DRN-4946240

Complaint

Mrs M has complained about a loan Progressive Money Limited ("Progressive") which she says was unfairly lent to her.

She says the loan was unaffordable and so should never have been granted to her in the first place.

Mrs M is being represented in her complaint by a Claims Management Company ("CMC").

Background

Progressive provided Mrs M with a loan for £10,000.00 in April 2018. This loan had an APR of 53.49% and a term of 36 months. This meant that the total amount to be repaid of £18,087.52, which included interest fees and charges of £8,087.52 (made up of interest of £6,697.52, an acceptance fee of £1,000.00 and an administration fee of £390), was due to be repaid in 35 monthly instalments of £502.43 followed by a final instalment of £502.47.

One of our investigators reviewed what Mrs M and Progressive had told us. She thought that Progressive ought to have realised that it shouldn't have provided this loan to Mrs M and so recommended that the complaint be upheld.

Progressive disagreed with our investigator and asked for an ombudsman to review the complaint.

My provisional decision of 25 June 2024

I issued a provisional decision – on 25 June 2024 - setting out why I was not intending to uphold Mrs M's complaint.

In summary, I wasn't intending to uphold Mrs M's complaint because I was satisfied that Progressive carried out proportionate checks and reasonably relied on what it found out which suggested the repayments were affordable.

Progressive's response to my provisional decision

Progressive agreed with my provisional decision and provide anything further for me to consider ahead of my final decision.

Mrs M's response to my provisional decision

The CMC, on Mrs M's behalf, responded to say that it disagreed with my provisional decision. In summary, it said that this was, amongst other things, because:

- Mrs M was gambling considerably on her sole account;

- The investigator said that Mrs M's credit file was considerably distressed and my provisional decision contradicted what she said;
- Progressive simply freed up further funds to allow Mrs M to use her credit cards to gamble further

My findings

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

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mrs M's complaint.

Having considered everything, including the responses provided to my provisional decision, I'm still not persuaded to uphold Mrs M's complaint. I'll explain why in a little more detail.

Progressive needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice, what this means is that Progressive needed to carry out proportionate checks to be able to understand whether Mrs M could afford to make her repayments 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 provide loans to a customer irresponsibly.

Progressive says Mrs M's loan application was manually assessed by an underwriter after she provided details of her monthly income and information on her expenditure. It says it cross-checked Mrs M's declarations against information on a credit search it carried out, bank statements and open banking data that it obtained from Mrs M and questions that it asked her during a telephone interview.

In Progressive's view although the credit search showed that Mrs M had historic defaults, all of the rest of the information it gathered showed that Mrs M could afford to make the repayments she was committing to. On the other hand, Mrs M has said she was already in difficulty and couldn't afford this loan.

I've carefully thought about what Mrs M and Progressive have said.

As I explained in my provisional decision, it's clear that Progressive obtained a significant amount of information, including bank statements, before it decided to proceed with Mrs M's application. So I don't think that there is any argument for saying that it needed to ask for even more information.

I'm therefore satisfied that Progressive gathered a proportionate amount of information before it made its lending decision. And on the face of things at least, this information does appear to suggest that, at the time at least, the monthly loan repayments were affordable for Mrs M.

That said, it isn't enough for a lender to simply request information from a borrower. I also need to consider whether the lender reviewed the information in a fair and reasonable way and fairly determined whether the customer could make their repayments.

In this case, what is in dispute is the weight Progressive placed on the bank statements it obtained from Mrs M and how it considered this information. There isn't any dispute that there were significant amounts of gambling transactions on the joint bank account statements that Mrs M provided to Progressive.

It's also clear that this piqued Progressive's attention, as it questioned Mrs M further about these transactions as part of the underwriting process. Progressive's underwriting notes suggest that when she was questioned about this matter Mrs M said that the transactions weren't made by herself, but rather they had been made by her husband. Progressive argues that this means it didn't simply ignore this information and that it took reasonable and proportionate steps when it saw this.

As I explained in my provisional decision, our investigator didn't consider Mrs M's response to be plausible and thought that Progressive ought to have realised this. In her view, Progressive was provided access to Mrs M's open banking data and this meant that it had access to the headline details of Mrs M's transaction groupings.

This information indicated that gambling transactions were also being made from Mrs M's sole account, as well as the joint account which she'd provided statements for. In the investigator's view, this not only called into question Mrs M's explanation that her husband was responsible for the gambling on the joint account, it completely undermined it to the extent that it wasn't reasonable for Progressive to continue with Mrs M's application. This is a position that went to be supported by the CMC.

