

## **Complaint**

Mrs H has complained about a flexible loan which she says Santander UK Plc unfairly lent to her.

This flexible loan was provided by a firm named Cahoot, which was a trading name of Abbey National Plc. Abbey National Plc went on to be acquired by Santander UK Plc and this is why it is responsible for answering Mrs H's complaint. However, for the sake of clarity and ease of reference, I will refer to Cahoot in this decision.

Mrs H says that the facility was never affordable given her existing debts and so she shouldn't have been lent to.

## **Background**

In December 2001, Cahoot provided Mrs H with a flexible loan which had a credit limit of £6,000.00. This flexible loan was effectively a revolving credit facility as it allowed Mrs H to draw funds and make flexible repayments. It operated in a similar way to a credit card except that instead of using the card to make purchases, with a retailer, Mrs H was able to withdraw cash funds directly. Mrs H was required to repay the greater of £50, or 1.75% of the total outstanding balance, as a minimum payment and the facility had an APR of 9%.

From what I can see, Mrs H made her first drawdown on the facility in December 2001. As I understand it from the limited records which Cahoot has been able to provide, the facility was closed in March 2010 and an outstanding balance was sold on to a third-party. In August 2023, Mrs H complained that this facility was unaffordable and therefore shouldn't have been provided to her.

One of our investigators reviewed what Mrs H and Cahoot had told us. He hadn't seen enough information to be persuaded that Cahoot had done anything wrong or that it had treated Mrs H unfairly when it provided this facility. So he didn't recommend that the complaint be upheld.

Mrs H disagreed and asked for an ombudsman to review her complaint.

## **My findings**

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

Having carefully considered everything, I'm not upholding Mrs H's complaint. I'll explain why in a little more detail.

I think it's worth me starting by explaining that given just how long ago the decision to lend took place, more than two decades, there is quite understandably an extremely limited amount of information that remains from the time. It may also help for me to explain that I have to reach my decision on the balance of probabilities. Where the evidence is incomplete

and/or inconclusive (like it is here), I have to consider what is most likely to have happened in light of the evidence that does remain available and the overall circumstances.

In essence, Cahoot needed to make sure it didn't treat Mrs H unfairly. I've deliberately referred to Cahoot needing to ensure that it didn't treat Mrs H unfairly, rather than lend responsibly, as Mrs H applied for her Cahoot account in December 2001. This was not only before the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance came into force, in April 2014, it also predates the main guidance on irresponsible and unaffordable lending that was introduced by the previous regulator of consumer credit (the Office of Fair Trading ("OFT")) in March 2010.

That's not to say that there weren't any expectations or standards at all in relation to lending at the time Mrs H applied for a Cahoot account. Indeed, I understand that Cahoot, or at least its then parent, was a subscriber to then British Bankers' Association's Banking Code, which was in place at the time. But it would be fair to say that Cahoot's obligations and responsibilities at the time were not the same as they are now. For example, the concepts of borrower focused assessments, proportionate checks and sustainability were not part of the expectations or requirements at the time.

What Cahoot agreed to do – as a result of it being a subscriber to the banking code – at the time of Mrs H's application, was assess whether it felt that she would be able to repay any lending.

I understand that Cahoot may well have carried out credit checks on Mrs H. Indeed, Mrs H's signed flexible loan application form shows that she consented to credit searches being carried out and credit scoring being used, should Cahoot have considered this necessary. Nonetheless, Cahoot no longer has the output of any credit checks. And since it is no longer required to have this information more than 20 years later, I've not drawn any adverse conclusions as a result.

In any event, I've not seen anything to indicate that Mrs H had any significant adverse information – such as defaults or County Court Judgments ("CCJ") – recorded against her in December 2001. Mrs H has referred to adverse information of this type going on to be recorded against her. However, what she's said and provided suggests that this went on to happen from around 2005 onwards – so after this facility was provided.

Furthermore, while Mrs H has provided a list of her creditors and the amount she owed at the time she entered into a debt management plan, this doesn't show me what Mrs H's balances were in December 2001. For the sake of completeness, I should also say that while I've seen Mrs H has said that this information, in any event, shows that the amount of debt she was able to accrue was unsustainable, as I've explained, the concept of sustainability only came about with the publication of the OFT's irresponsible lending guidance ("ILG") in March 2010.

In this case, what's important to note is that Mrs H was provided with a revolving credit facility rather than funds which needed to be repaid in a lump sum. And this means that Cahoot was required to understand whether Mrs H could repay a credit limit of £6,000.00. As I've set out in the background section of this decision, the terms of the facility meant that Mrs H would have minimum payments which be a minimum of £50 or a maximum of £105 should she draw down the full £6,000.00.

Cahoot clearly felt that Mrs H would be able to make such repayments. And there isn't anything from the time at least which clearly shows me that it wholly unreasonable for Cahoot to have reached this conclusion.

I appreciate that Mrs H may feel that it is unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Cahoot isn't required to have retained all of this information either and it was Mrs H that chose to make her complaint in August 2023. As this is the case, I have to decide the complaint on what I have before me.

Furthermore, I can also understand why it may be frustrating for Mrs H that we aren't assessing the facts of her case against the standards and expectations she's referred to. It is only fair and reasonable for me to uphold a complaint where a firm failed to act in accordance with the obligations expected of it at the time - not obligations that went on to be introduced a number of years later. Most of Mrs H's submissions are based on borrower focused assessments, proportionate checks and sustainability.

While these are standards which lenders have had to adhere to more recently, I'm afraid that I cannot reach the conclusion that Mrs H's complaint should be upheld for a failure to meet these standards when this facility was provided a number of years before these standards and expectations were introduced.

As this is the case, I've not seen enough to be persuaded that Cahoot did anything wrong when providing this flexible loan to Mrs H. I've not seen anything to indicate that Cahoot failed to act in accordance with its obligations and expectations at the time that it agreed to lend to Mrs H in December 2001.

So overall and having considered everything, I'm satisfied that Cahoot didn't treat Mrs H unfairly or unreasonably when lending to her. And I'm not upholding Mrs H's complaint. I appreciate this is likely to be very disappointing for Mrs H – as she clearly feels strongly about this matter. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 10 March 2025.

Jeshen Narayanan  
**Ombudsman**