DRN-5102395

The complaint

Miss C has complained that Chetwood Financial Limited trading as Better Borrow ("Better Borrow") didn't conduct appropriate affordability checks before it lent to her.

What happened

Miss C was granted one loan by Better Borrow in September 2022 of £10,000 to be repaid in 36 monthly payments. Miss C was due to make 35 monthly repayments of £369.15 followed by a final payment of £368.93. Had Miss C repaid the loan in line with the credit agreement she would've repaid a total of £13,289.18. The loan had an APR of 22.2%. The statement of account shows that the last full monthly payment Miss C made was in May 2023. Miss C has been making reduced payments from then on.

Following Miss C's complaint Better Borrow wrote to her in June 2024 and explained why it wasn't going to uphold it. Unhappy with this response, Miss C referred the complaint to the Financial Ombudsman.

An investigator didn't uphold Miss C's complaint. He said the checks carried out by Better Borrow were proportionate and suggested that she'd be able to afford the repayments.

Miss C didn't agree with the outcome, saying:

- She had a credit utilisation at the time – of 72% - she says financial experts expect that figure to be below 50%.
- She had around £35,000 of existing credit commitments across at least six other credit accounts.
- She was only making sufficient payments to cover the interest on her debts and this clearly shows that she was reliant on credit.
- The only way for Better Borrow to have assessed her income and expenditure was to review her bank statements. Had Better Borrow checked her statements then it would've discovered her gambling activity.
- She has already had a different complaint upheld in her favour by the Financial Ombudsman Service with the case handler in that complaint having reviewed her bank statements.
- Her salary wasn't as high as Better Borrow believed and the check it carried out into her income wasn't accurate.
- Better Borrow could have just as easily asked for her bank statements rather than rely on information from the Office of National Statistics (ONS).

These comments didn't change the investigator's mind about the outcome and as no agreement could be reached the complaint has 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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Miss C's complaint. Having carefully considered everything I've decided to not uphold Miss C's complaint. I'll explain why in a little more detail.

Better Borrow needed to make sure it didn't lend irresponsibly. In practice, this means it needed to carry out proportionate checks to be able to understand whether Miss C could afford to repay any credit it provided.

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 checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to do be done 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 firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss C's complaint. Having looked at everything I have decided to not uphold Miss C's complaint about the loan, and I've explained why below.

In the circumstances of this complaint, taking account of the information Miss C provided to Better Borrow and the results of its own checks – I'm satisfied that these were proportionate and demonstrated the loan to be affordable. I've explained why in further detail below.

Miss C's income declaration and Better Borrow's checks on this

As part of her application to Better Borrow Miss C declared she worked full time and earned £4,142 per month. Better Borrow didn't just rely on what Miss C declared to it – it took steps to crosscheck Miss C declaration against information from credit reference agencies on the amount of funds going into her main bank account each month. This information suggested that Miss C was receiving total funds that suggested her declaration was plausible.

Better Borrow was therefore satisfied that the amount declared by Miss C was likely to be accurate and it was this figure that was used in its affordability check. In my view, this is a proportionate check taking account of the regulations. Which says in CONC 5.2A.16(3).

> *(For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).*

Therefore, I'm satisfied that Better Borrow was entitled to rely on Miss C's declaration when deciding whether to lend to her. There was no indication to suggest what Miss C had declared was inaccurate or anything else to suggest that a further check into Miss C's income was necessary. Indeed, for a first loan and where the information gathered wasn't inconsistent or difficult to explain, I'm satisfied that it was a reasonable and proportionate for Better Borrow to establish how much Miss C earned.

For the sake of completeness and in any event, I would also add that even if Better Borrow was to have used the income figure that Miss C has now told the Financial Ombudsman Service – around £3,600 per month – I'm satisfied that this wouldn't have made any difference to my outcome. I say this because even if Better Borrow had used a lower amount of £3,600 for Miss C's monthly income and bearing in mind the results of its expenditure checks, I think Better Borrow would still have deemed the monthly repayments affordable on the lower income amount.

