

complaint

Miss D complains that Creation Consumer Finance Ltd treated her unfairly, when she told them about the events that led up to an application to get a laptop, using a point of sale loan with them.

Throughout Miss D's complaint with us, she has been represented by her father. But, to make things simpler, I'll just refer to Miss D.

background

In 2018, Miss D says her boyfriend at the time, asked her to buy an expensive watch, using a loan. She says he gave her a deposit to be able to get the borrowing. Miss D says her former boyfriend had told her he'd give her the money back, to pay off the loan and that was the reason why she agreed to do it.

Miss D has told us that her former boyfriend didn't give her the majority of the money for the watch. Instead, in June 2018, she says she was told to make various applications for credit, to get other expensive goods, in return for the money to repay the loan for the watch. Miss D says the pressure to take out the applications came from not only her former boyfriend, but other third parties.

One of the applications Miss D made, was a point of sale loan with Creation to get a brand new laptop. She says she went into a high street shop and the application was completed with a sales assistant. A second application for a different item, was started on the same day, in the same shop. But, Miss D says the second application wasn't completed, because the pressure from the third parties stopped, when they took the first laptop from her.

A month later, Miss D says she sent an email explaining what the third parties had made her do, to the shop where she completed the application for the laptop. Miss D says she also reported everything to the police. Although the retailer acknowledged her email, she didn't receive a response to her concerns.

Over the remainder of 2018, Miss D has told us that she raised a complaint with Creation, but didn't receive a reply. During that time, the point of sale loan wasn't being repaid and Creation sent notices of arrears to Miss D. Because she didn't receive a reply, Miss D contacted us and asked us to look into her complaint. She said she was made to take out the loan with Creation and in any case, they didn't ask enough questions about her financial circumstances.

One of our investigators looked into Miss D's complaint. They found that the finance agreement with Creation, was one of several which Miss D had taken out in the same week. The investigator was persuaded that Miss D was pressured by third parties into taking out the agreement and that Creation didn't consider fully, if she could have afforded the repayments. Overall, the investigator recommended that Creation should cancel the loan agreement and remove any information about it, from Miss D's credit file.

Creation didn't accept this. They said Miss D could have chosen not to continue with the application. They also said any other credit applications Miss D had made, would not have appeared on their credit file check, as they were made around the same time. However, Creation offered to accept half of the payments due under the agreement, in an attempt to

settle Miss D's complaint. They also said they would remove the account from Miss D's credit file, once these repayments had been made.

The investigator didn't change their opinion and now the case has been referred to me to make a final decision.

my findings

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

Quite some time has passed since the investigator's findings. I acknowledge that this probably hasn't helped Miss D from being able to move on from what happened. I can see from what Creation have told us, that for most of this time they have placed a hold on the loan in Miss D's name. This means, when prompted, Creation haven't asked Miss D to make payments, whilst she was waiting for our findings.

the background to the purchase of the laptop

Miss D has explained that she was asked by her former boyfriend to buy the expensive watch, using a loan organised by a jewellery shop. She says her former boyfriend gave her cash for the deposit, but refused to give her the balance of the loan. Instead, Miss D says she was pressured to take out other borrowing.

I've considered what Miss D says, as well as her bank statements from the time and the information on her credit report. I can see that Miss D received money into her bank account, the day before she says she was taken to the jewellery shop, by her former boyfriend. I think this was the deposit Miss D has told us about. I can also see a similar pattern with other amounts paid into her account, corresponding with the other borrowing she took out.

I think Miss D has been consistent in what she's told us here. She says she was given money by her former boyfriend to use as a deposit. Miss D's bank statements show that other cash was credited her account in the same way, over the next day. So, I'm persuaded there was an arrangement, where a third party was involved with the purchases Miss D made over the two days in June 2018.

Miss D's credit report shows the amount of borrowing she had, around the period where she says she was pressurised by third parties, into applying for credit. I can see that Miss D took out multiple loan agreements, for high street goods on or around 19 June 2018. I can also see applications were made to her banker, for a personal loan around that date. Altogether, there were seven applications for credit across two days.

Before June 2018, the only other account showing on her credit report, was her current account. And I can see from the credit report and bank statements, that Miss D didn't make use of an overdraft facility at the time. Since June 2018, Miss D's credit report shows she hasn't applied for any further credit. In other words, she didn't have a history of borrowing money before June 2018, or for a significant time afterwards.

Miss D has given us details of the report she made with the police. She says the third parties told her they wouldn't give her money for the goods, if she didn't make the application to Creation. Miss D also says it would have had implications for her family, if she had refused to do what the third parties said.

I've thought about this and given Miss D's personal circumstances, I can see why she felt hesitant to go against what she was being told by the third parties. Miss D has explained to everyone, including the police, that she doesn't have the item bought, using the loan from Creation. Again, this is similar to the other applications made at the time.

I've also thought about why Miss D didn't follow through with the second application with Creation, on the same day. She says the third parties were content with the first item bought, so she was able to prevent the subsequent application from completing. I think Miss D's explanation is reasonable and it follows that she has tried to limit the extent of the situation she found herself in.

