

The complaint

Miss K complains that Creation Consumer Finance Ltd (“Creation”) unfairly asks her to repay lending it provided in relation to the purchase of goods from October 2021 until March 2023.

What happened

Between October 2021 and March 2023 Creation entered into seven fixed sum loan agreements with Miss K. All of the loans were interest free and to fund purchases of specific items. Those items included household goods such as furniture, electrical goods as well as children’s items. I’ve set the agreements out below.

date	Amount borrowed	Term and repayments
3/10/2021	£1,639.00	£45.52 over 36 months
28/6/2022	£3,777.60	£78.70 over 48 months
10/10/2022	£3,726.00	£155.25 over 24 months
18/11/2022	£1,186.15	£98.84 over 12 months
28/12/2022	£1,105.00	£92.08 over 12 months
06/1/2023	£1,141.96	£95.16 over 12 months
15/2/2023	£1,260.00	£105.03 over 12 months
10/3/2023	£2,602.00	£54.20 over 48 months

Miss K says that she was in an abusive relationship at the time and her then partner controlled her finances. She says that she was forced to seek emergency accommodation in March 2023.

Miss K subsequently raised a complaint with Creation. She said that she had been coerced into entering into the agreements and hadn’t had the benefit of any of the items. She also said that the employment information provided as part of her applications had been false, and she wouldn’t have been able to meet the repayments. She asked Creation to reduce the balance by 50%.

Creation didn’t think it had done anything wrong, so it didn’t uphold the complaint(s). However, after Miss K’s referral to this service and having been told more about Miss K’s personal circumstances at the time, Creation accepted that it ought not to have provided all of the lending. It agreed to remove interest, fees and charges.

Creation subsequently offered to accept payment of 50% of the current outstanding total

balance to partially settle the debts, which would be recorded with Credit Reference Agencies ("CRAs"). It asked Miss K to make this payment within two months. It maintained, however, that Miss K had made the purchases associated with the agreements and received the goods.

Miss K didn't think that was fair. She said that it had taken Creation over a year to make an offer to settle matters and it wasn't fair to hold her responsible for lending she didn't want in the first place. At this point Miss K said Creation ought to write off the outstanding balances and remove any adverse information recorded with CRAs.

Our investigation carefully considered the circumstances under which Miss K brings this complaint and was sympathetic to her in respect of the events which led to this point. They found that Miss K's evidence supported her assertions about the nature of her relationship with her then partner. However, they didn't think that it ought to have been clear or obvious to Creation at the point of any of the loans, so they didn't find that Creation had done anything wrong in supplying them in the first instance.

Our investigator said that Creation had a responsibility to carry out reasonable and proportionate checks of Miss K's ability to sustainably repay the agreements. However, they found that it hadn't done so. As a result, they went on to consider what it might have found if it had asked more questions.

Our investigator found several barriers in building an accurate picture of Miss K's finances at the time – whilst they were able to procure some of Miss K's personal bank statements, they weren't able to see accounts held jointly with her then partner. Nonetheless, based on what they had learned about Miss K's financial circumstances at the time, our investigator concluded that Creation likely would've reached the same lending decision on the basis that it appeared the agreements were affordable for Miss K.

Our investigator noted that Miss K accepted that she had applied for some of the agreements herself, albeit under duress. And that Miss K had said some were applied for by her then partner, without her permission.

Our investigator accepted that this might have been the case, and that the evidence Miss K had supplied, along with her plausible testimony about her former relationship, supported that. They nonetheless found that Miss K had likely benefitted from the items provided as they'd been sent to the address she was living in at the time. And, having already concluded that Creation ought reasonably not to have known about Miss K's personal circumstances at the time, they didn't think it'd be fair to require Creation not to hold Miss K responsible for the lending.

Lastly, given all of their findings our investigator didn't think that it would be fair to require Creation to remove information about the lending it had recorded with CRAs. They found this, broadly speaking, because they thought it was fair for Creation to record an accurate version of events with CRAs.

Miss K disagreed. She made a number of points. In summary, she said;

- Some of the income our investigator took into account was benefits intended to cover the cost of living with a disability and ought not to be considered as disposable income.
- Payments made through her bank accounts do not reflect that she was in control of them nor that she benefitted from them.
- Creation was unclear and ambiguous about offers it had made to settle the complaint.

- Payments she's made towards the debt in the region of £4,000 haven't been taken into account in determining whether Creation's offer to settle matters is fair.
- Reporting adverse information with CRAs is unjustified and is causing her financial harm. That's something Creation had a responsibility to avoid under the Consumer Duty.
- Our consideration of her vulnerability and experience of economic abuse was inadequate.
- That a counter proposal she made to repay 25% of the outstanding balance hasn't been addressed adequately by Creation nor this service.

Miss K reiterated her proposal to repay 25% of the balance on the basis that adverse credit information is removed with CRAs and the accounts are marked as closed and settled.

Our investigator considered that they'd already addressed the points made by Miss K. They added that Creation had already said it wouldn't accept less than 50% of the outstanding balance to settle the debts.

