 84-months. This meant that the total amount to be repaid of £22,276.07, which included interest, fees and charges of £10,526.07 (made up of interest of £9,762.32 and a £763.75 origination charge) was due to be repaid in an initial 15 monthly instalments of £5 followed by 67 monthly instalments of £326.28. This was to reflect the fact that Miss P would make lower repayments for the period that she was studying.

In April 2023, Asset Link wrote to Miss P to say that Future Finance may not have acted fairly and reasonably when she fell into difficulty with this loan. And it reduced the balance on this loan by £6,038.31. However, by this stage Miss P had already complained that Future Finance had acted irresponsibly in providing her with this loan.

One of our investigators reviewed what Miss P and Future Finance had told us. And she thought that Future Finance hadn’t acted fairly and reasonably towards Miss P. So she thought that Miss P’s complaint be upheld and that all the interest, fees and charges should be removed from her balance.

Future Finance disagreed with our investigator’s assessment and asked for an ombudsman to look at this complaint.

My provisional decision of 22 January 2024

I issued a provisional decision – on 22 January 2024 - setting out why I intended to partially uphold Miss P’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we've explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I had used this approach to help me provisionally decide Miss P's complaint.

Future Finance needed to make sure that it didn't lend irresponsibly. In practice, what this means is Future Finance needed to carry out proportionate checks to be able to understand whether Miss P could afford to repay before providing this loan.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

As I understood it, Future Finance agreed to Miss P's application after she provided details of the funds she received and some information on her expenditure. It says it cross-checked this against information on a credit search it carried out. And in its view, all of this information showed Miss P could afford to make the repayments she was committing to.

On the other hand, Miss P said she should never have been provided with this loan because she didn't have a job and her existing financial position.

I carefully thought about what Miss P and Future Finance said.

Miss P said that she shouldn't have been lent to because she wasn't working. But the first thing for me to say was that Miss P's loan wasn't a typical arrangement. In this case, there was a clear understanding that Miss P wasn't immediately able to make the full monthly repayments as she was going to be studying.

However, as a result of this Miss P was only required to make considerably reduced payments of £5 a month for the duration of her studies. It was only when Miss P's studies were completed and a couple of months had passed to allow her to find employment would she have to make the increased repayments. And this was due to happen sometime around December 2019.

Regarding Miss P's situation at the time of the application, the information provided did suggest that Miss P was asked to provide some details regarding her income and expenditure and Future Finance didn't just rely on what it was told as it carried out a credit search too. The credit search that Future Finance carried out did indicate that Miss P had some existing debt.

But there wasn't anything to indicate that Miss P's existing debt wasn't being reasonably maintained. And there wasn't anything in the information provided that suggests to me that Miss P wouldn't have been able to repay the extremely low monthly in-study payments. I said this particularly given the bank statements Miss P provided to us from around the time too.

I was also mindful that Miss P was already committed to her course at the time that she took this loan. I thought this was important given the fact that Miss P was not supposed to start fully repaying this loan until her salary had improved after completing her course.

The projected income recorded wasn't unreasonable either and there wasn't anything to suggest at that time at least that if Miss P's income had increased as expected, she wouldn't have been able to make the required repayments. Bearing this in mind, I thought that Future Finance's decision to provide the loan in the first instance wasn't unreasonable.

As a result of the type of loan and Miss P's eventual need to make increased payments, I thought that Future Finance should probably have checked with Miss P to see that she had secured employment and that her earnings were in line with expectations at the time of application, before it began attempting to collect full repayments from her in around December 2019.

I couldn't see that Future Finance attempted any such contact with Miss P. So I didn't know for sure what it would have found out if it had done this. As this was the case, I looked through the information Miss P provided with a view to determining what Future Finance is more likely than not to have found out had it contacted Miss P around December 2019.

As I understood it, by December 2019, Miss P had already enrolled for another further education course after the one which was linked to this loan completed and was still not working at this time. So I thought that Future Finance will have found out that Miss P wasn't in a position to make the increased payments required on this loan had it contacted Miss P at this stage, as I think it ought fairly and reasonably to have done.

