

The complaint

Mr Y complains that Zempler Bank Limited (“Zempler”) irresponsibly provided him with a credit card.

What happened

Zempler provided Mr Y with a credit card and a limit of £1,500 in September 2021. I understand there’s a balance outstanding which Mr Y is making payments towards under an arrangement to pay.

Mr Y complained to Zempler. In summary, he said the lending was unaffordable, he had a poor credit score with defaults and substantial amounts of outstanding debt. Mr Y also says he had a severe gambling addiction.

In its final response, Zempler didn’t uphold Mr Y’s complaint. In summary, it said the checks it carried out revealed the lending was affordable. Mr Y didn’t accept this and referred his complaint to our service.

Our Investigator reviewed matters and, following multiple communications between the parties, ultimately didn’t uphold the complaint. In summary, they said Mr Y had sufficient disposable income to make the repayments on this lending. And therefore, the overall lending was fair.

Mr Y didn’t agree with the Investigator. In summary, he said the credit report he’d provided shows he had defaulted on multiple debts and had a high utilisation of revolving credit. Mr Y said his statements showed multiple repayments to credit cards, frequent cash withdrawals and transfers to emergency funds, a high volume of transactions and salary payments following rapid outflows. He said he was also borrowing substantial amounts from family and friends which he withdrew as cash to fund his gambling habit. Mr Y said that he was using new credit to cover old credit. And had Zempler carried out proportionate checks, this would have revealed the extent of his gambling. Mr Y said the Investigator got his income wrong as it was around £2,700 each month and not over £3,800.

Because the parties couldn’t agree, the matter was passed to me to decide.

I issued a provisional decision where I said, in summary, that I thought Zempler’s checks revealed any further lending would be irresponsible and likely unaffordable for Mr Y. I said this because of the large amount of default debt Mr Y had outstanding, as well as the credit check suggesting Mr Y had problems paying existing debt. I said this showed Mr Y was likely in financial difficulty and therefore any further lending would likely be problematic for him. On this basis, I felt Zempler shouldn’t have lent.

Zempler didn’t agree and, in summary it said:

- The provisional decision attempted to make the argument that if a customer defaults within the last three years, they shouldn’t be provided with access to credit, and any historically defaulted balances should be considered as existing debt obligations.

- Zempler doesn't lend to customers who have had a default in the last seven months and here, Mr Y hadn't had a default for 35 months.
- It may be considered poor practice for lenders to rely on data greater than 12 months old to make decisions and if lenders were to exclude borrowers from access to credit because of defaults recorded between 12 and 36 months, this would be considered a poor outcome under The Consumer Duty.
- There are no regulations preventing lending to those with defaults in the last three years.
- Defaulted debt doesn't form part of a customer's current credit obligations and doesn't require monthly payments so shouldn't be considered as part of the affordability assessment.
- However, if there is a formal agreement to repay historical defaulted amounts, then that would be captured by the Credit Reference Agencies ("CRAs") and would have been included in the monthly credit repayment calculation.
- Zempler's credit check showed Mr Y hadn't missed more than two consecutive payments within the prior six months.

Following this, and in light of Zempler's comments, I reviewed the case afresh, including the credit check data provided by Zempler, as well as taking into account further evidence from Mr Y about his financial situation. Having done so, I got in touch with the parties informally, to explain that I didn't think Mr Y's complaint should be upheld. I said:

"In response to this, [Zempler's comments following my provisional decision, as set out above] I agree with Zempler that a borrower shouldn't automatically be precluded from lending, if they have defaulted accounts, whether those occurred in the past three years or not. Rather, in all the circumstances of Mr Y's case, I felt the lending was irresponsible because from what I'd seen, Mr Y's current financial situation didn't seem stable, particularly against a backdrop of having previously mismanaged a large amount of credit.

I also appreciate Zempler will set its own limits around what it considers an acceptable risk, and it's entitled to do so. But that doesn't necessarily mean the lending was fair. Instead, I must consider whether Zempler has met its obligations as a responsible lender.

With all this in mind, I've reconsidered the evidence on this case afresh, including Zempler's comments about what the checks showed in relation to how Mr Y was managing his existing credit. Having done so, I can see that whilst I'd said previously Mr Y did have some issues repaying existing credit, in fact, these issues happened some time before this lending. So, I'm no longer taking the position that Mr Y's current situation is a reflection of the previous issues he'd had mismanaging his credit. Instead, it appears he'd been managing his existing credit relatively well. The issue in part, here, is that Zempler has shared raw credit data with our service that it said it's unable to interpret for us – and it is for Zempler to evidence what its checks showed. This initially led to some issues understanding exactly what Zempler had seen at the time of lending.