Miss C's credit commitments and the information Better Borrow obtained on this

As part of its affordability assessment, Better Borrow carried out a credit search and it has provided a summary of the results it received from the credit reference agency. I want to add that although Better Borrow carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard.

Better Borrow says the credit check results showed that Miss C had seven credit accounts including three credit cards, a loan and a current account owing a total balance of just over £25,343 and the total repayments due on these accounts came to £929 per month. It used this figure for its affordability assessment which I think was the correct thing to do.

Miss C says the total amount of debt she was reported to be owing is incorrect – she has said she owed over £35,000 at this time. This may have been the case. But that isn't and wasn't reflected in the data Better Borrow received – and so it wouldn't have known that Miss C's debt was as high as she said.

It isn't clear why Better Borrow's credit check results showed a lower amount of overall debt than Miss C said she had at the time for example it could be that any other credit that she took hadn't yet been updated or reported to the agency used by Better Borrow. Whatever the reason is, I'm satisfied that it was fair and reasonable for Better Borrow to rely on the results that it was given by the credit reference agency.

The credit check results also showed that there were no missed payment markers, defaults or any types of insolvency events. It appeared from the information Better Borrow received that Miss C was on top of her payments and didn't at least superficially appear to be having repayment problems.

Miss C has said that her credit utilisation of around 70% was high. She has said that many financial experts have said that such a utilisation is problematic. However, I don't agree that such a utilisation rate is in itself indicative of financial difficulty in the way that Miss C argues.

In my view, considering the utilisation rate on its own ignores things like the type of credit being used, the interest being paid, what the borrower was required to actually repay each month and their repayment record. So, I don't think that Miss C's credit utilisation rate on its own was sufficient to have required Better Borrow to carry out further checks or to have declined her application.

Furthermore, I'm also mindful that the information from Miss C's application, shows the loan purpose recorded was "*debt*". I accept that Better Borrow didn't know which accounts would have been consolidated. But I do think it was reasonably entitled to believe Miss C would use the funds in the way she said she would. But whether or not Miss C did use the funds for the stated purposes Better Borrow's expenditure calculations added the monthly repayment for this loan to the amount.

In the circumstances of this complaint, while Better Borrow's credit checks showed Miss C's credit utilisation at 70% I also have weighed this against, the lack of adverse payment information or other indications of difficulty in the credit check results. In my view, there wasn't anything – even taking account of the credit utilisation figure to have prompted further and more in-depth checks.

Miss C's living costs and use of statistical data

As part of the application Miss C declared her housing costs came to £425 per month. To this figure Better Borrow added the amount of the monthly loan repayment for this loan, repayments to the existing credit commitments it saw Miss C had on its credit check (£929) as well as £775 per month for other living costs which is information it had gathered from the Office of National Statistics (ONS). These amounts subtracted from Miss C's declared income left her still with around £1,630 per month. The loan looked affordable.

I'll now proceed to explain why the information Better Borrow gathered was reasonable and why it was reasonably entitled to rely on it.

Miss C says that given everything Better Borrow collected about her it ought to have asked to see her bank statements. Miss C says that had Better Borrow received her bank statements, it wouldn't have lent to her.

In considering this matter, I've started by thinking about whether it was reasonable for Better Borrow to have used ONS data. I've done this because Miss C says that instead of using estimates from the ONS, Better Borrow could've easily gathered her bank statements to understand her actual living costs.

I agree that Better Borrow could have requested bank statements from Miss C if it wished to do so. However, that's not what I need to consider in order to determine whether Better Borrow acted fairly and reasonably. What I need to consider is, whether it was required to do so given the circumstances here.

Given this was a loan which had monthly payments of approaching £400 over a three-year term, I would expect Better Borrow to have had some idea of what Miss C's living costs were likely to be.

