



complaint

Miss V complains that Microcredit Limited would not engage with her or her debt advisors after she began experiencing financial difficulty and could not afford to repay her loan.

background

Miss V had taken out several loans with Microcredit between December 2011 and February 2012. All loans, apart from the last one were paid ahead of the due date, according to Microcredit's records. The final loan, taken out in February 2012, was due to be repaid one month later. However, Miss V contacted Microcredit before the payment due date to say that she was in financial difficulty, was unable to meet her repayment obligations and had contacted a debt charity which was going to set up a debt management plan for her.

Microcredit wrote to Miss V to say that she was able to make part payments herself online or using vouchers. However, it would not deal with any third parties until the account defaulted and passed to Microcredit's debt recovery and legal partner 120 days after the payment due date. Microcredit also denies receiving any contact from the debt charity.

Miss V is unhappy that her balance continued to increase significantly during this time because interest and charges continued to accrue. She also believes that Microcredit did not process payments sent by the charity.

Microcredit has since agreed to waive debt attempt fees and its debt recovery fee, but does not agree to remove other late payment charges and interest applied until the default date.

our initial conclusions

Our adjudicator recommended that the complaint be upheld. She concluded that Microcredit had not acted in accordance with the Office of Fair Trading's ('OFT') debt collection guidance because it had not allowed Miss V to make affordable repayments and had failed to suspend its debt recovery activities, including by use of the continuous payment authority. Therefore, she recommended that Microcredit waive all interest and charges applied after the payment due date. She also recommended that Microcredit pay Miss V £75 compensation for distress and inconvenience caused by its refusal to consider her payment proposal.

Microcredit does not agree. It has asked to see documentary evidence that Miss V was in financial difficulty. It says it will only agree to reduce charges if the difficulties were unforeseen at that time she took the loan. It says it is entitled to treat differently a debtor who is experiencing financial difficulties as a result of 'irresponsible borrowing'.

The adjudicator did not agree that the business could treat customers who were in financial difficulties differently depending on how they had found themselves in that situation. Therefore, the matter has been referred to an ombudsman for review.

my findings

I have considered all the available evidence to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I uphold Miss V's complaint for reasons which I give below.

Microcredit says it did not receive any contact from the debt charity to negotiate a debt management plan after Miss V contacted it in March 2012. As no payment offers were received, it says the balance increased and in August the account defaulted and transferred to its debt recovery partner.

The debt charity has since told this service that it did not send a payment proposal to Microcredit on Miss V's behalf. This is because its payment proposals were apparently repeatedly being returned by Microcredit and cheques were not being cashed. Therefore, from December 2011, the charity says it had stopped sending payment proposals to Microcredit and cancelled all previously issued cheques. Whilst Miss V's Microcredit account still showed on the debt management plan, the debt remained 'inactive'. The charity says it sent her a letter explaining the position in April 2012.

In light of the information sent by the charity, I accept that Microcredit did not receive a payment proposal on behalf of Miss V, contrary to her understanding. However, I do not think this makes a difference. It is clear from Microcredit's April 2012 letter that it would not have agreed to deal with the charity in any event.

Microcredit appears to operate a blanket policy of non contact with third parties until the account defaults 120 days after the payment due date, when it is transferred to Microcredit's debt recovery partner. Whilst Microcredit says its customers can make part payments online after completing its hardship form, or via voucher payments, it is clear that Microcredit does not freeze interest and charges during this period and will only accept a settlement payment for a reduced amount if it can be paid in one lump sum. I find this policy inconsistent with Microcredit's obligations under the OFT's guidance.

Since the complaint has been referred to this service, Microcredit has asked for evidence of Miss V's financial difficulties, but I can see no evidence that it asked for this information when she wrote in March 2012. Microcredit now claims that Miss V's financial difficulties were not unforeseen therefore it is not reasonable to waive interest and certain charges applied to her account. It says it would not be reasonable to treat cases of irresponsible borrowing in the same way as other causes of financial difficulty.

According to the information provided to us by the debt charity, Miss V had a number of credit commitments and insufficient funds to meet these in March 2012. But, there is insufficient evidence to say that this was foreseeable when Miss V applied for the loan, given that she had paid all previous loans on time. There is also no suggestion that she took out the loan by giving false information about her financial position. She was in employment at the time of her application. In addition, Miss V does not appear to have been asked to give information about her expenditure, including other credit commitments, even though this would have given Microcredit a fuller picture of her financial circumstances.

The expenditure summary provided by the debt charity indicates Miss V was in financial difficulty in March 2012. How Miss V came to be in financial difficulty is not, in my view, a

material consideration in this complaint. The OFT guidance does not draw any distinctions in this respect.

I do not agree that Microcredit responded appropriately to Miss V's March letter. It did not reply until about one month later. It did not ask Miss V for evidence of her financial circumstances in order to consider whether it should stop applying interest and charges to her account, in accordance with the OFT's guidance. I also do not agree that it is fair or consistent with the guidance to refuse to entertain a debt management proposal until the account defaults 120 days after the due date, during which time interest and charges continue to accrue.

I note that Microcredit has since agreed to waive all debit attempt fees and the debt recovery fee. In my view, Microcredit should not have applied these in the first place. Its actions in making repeated debit attempts after it had been told by Miss V that she was in financial difficulty were contrary to the OFT's guidance. It is therefore right that Microcredit should remove these charges from Miss V's balance.

However, I also find that adding late payment charges and continuing to add daily interest to the debt was inappropriate given Miss V's financial difficulties. Whilst I accept that Microcredit had not been contacted by the debt charity, simply letting the debt increase in this way, after being told by Miss V that she was in financial difficulty, was not in line with the OFT's guidance. Therefore, I consider that Miss V's liability should be limited to repaying the original loan of £600, plus interest to the payment due date of 24 March 2012.

Our adjudicator also recommended that Microcredit pay Miss V £75 to reflect the distress and inconvenience caused by its refusal to consider any payment proposal. I have taken into account the lack of contact from the debt charity. Nevertheless, I still consider that Microcredit failed to respond appropriately to Miss V and caused additional distress by applying multiple debit attempt fees to her balance. Therefore, I do not propose to interfere with the adjudicator's recommendation to make a compensation award, which I consider to be fair in the circumstances.

my final decision

My final decision is that I uphold Miss V's complaint. I direct Microcredit Limited as follows:

Microcredit Limited must not ask Miss V to pay any more than the principal amount borrowed in February 2012 of £600, plus interest up to the due date of 24 March 2012.

I understand Miss V has made some payments towards the outstanding balance. Therefore these must be taken into account and deducted.

Microcredit must allow Miss V to repay the outstanding amount under an affordable payment arrangement, if she cannot afford to pay it in one lump sum.

Microcredit must also pay Miss V £75 compensation for the distress caused by its actions.

Athena Pavlou
ombudsman