I've carefully considered this argument. I can see why the investigator reached the conclusion that she did and I don't think that her argument is without any merit. This is particularly because I'm satisfied that the open banking data did not support the explanation that Mrs M's had provided in relation to the joint account statements. I'm also mindful that depending on the circumstances a lender providing a loan in such a situation could be unfair.

But I'm not bound by the investigator's assessment. And should I not agree with it, given I would be reaching a different outcome, it wouldn't be surprising for my findings to be different. It doesn't mean that my findings are incorrect, it means my own view, which I am required to form when a case is referred to me, is different and I am entitled to reach such a conclusion.

In reaching my conclusions, I'm mindful of the particular circumstances here. While I accept that Mrs M's open banking data did not support her explanation about the gambling transactions on the joint bank account statements she provided, the rest of the information Progressive obtained doesn't persuade me that her explanation was obviously and completely undermined, in the way that the CMC now argues.

So I don't think that Progressive's decision to lend in this particular instance was unreasonable. I'll explain why I think this is the case.

To start with, Progressive only had the headline transaction groupings the open banking platform used for Mrs M's sole account and the amount she spent in each area, rather than the full data that was included on the joint statements. And, in my view, while there was some gambling on the open banking data (and I accept that Mrs M's full statements for her sole account (which Progressive did not have) might have shown more and in better detail), the amount attributed to this headline grouping didn't completely undermine what Mrs M had said about her husband being responsible for the gambling on her joint account.

To be clear, and in response to the CMC's comments to my provisional decision, I want to reiterate that I'm satisfied that the transactions did not fully support what Mrs M had said about her husband being responsible for the gambling on the joint account. But I remain satisfied that they did not completely undermine her explanation either.

I know that the CMC has said that it considers the amount of gambling transactions were excessive. But I think that the amount being gambled needs to be considered in relation to Mrs M's income and the fact that a significant proportion were lottery transactions. And I don't think that the amount being gambled from Mrs M's sole account meant that there was absolutely no way that Mrs M's explanation for the joint account transactions could be plausible.

Indeed, I also think it is worth noting that the CMC did not raise the gambling transactions as a reason to uphold the complaint either at the time it was made, or in its referral of the complaint to us, despite it being in possession of full copies of Mrs M's bank statements and therefore the bank transactions. Furthermore, I can't see anything about gambling and Mrs M specifically telling the CMC that the gambling transactions were hers, rather than her husband's, in any of the communications Mrs M has had with the CMC either.

As far as I can see, the first time that gambling was highlighted as an issue was when our investigator picked it up in her assessment. The CMC has since argued that it was certainly Mrs M who was gambling at the time and that she shouldn't have been lent to because of this. But it strikes me as somewhat odd that if was as obvious that Mrs M was gambling unsustainably, as is now being suggested, why this matter was never raised prior to our investigator's assessment.

I also think it's worth me mentioning that, whilst I accept that this was a couple of years later and so won't have been known to Progressive at the time, when Mrs M asked for a payment holiday on the account in May 2020 she said that this was because her (now ex) husband was on a reduced wage, due to the pandemic, and he normally gave her the money for this loan.

I accept it is possible that this may have also been inaccurate representation, in the same way that the CMC now says the declaration that the gambling was her husband's at the time of the application was. But it does suggest that Mrs M's husband may have had some involvement in the loan and that the issue regarding who is responsible for the gambling, isn't as clear cut as the CMC is making it out to be.

Equally, I remain satisfied that Mrs M's credit file wasn't so distressed that it ought to have been obvious that that her explanation about the gambling transactions was wholly implausible either. There were issues here and there as well as more historic difficulties. But I can't see that there were any significant and sustained arrears, or recent significant adverse information such as recent defaulted accounts, or recent county court judgments recorded against Mrs M either.

I've once again reviewed the credit search that was carried out and it shows a couple of missed payments here and there. I accept that there were cash withdrawals on a credit card. But I don't think that £270 across twelve months, when Mrs M stood at using 84% of her revolving credit balances, is an indication of a huge problem. Finally, it's possible that Mrs M was slightly over her credit limit on a mail order account, it's not immediately clear as the headline report only indicates the missed payments and the investigator drilled into the month by month position. In any event, the account was being completely cleared with the proceeds of this loan.

To be clear, I am not making the finding that Mrs M's credit file was clear and pristine. I accept that there were some issues which didn't fully support what Mrs M had declared. But equally, I don't think that it didn't contain anything which clearly and obviously showed that Mrs M was masking problems and more importantly that her explanation to what were clear and direct questions was obviously implausible.

Furthermore, the interaction Mrs M had with Progressive's underwriter indicates that it was Mrs M intention to use the majority of the funds (almost £9,800.00) from the proceeds of her Progressive loan to settle existing debts. These were debts that Mrs M had already built up and which had to be repaid. Mrs M not being able to repay those debts with the funds from this loan are likely to have had significant adverse consequences.