One way of getting an idea of a consumer's essential living costs is by using ONS data – this is a well-established approach and can be an appropriate way of a lender getting a sense of whether loan payments are likely to be affordable. The regulations in place at the time permitted a lender to use such data where it was appropriate to do so. Indeed, CONC 5.2A.19 states:

> *"It is unlikely to be appropriate to place reliance on statistical data, for example, where the firm is aware, or has reasonable cause to be aware from information in its possession, that the composition of the customer's household, or the number of dependants that the customer has, or the level of the customer's existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based."*

Miss C has also said the ONS data used by Better Borrow wasn't correct or accurate. But, as the above regulations show, Better Borrow could rely on it and it isn't for the Financial Ombudsman Service to question the legitimacy of the figures provided by the ONS.

Given that there wasn't anything in the rest of the information gathered that would suggest that Miss C circumstances significantly differed from those of the average customer that is typically used in such data, I don't think that Better Borrow had any reason to believe that the ONS data couldn't be fairly relied upon. As it was reasonable to use this information in its assessment of affordability, I'm satisfied that Better Borrow's checks were proportionate.

In any event and for the sake of completeness, I'd also add that even if Better Borrow had attempted to find out more information about Miss C's expenditure, I'm not persuaded that this would have resulted in it reaching a different conclusion. I say this because while Miss C has referred to her total monthly expenditure from her main account (the one where her income is received) exceeding her income, I wouldn't expect Better Borrow to have found out about Miss C's total monthly expenditure.

Given the circumstances of this complaint, I'm satisfied that Better Borrow simply needed to have worked out Miss C's likely non-discretionary living costs. This doesn't mean Better Borrow needed to know everything Miss C was spending her money on but merely her essential living costs such as utilities, housing and other fixed payments she had – and Better Borrow did this. And having considered the information Miss C has provided, I'm not persuaded that her essential living costs made this loan unaffordable.

I'd also argue that it wouldn't be proportionate in all applications to conduct a review of a consumer's bank statements. But, in any event, even if Better Borrow had asked to see Miss C's main account statements to see what she was spending on her bills, or check her income, I don't think it would've been overly concerned – as there was very little in the way of gambling on that main account.

I accept that Miss C was making transfers to another of her accounts– but, given what Better Borrow already knew about Miss C's circumstances, I'm not persuaded that Better Borrow can be reasonably expected to have obtained bank statements for multiple bank accounts. It therefore follows that I'm not persuaded that Better Borrow requesting Miss C's main bank account statements as part of any affordability checks would have made a difference to its decision to lend.

Miss C's other complaints

Finally, Miss C has said that she's had other complaints upheld by the Financial Ombudsman Service for lending that was taken around the same time as the Better Borrow loan – and that is why this complaint should be upheld.

Having checked our records on the complaints Miss C has referred to us, I've found another complaint about a credit card – which was opened in October 2022 – this was only a matter of weeks after Better Borrow advanced the loan that is the subject of this complaint. There is also another complaint about a loan which was advanced to Miss C by a different lender in February 2023.

In both of Miss C's other complaints referenced above, the investigator recommended that the complaint be upheld, and the lender accepted the recommendations. Miss C says that as her other complaints were upheld it therefore follows this complaint should also be upheld.

I can understand why Miss C may find it inconsistent to receive a different outcome on this case. However, Miss C having other complaints upheld by investigators do not create a precedent that I am required to follow.

I'm required to consider the facts and individual circumstances of this particular complaint – and then come to what I consider to be a fair and reasonable outcome. And for the reasons, I've in some detail explained above, I've been persuaded that Better Borrow has acted fairly and reasonably towards Miss C and I'm not upholding this complaint.

Although I've not upheld Miss C's complaint, I've noted Miss C's reduced payments and that an outstanding balance remains due. As this is the case, I would remind Better Borrow of its obligation to treat Miss C fairly and with forbearance with the repayment of the balance.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Better Borrow lent irresponsibly to Miss C or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I've explained above, I'm not upholding Miss C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 5 June 2025.

Robert Walker
Ombudsman