The case was passed to me to make a decision on it. Before issuing a decision, I asked Creation for clarity on its position on the case, noting that it had previously suggested writing balances off only to change its mind. I asked it why that was the case, and also for its thoughts on whether the requirement for Miss K to repay 50% of the balance within two months was a fair one. I gave it a final opportunity to reconsider its position.

Creation clarified that it accepts it ought not to have given Miss K a large amount of credit over a short period of time. It reiterated that it is willing to remove all interest fees and charges from the agreements and then come to an affordable repayment plan with Miss K. It also said that once the debt is repaid it would be in a position to remove adverse credit information.

Creation otherwise said that a specialist team within its business was responsible for making a decision to write off a debt or partially settle it. It said that it's unable to influence that internal decision.

The case was passed to me to make a final decision on it. Before doing so, I issued a provisional decision in which I reached broadly the same outcome. I wanted to give both parties a final opportunity to submit evidence, however. In summary, I said;

At the outset I'd like to acknowledge what Miss K has said about the circumstances which led to this complaint. She's spoken in detail about what sound like very unfortunate circumstances she experienced.

Miss K might find that I haven't addressed every point she's made, or I haven't gone into as much detail as she did. That's simply because I might not find it necessary in order to explain what I think a fair and reasonable outcome is. I can nonetheless assure Miss K I've carefully considered everything that's been said.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required to take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

When the evidence is incomplete, inconclusive or contradictory – and I think it is in this case – I make my decision on the balance of probabilities. That is, what I think is most likely to have happened given the available evidence and the wider circumstances.

The types of agreements Miss K complains about are fixed sum loans. They're all regulated

agreements and ones which this service has the power to consider complaints about. Miss K complains on the basis that the lending was unaffordable and/or irresponsible. She also complains that Creation isn't acting fairly in holding her responsible for the lending due to the personal circumstances she was experiencing at the time the lending was provided. I'll deal with these points in turn.

Did Miss K give authority for the agreements and if not, should Creation have reasonably been aware of this?

I think a relevant question here is whether Miss K entered into the agreements herself, or had given authority – actual or apparent – for someone else to do so on her behalf.

By Miss K's own account she accepts that she applied for some of the agreements, albeit under duress from her former partner. She asserts that she wasn't involved in the remainder of the applications.

Miss K has also given a plausible account of her unfortunate experience as a victim of domestic abuse whilst in a relationship with her former partner. She's shown that was granted a restraining order which restricted contact in February 2021, but she says that relationship started again later that year.

Like our investigator, I've no reason to doubt what Miss K has said about the abuse she suffered. I accept that it's therefore possible that there could have been an element of undue influence involved in the applications in question.

That doesn't necessarily mean that Miss K hadn't given authority for any of the agreement. I say this because the goods in question were sent to the address I think Miss K accepts she was living at. And most of the goods in question were household items, or items for children. So, it seems to me that Miss K has likely benefitted from the use of those goods. On balance, I don't think I can confidently conclude that Miss K hadn't given authority for the lending.

I've also carefully considered whether Creation ought reasonably to have been aware that Miss K might have been unduly influenced in relation to any of the agreements.

Taking into account what I've said about the items being sent to an address Miss K was likely living in at the time – and the one on her bank statements – as well as the nature of the goods and there being no clear discrepancies with the personal details supplied as part of the application, I can't reasonably say that Creation ought to have been aware of Miss K's personal circumstances.

Overall, I don't think that Creation ought reasonably to have questioned whether Miss K had made the applications herself or had been influenced by someone else in doing so. I also haven't been persuaded that Miss K hadn't given authority to enter into the agreements.

Did Creation complete appropriate checks of Miss K's ability to repay the agreement, and if not, what would it have found?

Our approach to cases involving allegations of unaffordable lending is set out on our website – including all of the rules regulations and good industry practice we consider. So, I don't find it necessary to set all of that out in this decision.

Relevant industry guidance required Creation to have conducted a reasonable and proportionate check of Miss K's ability to repay each agreement.

Reasonable and proportionate checks with inevitably vary. Such checks ought to depend on a number of factors, focusing on things like the applicant's personal and financial circumstances, as well as the amount and type of credit. They also ought to take into account any indications of vulnerability or potential change in circumstances which might affect someone's ability to meet repayments.

Creation gathered what I consider to be very basic information about Miss K's circumstances on each application – such as credit checks by way of estimating her committed expenditure, asking her how much she earned, whether she was a homeowner and if she had dependents.

Like our investigator, I've found that there were some discrepancies with the information Creation gathered for all of the applications. And given the number of agreements and amount of lending provided to Miss K, as well as what it found about her existing commitments, I think Creation could've asked more questions – particularly about Miss K's expenditure.

It follows that I don't think that Creation carried out a reasonable and proportionate check of Miss K's ability to repay any of the agreements in question. So, I'll go on to consider what it likely would've found if it had.

I think it's fair to say that Miss K hasn't provided what I'd consider to be a detailed picture of her financial circumstances at the time of the applications in question. Nor has she provided supporting evidence.