So, to recap, Zempler provided Mr Y with a credit card in September 2021, with a limit of £1,500. And it says its checks showed:

- *Mr Y declared his annual income was £43,000 and this was verified with credit bureau information.*
- *In the last month, the total balance of his credit cards and store cards was £2,030, with total limits of £3,100, the total balance of his mail order accounts was £301 with total limits of £7,250 and he had a telecoms balance of £6.*
- *Mr Y paid £237 per month towards fixed-term accounts, excluding mortgages and secured loans.*

- Zempler applied a “maximum debt” figure of 35% to Mr Y’s income, which it calculated at £1,254 per month. Zempler says this would leave Mr Y with around £848 in available income. It said that would leave him with enough spare income to pay 10% of the balance on his credit card.
- Zempler appears to have calculated that to service his revolving credit debts, should he max out the limits, he’d need to pay around £169.92 per month.

It isn’t entirely clear from Zempler’s affordability calculations, nor from its explanations, how it determined this lending would be affordable for Mr Y. I’ve deduced that after working out 35% of Mr Y’s monthly income, which Zempler set as the maximum amount he should be spending on credit, it then compared this to Mr Y’s actual credit commitments, to understand if it met this criteria. So, it isn’t the case that Mr Y, as Zempler has suggested in its final response, had around £848 in available income after meeting his credit commitments, but, rather, that this is the proportion of the 35% of Mr Y’s income that was remaining for further credit commitments. In any event, Zempler appears to have relied on Mr Y’s gross salary. To understand if Mr Y actually had £848 available to spend on further credit, it would need to start with his net salary.

In addition, whilst Zempler has since told our service that any formal arrangements to repay historical debts would be captured in the monthly credit commitment calculation, the evidence it has provided doesn’t show me whether it was. Given Mr Y has shown he was contributing £100 per month towards his defaulted debt (more on this below), it seems Zempler’s calculations in fact didn’t likely include this. And as already mentioned previously, Zempler has said it isn’t able to explain its raw credit data further.

Based on this, I don’t think Zempler had a clear picture of whether this additional lending was likely affordable for Mr Y. Its calculations on what Mr Y was spending on his credit commitments appear to be incorrect. And, it hasn’t evidenced that it considered Mr Y’s payments towards his defaulted debt, despite saying this is something it would do.

I asked Mr Y whether he was making payments towards his defaulted debt, and he provided evidence that he was paying £100 per month into a Debt Management Plan (“DMP”) which included his defaulted debts.

Had Zempler obtained information from Mr Y about his defaulted debts, to understand whether he was committed to making repayments towards those, I’m satisfied this would have likely led it to understand that Mr Y was in a DMP at the time of lending. Once Zempler knew about Mr Y’s DMP, I think it would have been reasonable and proportionate for it to have obtained more information about Mr Y’s committed monthly living expenses – to help it understand whether this further lending was likely affordable.

So overall, I don’t think Zempler’s checks were proportionate.

Mr Y has taken the time to provide his bank statements. I’ve reviewed these statements to understand more about Mr Y’s situation in the lead up to this lending. It’s important to say that Zempler weren’t obliged to check Mr Y’s bank statements. In fact, taking into account the amount being lent against Mr Y’s income and what the rest of Zempler’s checks showed, I don’t think it would have been proportionate for Zempler to have checked Mr Y’s bank statements. I’ve simply reviewed them to understand what any further checks Zempler may have carried out would have likely revealed.

Having done this, I think further checks would have likely revealed this lending was affordable. At this point, I do want to reassure Mr Y that I’ve considered all of his comments and responses on his case, very carefully. I agree with him, for example, that his income was around £2,700 per month and not higher, as suggested in the Investigator’s view. But

even after relying on this figure, if I deduct what I can see are his committed monthly living expenses along with sustainable payments towards his existing credit commitments and the £100 towards his DMP, he'd likely have a sizeable amount left each month to pay for this new lending. And, importantly, for any unforeseen circumstances.

I know Mr Y disputes this – he says all his income was being spent on servicing his debts. I can see he was making large payments towards his existing credit at times – and of course, he's entitled to do that. But when applying for further lending, it's reasonable for a lender to consider what sustainable payments would likely cost the borrower – so not the minimum repayments but amounts that would pay off existing debt within a reasonable period of time. I think doing that here would mean Mr Y likely had sufficient disposable income available each month, even after this new lending.

In reality, I can see there were likely other reasons Mr Y may have found this lending unaffordable. I want to thank Mr Y for telling us that he had a gambling addiction, as well as mental health difficulties at the time of lending. No doubt this would have contributed to any financial difficulties he was having. But – I don't think Zempler would have likely been aware of this. I can't see Mr Y disclosed this to Zempler and as I've explained, I don't think proportionate checks would have extended to checking bank statements. On this basis, given what proportionate checks would likely have shown – and that I don't think those checks would have revealed Mr Y's gambling, I don't think Zempler could have foreseen that Mr Y would go onto have issues paying.