There is no dispute that this loan was expensive. But it did allow Mrs M the opportunity of reduced monthly payments compared to what she would have been paying towards creditors already. This would clear what Mrs M already owed within in a reasonable period of time (in my view, 36 months is a reasonable period of time to repay £10,000.00), which continuing to make minimum payments, in the way she has argued she was doing so previously, would not have seen her clear her revolving credit balances.

I note that the CMC has said that consolidating Mrs M's debts in this way freed up funds for her to be able to gamble further. I don't know if Mrs M did go to apply for further credit or loans after clearing the balances that were to be consolidated. Although, I do note that Mrs M did fully repay this loan early and this was despite having taken a pandemic payment break.

In any event, Progressive could only make a reasonable decision based on the information it had available at the time. And I'm satisfied that the proceeds of this loan could and should have been used to reduce the balances on some of Mrs M's existing accounts in the way that Mrs M had committed to.

It's also my understanding that the balances were settled directly with Mrs M's existing providers too. This is important because it effectively restricted the credit to Mrs M using the vast majority of the loan proceeds (almost £9,800.00 out of £10,000.00) to consolidate her existing debts.

It was not possible for Mrs M to gamble the £10,000.00 advanced even if that is what she wanted to do. Therefore, it's arguable that the risk of this loan increasing Mrs M's indebtedness in a way that was unsustainable or otherwise harmful was, by way of luck rather than design, in any event, mitigated.

As I've previously explained, I don't rule out the possibility that Mrs M went on to re-establish balances on the accounts that were cleared, or that she took out other debts and the proceeds of these debts may have been lost to gambling. But Progressive won't have known this. It could only arrange for Mrs M's existing balances to be repaid, it did not have the authority to close those accounts once this was done.

If Mrs M is unhappy at being allowed to gamble on the credit card accounts - I'd point out that some mail order accounts were cleared and Mrs M wouldn't have been able to gamble on those - which the balances were cleared on afterwards, she'll need to take this up with the respective lenders rather than Progressive. And I remain satisfied that Progressive did not provide the means for a further £10,000.00 to be gambled.

Finally, it's also worth noting that this was a first loan Progressive was providing to Mrs M. So there wasn't a history of Mrs M obtaining funds and then failing to consolidate debts elsewhere in the way she committed to. If Mrs M had been returning for a second, or later, loan in similar circumstances, I think that her account would have been completely implausible as Progressive would have had experience of an earlier loan not having improved Mrs M's overall position.

While I do accept that there were some warning signs in the information that had been gathered, which needed to be reflected in any underwriting of a subsequent loan, I do think that Progressive was reasonably entitled to believe that Mrs M would be left in a better position after being provided with this first consolidation loan.

In reaching this conclusion, I have kept in mind that this loan was manually underwritten. So Progressive's underwriter will have had access to everything, including the concerning information that I've highlighted. But I have completed my review at a time where I have the benefit of hindsight.

I have to ensure that this hindsight does not creep into to my assessment. And most importantly I have to keep my determination here to whether Progressive made a reasonable decision in this instance, not re-underwrite this loan or decide whether I (or the CMC) would have instead made a different decision, a number of years later.

Given the circumstances here, in particular Mrs M's declaration regarding the gambling transactions, the lack of glaring inconsistencies in relation to this and Mrs M being advanced little in the way of new funds that she would be able to gamble, on balance, I don't think that Progressive did anything wrong when providing this loan to Mrs M. In my view, it carried out proportionate checks and, on balance, it reasonably relied on what it found out which suggested the repayments were affordable.

Overall and having considered everything, I satisfied that Progressive didn't act unfairly or unreasonably when lending to Mrs M. It manually underwrote her loan application after obtaining a significant amount of information indicating that the monthly payments were affordable for her. It also questioned some of the information provided and as it was providing a first loan, I think that it was entitled to rely on Mrs M's explanation as on the facts here it wasn't wholly implausible.

In reaching my conclusions, I've also considered whether the lending relationship between Progressive and Mrs M might have been unfair to Mrs M under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Progressive irresponsibly lent to Mrs M or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

I'm therefore not upholding this complaint. I appreciate this is likely to be very disappointing for Mrs M and her CMC – particularly as our investigator initially said that this complaint should be upheld. I'm also sorry to hear what Mrs M has said about it being difficult to repay this loan. But I hope she'll understand the reasons for my final decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained above and in my decision of 25 June 2024, I'm not upholding Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 16 September 2024.

Jeshen Narayanan
Ombudsman