Our investigator sought Miss K's personal bank statements around the time of the applications. That's not to say that I would've expected Creation to do the same. Those statements, nonetheless, likely give us some insight into Miss K's financial position at the time. I say some insight because I'm aware that Miss K also had other accounts – some of which might have been held jointly with her then partner. I can see that's the case because I've seen transfers being made to and from those accounts.

Our investigator found that Miss K appeared to receive a reasonably consistent income by way of employment at around £2,140 for the period in question. In addition, she was in receipt of various support and benefit payments totalling around £1,200 per month.

The statements show that Miss K's regular expenditure remained fairly consistent for the period in question – things such as council tax, subscriptions, energy and insurance costs for example.

There are significant inconsistencies in other respects, however. I say this because during the period in question there were times where Miss K appears to have sought a number of short-term loans as well as other longer term lending products, which appear to have been used to consolidate other lending. She also received significant and regular transfers from other accounts which haven't been accounted for. And as above, I'm aware Miss K had other accounts for which we haven't been provided statements for.

All of the above leads me to conclude that we haven't been able to build a reliable or full picture of Miss K's financial position at the time of the lending in question.

Our investigator nonetheless considered the information we have been provided with and found that all of the agreements in question likely would've been affordable for Miss K on that basis that she'd be left with a disposable monthly income. I agree, based on the evidence we've been provided, that it seemed Miss K had a sufficient disposable income to be able to meet the repayments required under all of the agreements.

I also think it's clear that despite that, Creation ought to have picked up on what might be considered to be financial instability on Miss K's part. I say this in the main part due to the various other lending products that Miss K took out. I don't think we know enough to reasonably say that Miss K was reliant on those loans for day-to-day living, particularly since she's not been able to account for other transfers into her account, the bigger of which was £10,000 in December 2022.

So, whilst I can't reasonably conclude that Creation ought to have considered the lending it provided was unaffordable for Miss K, I think there could be an argument to say that Creation might have found that it wasn't appropriate to provide Miss K with all of the lending, given inconsistencies in relation to her borrowing habits.

Creation accepts that it shouldn't have provided all of the lending. It's offered to refund all interest, charges and fees applied to the lending. Taking into account that the lending was provided for specific purchases and the goods relation to those purchases appear to have been supplied to Miss K, I think that's enough to put things right in the circumstances.

Lastly, Creation has said that once the lending has been repaid it will be in a position to remove adverse credit information. It's not clear what it means by that and whether it intends to do this or if it intends to consider the matter further at that point. However, the reality here is that Miss K hasn't been making payments towards her agreements. I don't think it'd be unfair for Creation to report that and any future arrangements it might enter into with Miss K regarding repayment. If, once the agreements have been repaid, it's for Miss K to take the matter up with Creation – in light of what it's said – if she thinks the information it's recording at that point isn't fair.

Has Creation treated Miss K unfairly in any other way?

I've covered above why I don't think that the lending Creation provided Miss K was unaffordable. And why I think it's done enough to put things right on the basis that it was irresponsible for it to have provided the lending.

Miss K has also made several points about why Creation hasn't treated her fairly subsequent to it learning about her personal circumstances at the time of the lending, such as it having chased payment, taken too long to make an offer to resolve matters and declined to remove information it's recorded with CRAs.

In making those points, Miss K has referred to Creation's obligations under what she considers to be relevant industry guidance, rules and legislation. I've carefully considered everything she's said. Having done so, I don't think that Creation has treated Miss K unfairly. I'll explain why.

I've seen that Creation quickly resolved issues Miss K raised around the frequency and nature of its contact regarding it requesting repayment. I require no action from it in this respect.

It's also clear that Miss K feels strongly that it's not fair for Creation to report information with CRAs regarding the loans in question. But, Creation has an obligation to report accurate information in that respect, and I don't think there's sufficient reason here to say that it ought not to report the loans. It wouldn't be in Miss K's or any other lenders interest to represent that the agreements hadn't existed.

Lastly, the points Miss K has made about why Creation ought to remove the entries from her credit file – and the associated guidance, legislation and caselaw she's cited – broadly relies on the lending having been entered into as a result of coercion or duress. I've covered above

why I haven't been persuaded that was more likely the case in this situation, so I don't find that it would be fair to require Creation to remove the associated credit entries. But, I'll nonetheless remind Creation of its responsibility to record accurate information with CRAs.

My provisional decision was that Creation had made a reasonable offer to put things right by offering to rework the seven fixed sum loan agreements referenced above to remove any interest, charges and fees.

Creation agreed with my provisional decision. Miss K didn't respond by the deadline set.

The case has been passed back to me to make my final decision.

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.

Neither party in this case has provided evidence which I consider to be materially new in response to my provisional decision. As such, I find no reason to depart from my provisional conclusion, and therefore make those findings final.

My final decision

For the reasons explained above, my final decision is that Creation Consumer Finance Ltd has done enough to put things right by offering to rework the seven fixed sum loan agreements referenced above to remove any interest, charges and fees. It should carry that out, to the extent that it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 24 April 2025.

Stephen Trapp
Ombudsman