

complaint

Mrs H has complained that George Banco Limited (“George Banco”) provided her with a number of unaffordable guarantor loans.

She says that her outgoings are more than she has coming in and she often has to take out payday loans to pay bills on time and just to keep afloat. She feels the loans were unaffordable and George Banco would have realised this if it had checked properly before providing the loan.

Mrs H is also unhappy about being sent text messages promoting further borrowing even after she said she didn’t want them.

background

George Banco provided Mrs H with a total of three guarantor loans. On two occasions, Mrs H was given further funds (“top-ups”) while she still had an outstanding balance. As George Banco doesn’t allow borrowers to have more than one outstanding loan at a time, Mrs H entered into completely new loan agreements where the new loan included a sum to clear the outstanding balance on the previous one, as well as the additional funds George Banco agreed to provide.

Mrs H’s overall lending history with George Banco is as follows:

Loan	Provided	Term	Amount	Funds paid	Paid to previous loan	Repayment
1	September 2015	36 months	£2,800	£2,500*	£0	£121.79
2	August 2015	54 months	£3,920	£1,023.25*	£2,476.75 (Loan1)	£137.58
3	December 2016	60 months	£5,152	£1,072.23*	£3,527.77 (Loan 2)	£172.90

* Document fees of £300 for loan 1, £420 for loan 2 and £552 for loan three were added to the loans.

One of our investigators looked at what George Banco and Mrs H said. She thought that loans one and two were unaffordable for Mrs H. And as loan three followed from loans one and two, George Banco shouldn’t have provided any of these loans to her.

Our investigator also thought that George Banco had treated Mrs H unfairly when it continued to send her messages promoting further borrowing even after she said she didn’t want any further funds. So our investigator upheld Mrs H’s complaint and said that George Banco should pay Mrs H £250 in compensation as well as making sure she didn’t pay any of the interest fees and charges on her loans.

George Banco disagreed with our investigator’s assessment. So the complaint was passed to an ombudsman for a final decision.

the regulatory framework

George Banco provided Ms H with these loans after regulation of Consumer Credit Licensees had transferred from the Office of Fair Trading (“OFT”) to the Financial Conduct Authority (“FCA”) on 1 April 2014. George Banco initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation as a consumer credit provider.

George Banco's interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules and guidance which apply to guarantor loan providers like George Banco when providing loans. CONC 5 sets out a firm's obligations in relation to responsible lending.

It's clear there is a high degree of alignment between the OFT's *Irresponsible Lending Guidance* ("ILG") and the rules set out in CONC 5. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's ILG on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a borrower a loan. It says a firm must consider:

- (a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

[Note: paragraph 4.1 of ILG]

- (b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability.

CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

CONC 5.3.1G(6) goes on to say:

For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:

- (a) without undue difficulties, in particular:
 - (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*
 - (ii) without having to borrow to meet the repayments;**
- (b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and*
- (c) out of income and savings without having to realise security or assets; and*

"unsustainable" has the opposite meaning.

[Note: paragraph 4.3 and 4.4 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

- (a) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

[Note: paragraph 4.31 of ILG]

CONC also contains the additional obligations owed by guarantor loan providers to guarantors when providing a guarantor loan. The additional requirements in relation to an assessment of the guarantor's circumstances are contained in CONC 5.2.5R.

As the guarantor isn't a party to this complaint, I don't think that it's necessary to set out all the rules and guidance relating to the additional obligations owed to guarantor in this decision. That said I do think it's useful for me to set out CONC 5.2.6G which says:

- (2) *The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under CONC 5.2.5R, does not remove or reduce the obligation on the lender to carry out an assessment of the borrower under CONC 5.2.1R or CONC 5.2.2R. Firms are reminded of the rule in CONC 5.3.4R that the assessment of the borrower must not be based primarily or solely on the value of any security provided by the borrower.*

Section 140 of the Consumer Credit Act 1974

Mrs H's loans were provided after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor.

