

The complaint

Mr P says Omni Capital Retail Finance Limited lent irresponsibly when providing him with a loan in 2016.

What happened

In October 2016, Omni loaned Mr P £657 over a 24-month term. The purpose of the loan was to purchase alloy wheels. The interest rate on the loan was an annual percentage rate (APR) of 19.9%. The total charge for the credit was £132.03, which meant the total amount repayable by Mr P for the £657 he was borrowing (plus a deposit of £74) was £863.03. The monthly repayments were £32.88.

In 2023, Mr P complained to Omni that it had lent irresponsibly to him and had worsened his already difficult financial situation.

Omni ultimately responded that it wasn't upholding Mr P's complaint. Omni said the loan application and credit check results were reviewed and processed in line with its lending criteria.

Unhappy with Omni's response, Mr P complained to this service. Our investigator looked into the complaint and recommended that it should be upheld. The investigator thought that Omni hadn't carried out the checks it should have done prior to making the lending decision. They felt that, if Omni had, it would have discovered that Mr P wasn't in a financial position to sustainably afford the loan payments. The investigator asked Omni to put things right for Mr P in line with our general approach to such cases.

Omni didn't agree with the investigator's assessment of the complaint. So, the complaint was referred to me to review afresh.

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 uphold the complaint. I'll explain why.

I confirm that I broadly agree with the investigator's findings on Omni's lending decision. I'm satisfied that the lending rules and provisions at that time meant Omni needed to assess whether it felt Mr P would be able to repay the credit taking account of factors such as the amount and type of borrowing and his income and expenditure. In summary:

- I recognise Omni carried out some checks to satisfy itself that Mr P was eligible for the loan. I don't doubt that Omni had its own internal lending criteria. But, as I say, there were wider rules and provisions that also needed to be considered by Omni, irrespective of its own policies.
- Given the amount of time that's passed, understandably Omni's no longer able to provide much detail about the precise checks it carried out. This makes it difficult for

me to conclude, on balance, that these checks were proportionate.

- I consider it likely that proportionate checks would have revealed Mr P's existing credit commitments. From what I've seen, these included at least four loans he'd taken out in 2016 alone, all of which were for £5,000 or more. This indicates, Mr P's levels of debt were already relatively high.
- It follows that, had Omni discovered the extent of Mr P's borrowing, it would have probed further regarding his income and expenditure – most likely by reviewing his bank statements. Copy bank statements from the time and a recent credit report indicate to me that his level of indebtedness in 2016 was very high and that he was spending a significant amount of his income on debts and gambling.
- Omni points out that Mr P appeared to manage the account in question well, eventually settling the loan early in 2017. While I've thought about that, I've placed emphasis on what information Omni gathered in 2016 and what information was otherwise available to it at that time. I've avoided considering the complaint with the benefit of hindsight.

Taking everything into account, I can't see that Omni carried out proportionate checks that would have enabled it to make a reasonable assessment of the affordability of the loan for Mr P. Mr P's circumstances in 2016 don't indicate to me that he was able to sustainably afford the credit he was provided with. As such, Omni should put things right for him.

Putting things right

I think it's fair and reasonable for Mr P to repay the principal amount that he borrowed, because he had the benefit of that lending. But he's paid interest and charges on the loan that shouldn't have been provided to him. So, I think Mr P's lost out and that Omni should put things right for him. Omni should:

- a) Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Mr P should then be deducted from the new starting balance. If the payments Mr P's made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him with 8% simple annual interest† calculated on any overpayments made, from the date they were paid by Mr P, to the date the complaint's settled.
- b) If there's still an outstanding balance on the loan, then Omni should agree an affordable repayment plan with Mr P, bearing in mind the need to treat him positively and sympathetically in those discussions, and take account of his current ability to repay the loan.
- c) Remove any relevant adverse information recorded on Mr P's credit file as a result of the lending.

† HM Revenue & Customs requires Omni to take off tax from this interest. Omni must give Mr P a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given, I uphold this complaint. I require Omni Capital Retail Finance Limited to put things right for Mr P as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 May 2024.

Nimish Patel
Ombudsman