Our investigator said that this meant that Future Finance should refund all of the interest, fees and charges added to Miss P's loan and also remove any adverse information it recorded on her credit file as a result of this. In her view, this would place Miss P in the position she would be in had Future Finance acted fairly and reasonably towards her.

However, I didn't agree with this analysis. Firstly, this did not take into account that a significant interest refund had already been applied to the account. Secondly and more importantly, the investigator's proposed remedy would have the effect of putting Miss P in the position that she would be if she was never given this loan.

But I didn't think that it was the case that Miss P should never have been given this loan in the first place. Indeed, I was satisfied that it was fair and reasonable for Future Finance to agree to this loan. In my view, it was the case that Future Finance would have seen that it shouldn't have began attempting to collect full loan payments from Miss P, if it had got in contact with her in around December 2019. So I thought that this was the position I should have been seeking to place her in.

I didn't think that removing all interest, fees and charges on the loan as well as removing any adverse information would place Miss P in the position she would be in had Future Finance got in touch with her around December 2019, as this failed to take into account that interest accrued on Miss P's loan from the moment the funds were drawn down. So Miss P would already have been required to pay some interest even before she was due to start making the full repayments on this loan.

Furthermore, Miss P was always likely to have had adverse information reported on her credit file as she was not in a position to make the repayments that she agreed to make from December 2019.

Overall and bearing in mind all of this, while I agreed that Future Finance didn't act fairly and reasonably towards Miss P by attempting to collect higher repayments without checking that she had found employment, I was not minded to direct Future Finance to put things right in the way that the investigator suggested.

Instead, it was my intention to conclude that Future Finance should adjust Miss P's current loan balance by removing all of the interest, fees and charges added to it from December 2019 onwards. I also said that Future Finance could also choose to continue recording any adverse information that it did, should it wish to do so.

Responses to my provisional decision

Future Finance responded to say that it had calculated the extra interest it needed to remove from Miss P's outstanding loan balance as £381.93.

Miss P was notified of the extra interest to be removed and confirmed that she had read my provisional decision. Other than asking for confirmation that the £381.93 reduction would be made in addition to the £6,038.31 reduction proposed in April 2023, Miss P didn't provide anything further for me to consider.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank the parties for their responses to my provisional decision and I'm pleased to see that they, appear at least, to have accepted the findings I outlined.

I set out in some detail why I intended to partially uphold Miss P's complaint in my provisional decision of 22 January 2024. As I've not been provided with anything further by the parties to consider, I've not been persuaded to depart from those conclusions.

I would just like to confirm to Miss P that a further reduction of £381.93 will be made to her account balance in addition to the reduction of £6,038.31.

Overall and having considered everything, I'm still partially upholding Miss P's complaint and I remain satisfied that Future Finance needs to put things right.

Fair compensation – what Future Finance needs to do to put things right for Miss P

Having thought about everything, I'm satisfied that Future Finance should put things right for Miss P by:

- removing all interest, fees and charges added to Miss P's loan balance from December 2019 onwards. Any interest already removed needs to be taken into account. So this means that Future Finance does not need to remove any interest that it has already removed.
- Future Finance can continue recording any adverse information that it did regarding any failure to make loan payments should it choose to do so.
- Future Finance should provide Miss P with an updated statement of account showing exactly how much she owes once all adjustments have been made to her loan balance.

For the sake of completeness and the avoidance of doubt, I wish to make it clear that my direction here does not preclude Future Finance from terminating Miss P's agreement if has done so (or wishes to do so in future) should it conclude that its relationship with Miss P has broken down and there is no reasonable prospect of her returning to fulfilling her side of the agreement as intended – even after the adjustments directed above have been made.

My final decision

For the reasons I've explained above and in my provisional decision of 22 January 2024, I'm partially upholding Miss P's complaint. Link Financial Outsourcing Limited (trading as Asset Link Capital (No.9)) should put things right in the way I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 3 March 2024.

Jeshen Narayanan
Ombudsman