Section 140A says:

140A Unfair relationships between creditors and debtors

- (1) *The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-*
- (a) *any of the terms of the agreement or of any related agreement;*
 - (b) *the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*
 - (c) *any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*
- (2) *In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*

- (3) *For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.*
- (4) *A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.*
- (5) *An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

- (1) *An order under this section in connection with a credit agreement may do one or more of the following—*
 - (a) *require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*
 - (b) *require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*
 - (c) *reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*
 - (d) *direct the return to a surety of any property provided by him for the purposes of a security;*
 - (e) *otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*
 - (f) *alter the terms of the agreement or of any related agreement;*
 - (g) *direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

other relevant publications

CONC set out the regulatory framework that authorised lenders have to adhere to. But the rules and guidance represent a minimum standard for firms. And I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

the FCA's Portfolio Strategy Letter to firms providing high cost lending products

On 6 March 2019, The FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all the firms it allocated to its 'High Cost Lenders' portfolio. The letter set out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in. On page two of this letter, the FCA sets out its view of the key causes of harm. It says:

"To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.

Following our analysis, we see two key ways that consumers may be harmed across the High Cost Lenders portfolio:

- a high volume of relending, which may be symptomatic of unsustainable lending patterns*
- firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".*

We also see an additional potential harm from guarantor lending:

- the proportion of loan repayments that guarantors make has risen considerably, which could indicate that affordability on the part of the borrowers is falling*

On page three of the letter, in the section entitled '**Complaints**' it says:

"We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service's relevant decisions. We gave further detail about what we expect from firms' complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio".

Further detail in relation to the FCA's future work was provided on page four of the letter. The section entitled '**Additional focus for firms providing guarantor lending**' said:

As well as the areas of focus above, we will also prioritise our supervisory work with firms that provide guarantor loans in the following area:

Payments made by guarantor:

Our diagnostic work on guarantor lending showed that many guarantors make at least one repayment and the proportion of guarantors making payments is growing. We want to understand the root causes for this increase, and whether firms are conducting adequate affordability assessments. We are also concerned that guarantors may not fully understand how likely it is that they will be called upon to make a payment. So, as well as our broad portfolio-wide work on relending, we will start a piece of complementary work on guarantor lending. This will establish whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced.

the FCA's Dear CEO letter on affordability of High-Cost Short-Term Credit ("HCSTC") loans

On 15 October 2018, the FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all HCSTC providers. The letter was about the issues surrounding the increase in complaints about unaffordable lending.

The third paragraph of this letter said:

"We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: <https://www.financial-ombudsman.org.uk/publications/technical.htm>). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)".

Paragraph eight of the letter went on to say:

"We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible assessments of the sustainability of borrowing".

the FCA Executive Director of Supervision's (Retail and Authorisations) speech at the Credit Summit, London, on 21 March 2019

The FCA's Executive Director of Supervision gave a speech at the Credit Summit, which took place on 21 March 2019, entitled "What can the consumer credit sector expect from the FCA?".

The speech reiterated much of what was said in the High Cost Credit portfolio strategy letter (set out above) issued on 6 March 2019. And in his speech the Executive Director of Supervision said:

"Over the last few years we have seen a dramatic increase in the use of guarantor loans by consumers. Balances on guarantor loans are fast approaching £1 billion and these have more than doubled since 2016.

While these products provide an opportunity for those with thin credit files - poor or limited credit history - we do have concerns. Concerns about affordability. Recent work we have done in this area showed that many guarantors are making at least 1 payment and the proportion of guarantors making these payments is growing.

There is also growing anecdotal evidence that guarantors may not understand how likely it is that they will be called upon to make a payment. Our work will therefore focus on affordability and on understanding whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced.

We have already amended certain rules to ensure that the protections they provide to borrowers also extend to guarantors, for example rules requiring forbearance, pre-contractual explanations and fair treatment. In assessing creditworthiness, we have clarified

that firms must undertake a reasonable assessment of the potential for the guarantor's commitment to have a significant adverse impact on their financial situation.

And if the guarantor is called upon, we have published guidance on our view of what constitutes 'enforcement' of the guarantee under the CCA – in practice this means we expect firms to provide guarantors with adequate notice before exercising a Continuous Payment Authority (CPA).