Having considered everything, I think a third party was involved in Miss D's actions to apply for credit in June 2018. I think Miss D's credit history and bank account activity show she didn't normally rely on credit to purchase high street goods. I also think Miss D acted in good time to report her concerns, about the behaviour of the third parties, to the police. I think Miss D has been consistent and credible with what she's told Creation and us.

I've also considered that Creation may not have had the benefit of knowing about the other applications at the time Miss D applied to them. But, I think Creation were made aware soon afterwards, when Miss D complained to them. On balance, I'm persuaded a third party used financial control and intimidation to coerce Miss D into applying for a loan to Creation, in June 2018. Given the report made to the police, I also think a third party took the goods financed by the loan with Creation, from Miss D.

the details Miss D used in the application

I acknowledge that some of the information I've used in my conclusions so far, may not have been available to Creation at the time of the application. So, I've thought about what information they did have, when they agreed the loan with Miss D, to see if they treated her fairly and reasonably.

Creation have told us that Miss D's application was completed in a high street electrical goods shop, which processes their loan applications in store. Creation have also sent us screen shots of the information they gathered from Miss D at the outset. I can see from the screen shots that Miss D's salary is recorded as "salary band K". Creation say this means Miss D told them she was earning around £80,000 a year.

Miss D has told us that at the time of the application, she was a full-time student and working part time hours in bar. I have looked at Miss D's bank statements from March until June 2018 and I can see her income was considerably less than what Creation say she had told them. Miss D received a payment from the student loan company during this three month period, but I cannot see any payments into her account from an employer.

I've considered the Financial Conduct Authority's Consumer Credit Sourcebook (CONC), where it outlines that lenders are expected to use proportional checks when processing an application for credit. Given Miss D's personal and financial circumstances, and the size of the loan being applied for, I think a responsible lender should have asked further questions.

In this instance, I think Miss D didn't have the income which Creation have relied upon and she wasn't asked any questions about her expenditure, apart from her rent or mortgage payments. Miss D wasn't asked to provide a payslip or a bank statement to support what she

was saying. And Creation say they were aware at the time, that Miss D was working occasional shifts in a bar. So, I don't think Creation did enough to check if Miss D could afford the repayments. Had Creation done so, I don't think a responsible lender would have agreed to the loan.

Creation say they considered Miss D's total household income, which included her parents' financial circumstances. They say it was reasonable to include this information, because Miss D's parents would be able to help with repayments.

I acknowledge that it was important for Creation to look at Miss D's expenditure and to consider what she has to contribute for costs like rent, food and utility bills. But, I think any loan application Miss D made, was separate to the income of her parents. The loan with Creation wasn't a guarantor loan, whereby the financial standing of someone else is used to help take out borrowing.

I've also thought about the relevant rules, regulations and what was considered to be best practice at the time. Having done so, I don't think Creation were right to look at Miss D's parents' income as it wasn't earned jointly with her and their own expenditure wasn't Miss D's responsibility either.

In all the circumstances, I think Creation had an opportunity to ask further questions about Miss D's financial circumstances. Had they done so, I think Creation would have found her income and expenditure to be very different from what they say she told them. Also, I don't think Creation can rely on household income as a reason to have lent to Miss D.

Although Miss D may have lived with her parents in June 2018, their income isn't shared with her. So, I think Creation should have reviewed Miss D's income and expenditure separately to anyone else she lived with at the time.

Having considered everything, I don't think Creation treated Miss D fairly when she applied for the loan with them. I think there was an opportunity to have stopped the loan from being opened and to have prevented Miss D's further indebtedness.

the settlement of the complaint

Creation have offered to accept half of the payments, due to the loan agreement to settle the complaint. They say they'll also remove any information from Miss D's credit file, should she make those payments.

But, I don't think Creation's offer takes into consideration the circumstances that led up to the application, which became clearer during their investigation into Miss D's complaint. I've concluded that I think Miss D was the victim of coercion and intimidation, when she applied for the point of sale loan with Creation. And I'm persuaded that she doesn't have the goods acquired with the loan. I think it's likely they were taken by the third parties who used coercive control over Miss D.

I've also concluded that the information Creation collected during the application meant that it was reasonable for them to ask further affordability questions. I think if more scrutiny was given to Miss D's employment status, income and expenditure, a responsible lender would have declined the application.

In all the circumstances, I don't think it's fair for Creation to pursue Miss D for repayment of the balance of the loan agreement. I think Creation should remove Miss D from the loan agreement at no cost to her and remove the information about the loan, held with credit reference agencies.

The information provided by Creation suggests that Miss D hasn't made any payments towards the loan agreement. Creation have treated Miss D positively and sympathetically here, by placing any debt collections activity on hold, during our investigation.

However, I acknowledge that there have been some instances where Miss D has been contacted for repayment. I think this was down to an error, rather than Creation insisting Miss D makes a payment. But, having considered everything, I think it's fair for Creation to refund the repayments to Miss D, if she has made any towards the agreement.

my final decision

For these reasons, my final decision is that I uphold this complaint and Creation Consumer Finance Ltd should:

- remove Miss D from the loan agreement at no further cost to her;
- refund the payments Miss D has made to the loan agreement; and
- remove the loan agreement from the information held about Miss D with credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 15 April 2021.

Sam Wedderburn
ombudsman