

## **The complaint**

Mr M complains Creation Consumer Finance Ltd trading as Creation provided him with an unaffordable credit facility to purchase goods at a retailer.

## **What happened**

Creation provided Mr M with a credit facility enabling him to make purchases at a retailer, 'store A'.

The credit facility had a limit of £1,000 and an APR of 19.9%. It was open ended meaning Mr M could use the facility to make purchases greater than £99, up to the agreed limit.

Mr M used the facility to make a purchase at store A in September 2018 for around £210. This was due to be repaid over 12 monthly instalments of around £19, with a total repayable value of around £230. Mr M made a further purchase at store A in November 2022 for £879 to be repaid at around £40 over a 24-month period.

Mr M complained to Creation in May 2023. He said the credit facility it had provided him with was unaffordable, and that had Creation completed proportionate checks it would have identified this.

Creation didn't uphold the complaint. It said its checks were proportionate and that it went on to make a fair lending decision when providing Mr M with this facility, based on the information it obtained from its checks.

Our Investigator upheld the complaint. He concluded Creation hadn't made a fair lending decision based on the evidence available to him. He said Creation ought to have identified Mr M was already over indebted and that he wasn't a suitable candidate to lend to.

Mr M accepted the outcome; Creation disagreed. In summary, it maintained its argument that it made a fair lending decision based on the information it obtained at the point of the application, and what it knew about Mr M's individual circumstances.

Creation asked for an Ombudsman's review, so the complaint's been passed to me to decide.

## **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 done so I've reached the same outcome as our Investigator, for broadly the same reasons.

We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website; both Mr M and Creation have been made aware of this approach.

Creation needed to take reasonable steps to ensure the lending it provided was responsibly lent to Mr M. The relevant rules, regulations, and guidance at the time of Creation's lending decision required it to carry out reasonable and proportionate checks. These checks needed to assess Mr M's ability to afford the credit limit being approved and repay it sustainably, without causing him financial difficulties or harm.

There isn't a set list of checks a lender needs to carry out, but they should be proportionate, considering things like the type, amount, duration, and total cost of the credit, as well as the borrower's individual circumstances.

And it isn't sufficient for Creation to just complete proportionate checks – it must also consider the information it obtained from these checks to make a fair lending decision. This includes not lending to someone in financial hardship; and ensuring repayments can be made sustainably without the need to borrow further.

I've taken this into account when reaching my decision on this case.

Creation has said it used a robust credit assessment tool when reviewing Mr M's affordability of this credit. It says it obtained Mr M's declared income and completed a credit check to identify his existing credit commitments; and to review the management of his current and recent credit accounts. It has said based on the information it obtained from these checks it was satisfied this lending was affordable for Mr M.

I've carefully considered Creation's argument; but I'm not persuaded its checks were proportionate, or that it went on to make a fair lending decision in this instance.

I say this because Creation was providing Mr M with a £1,000 revolving credit facility. While his initial credit purchase through store A was for just over £200, Mr M could use the available facility for any purchases above £99, up to the approved limit. So, Creation needed to base its creditworthiness assessments on the full facility limit being provided.

Creation has said it did base its assessment on the full limit being provided; but I consider its checks needed to go further. Creation was providing Mr M with an open-ended credit facility that could be used repeatedly. It identified from the credit check it completed that Mr M had debt with payday loan/short term lending provider(s). It could also see that Mr M was using a significant proportion of his existing revolving credit facilities.

Given Mr M's evidenced use of credit, I consider Creation needed to do more by looking to understand Mr M's actual financial circumstances; by verifying his income and expenditure, as well as completing the credit check as it did.

Our Investigator asked Mr M for his bank statements covering the months before this lending decision, to review what proportionate checks would likely have shown Creation about his financial circumstances at the time. Mr M hasn't been able to provide these details. But Mr M has provided us with his credit file which covers the time of Creation's lending decision. Mr M's credit file paints a different picture to that which Creation appears to have identified through its checks. As such our Investigator asked Creation for the raw data behind its summary and conclusions in reaching its lending decision. Creation hasn't been able to provide us with more detailed information.

In the absence of any other contrary information from either party, I consider Mr M's full credit file gives me a reasonable understanding of his financial circumstances around the time of the lending decision.

Mr M's credit file shows he had around three revolving credit facilities spread across a mail order and credit card accounts. It also shows Mr M had over ten payday loans/advances against his income in the 12 months leading up to this loan; with more beyond the most recent 12-month period. In addition, Mr M had been approved for around 15 other loans across the same 12-month period leading up to this lending. Several of the loans were still active at the time of Creation's lending decision, with a large number having been provided by high-cost credit and home credit lenders. Repayments to these existing lines of credit made up a significant proportion of Mr M's monthly income.

This suggests to me that Mr M's finances were severely stretched. Mr M had consistently turned to short-term and high-cost credit providers in the 12 months leading up to this loan, as well as high street lenders, to obtain credit. It would appear Mr M was refinancing high-cost lending with further high-cost lending.

I consider had Creation completed proportionate checks by verifying Mr M's income and expenditure it would reasonably have identified that he wasn't managing his finances well. He was borrowing from month-to-month with short term credit providers and high-cost credit providers; and it therefore follows I consider Creation would have reasonably concluded Mr M wasn't a suitable candidate for further lending.

It therefore follows, for the reasons set out above, that I don't consider Creation made a fair lending decision when providing Mr M with this credit facility.

### **Putting things right**

As I don't consider Creation Consumer Finance Ltd trading as Creation should have provided Mr M with this credit facility, I don't think it's fair for it to charge any interest or fees on any balances. However, I consider Mr M should pay the cash price for any goods he's kept. Therefore, Creation Consumer Finance Ltd trading as Creation should:

- Rework the account removing all interest (including any Buy Now Pay Later ("BNPL") interest), fees and charges applied to the account
- If the rework results in a credit balance, this should be refunded to Mr M along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. Creation Consumer Finance Ltd trading as Creation should also remove all adverse information recorded about this account from Mr M's credit file
- Or, if after the rework an outstanding balance still remains, Creation Consumer Finance Ltd trading as Creation should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the outstanding balance, any adverse information recorded about the account should be removed from Mr M's credit file

\*HM Revenue & Customs requires Creation Consumer Finance Ltd trading as Creation to deduct tax from any award of interest. It must give Mr M 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 the tax.

### **My final decision**

My final decision is that I'm upholding Mr M's complaint about Creation Consumer Finance Ltd trading as Creation, and I direct it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 April 2024.

Richard Turner  
**Ombudsman**