I empathise with Mr Y's point of view here – in that he'd been in a difficult situation previously where he'd incurred a large amount of debt and would be spending a relatively long time paying that debt down. I appreciate that Mr Y's contributions towards his DMP will have been based on reduced repayments due to difficulties paying. And therefore, it may seem, at face value, somewhat illogical for me to say he could afford further credit. But I understand the DMP was set up some time ago and it's fair to say that circumstances may change over time. As I said above, having reviewed the information afresh, Mr Y appeared to be managing existing credit well. So, it appears the historical debt he'd incurred wasn't likely a reflection of his current situation. Through his DMP, Mr Y was also paying his default debt down, albeit at a slower rate than originally contracted. I've also taken into consideration that there are lots of reasons someone may want a credit card – one of those being, for example, to afford the protection that certain legislation offers when making purchases. And being in debt previously shouldn't necessarily preclude someone from accessing this.

Mr Y has made other points about his situation at the time – for example, that he was borrowing from others to make payments. And, he's told us how much this situation has impacted him and his personal life. I'm sorry to hear this and I want to make it clear that I don't doubt what Mr Y has told us about his situation. I agree with Mr Y that had the entirety of his situation been visible to Zempler – in particular, that he was gambling, then it's possible Zempler wouldn't have – or shouldn't have - lent. But relevant guidance says that checks must be proportionate. And for the reasons explained above, I don't think proportionate checks would have revealed the extent of Mr Y's situation. For this reason, I don't think I can say Zempler has done something wrong here.

So overall, and having considered everything very carefully, I don't think Zempler lent to Mr Y irresponsibly and I'm not therefore intending to uphold his complaint.”

Zempler didn't respond but Mr Y didn't agree and provided some further comments. In summary, he said:

- The departure from the stance in the provisional decision was unexplained.
- Nothing in Zempler's representations following the provisional decision alters the fact

he had outstanding defaults, that those defaults occurred within three years of the lending decision, he had high existing credit balances and he was having difficulty managing existing credit.

- Ultimately, he was in financial difficulty and further lending would be unaffordable.
- The revised position appears to downplay the defaulted debt, accept affordability calculations which were unclear and based on gross income, rely on retrospective analysis of bank statements and rely on hypothetical “sustainable” repayment assumptions.
- He’s had several different outcomes on his complaint.

As Mr Y didn’t agree with what I said, I’m issuing this 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.

Having done so, I know this will come as a disappointment to Mr Y, but I’m not upholding this complaint.

We explain how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Mr Y’s complaint.

Zempler needed to make sure it didn’t lend irresponsibly. This means it needed to carry out proportionate checks to understand whether Mr Y could afford to repay before providing the credit card. Generally, it might be reasonable and proportionate 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 it didn’t continue to lend to its customer irresponsibly.

When Mr Y was provided with the credit card, Zempler was required to understand whether Mr Y could sustainably repay the full amount it was prepared to lend within a reasonable period of time.

I’ve taken all of this into account when deciding Mr Y’s complaint.

I’m sorry Mr Y has received different outcomes on his complaint, and I can appreciate this will be frustrating and disappointing, particularly given I’m not, ultimately, upholding his complaint. However, whilst Mr Y has said the departure from my stance in the provisional decision is unexplained, I disagree. I know this isn’t the outcome he was hoping for, but I have explained, in some detail, as set out above, why I’m no longer upholding his complaint. I’ve also responded to his further points below.

As I explained above, I don’t think Zempler’s credit checks did in fact reveal he was having any serious difficulties managing existing credit. I explained previously that in light of Zempler’s further comments and clarification on what its checks showed, it’s clear whilst he did have outstanding defaulted debt, he had been managing existing credit relatively well. So, the issues he’d had previously didn’t appear to be a reflection of his current situation.

In saying this, I’ve been clear that I don’t think Zempler’s affordability checks were good enough. So, I agree with Mr Y on this point. It isn’t the case that I’ve accepted Zempler’s

affordability calculations. On the contrary, I've said its checks weren't proportionate. But the next step is to understand what proportionate checks would likely have shown – to do this, I reviewed Mr Y's bank statements and other information. And I explained what sustainable payments are and why it's reasonable for me to have considered those. I've also explained why proportionate checks would likely have shown the lending was affordable and that Zempler wouldn't have likely been aware of any other reasons not to lend.

Therefore, whilst Zempler's checks were not proportionate, I'm satisfied, for the reasons explained, the lending overall was fair.

Finally, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Zempler lent irresponsibly to Mr Y or otherwise treated him 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

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 16 February 2026.

Sophie Kyprianou
Ombudsman