There are also questions over the level of interest rates charged on these products considering that these guarantors are deemed to be credit worthy, we will therefore be considering this and the business models of these firms”.

my findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are three overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint.

These three overarching questions are:

- Did George Banco complete reasonable and proportionate checks to satisfy itself that Mrs H would be able to repay her loans in a sustainable way?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mrs H would've been able to do so?
- Bearing in mind the circumstances, at the time of each application, was there a point where George Banco ought reasonably to have realised it was increasing Mrs H's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?
- Did George Banco act unfairly or unreasonably in some other way?

If I determine that George Banco didn't act fairly and reasonably in its dealings with Mrs H and that she has lost out as a result, I will go on to consider what is fair compensation.

Did George Banco complete reasonable and proportionate checks to satisfy itself that Mrs H would be able to repay her loans in a sustainable way?

The rules and regulations throughout the time George Banco lent to Mrs H required it to carry out a reasonable and proportionate assessment of whether she could afford to repay her loan in a sustainable manner. George Banco was required to carry out this borrower focused assessment in addition to a similar one on the guarantor. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so George Banco had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mrs H*. In

practice this meant that George Banco had to ensure that making the payments to the loan wouldn't cause Mrs H undue difficulty or adverse consequences.

In other words, it wasn't enough for George Banco to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mrs H. The existence of a guarantee and indemnity agreement and the potential for George Banco to pursue the guarantor instead of Mrs H, for the loan payments doesn't alter, lessen, or somehow dilute this obligation.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were George Banco's checks reasonable and proportionate?

George Banco has said that it carried out identity, credit history, income verification checks on both Mrs H and her guarantor before providing these loans. It has also referred to Mrs H's "*excellent repayment history*" on loan one – six payments were made on the agreed due date with one being made the day after – as supporting its decision to lend.

I've carefully thought about what George Banco has said. But simply requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan. I say this because any assessment requires some kind of evaluation, judgement, appraisal or scrutiny of the

information obtained. And, in this case, I think that George Banco didn't properly scrutinise or evaluate it.

The credit check George Banco carried out showed that Mrs H had defaulted on five accounts in the previous 36 months and four of these defaults had occurred in the last year. Equally as well as the increasing number of defaults, Mrs H's credit file showed that her balance to limit ratio on her existing credit accounts was at 105% (in other words, Mrs H was already over the combined limit of her existing accounts). This all suggests that Mrs H's financial position was worsening. George Banco says this is why a guarantor was required to support Mrs H's loan.

But I've already explained that George Banco was required to ascertain whether Mrs H could sustainably make the repayments to her loan. And while the existence of Mrs H's guarantor might have given George Banco more confidence that the payments would be made, I don't see how the existence of the guarantor, on its own, meant that Mrs H herself would be able to sustainably make the payments. This is especially the case in circumstances where Mrs H's finances were already showing obvious signs of distress and the existence of the guarantee didn't alter George Banco's obligations to Mrs H.

As I've set out on page three of this provisional decision, the rules and guidance in place at the time provides guidance on the proportionality of affordability/creditworthiness assessments. The rules and guidance suggest that the risk of any credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation. This was an expensive loan and the credit search carried out on Mrs H showed she wasn't in a great financial position.

I'm also not persuaded that Mrs H's repayment history on loan one was as excellent as George Banco appears to be suggesting either. Mrs H made only seven payments and one of these was late. So I don't think that this on its own suggested that Mrs H would be able to take on an increasing amount of debt or that she could sustain making higher repayments for an even longer period of time.

At this point, I think that it might also be helpful for me to explain that a less detailed affordability assessment, without the need for verification, is only really likely to be fair, reasonable and proportionate in circumstances where the amount to be repaid is relatively small, the consumer's financial situation is stable and they will be indebted for a relatively short period.

But, in circumstances – such as here - where a customer's finances are showing telling signs of possible strain and distress, they are expected to maintain payments for a longer period of time and there is the potential that a guarantor will be required to step in and make payments, I think it's far more likely that any affordability assessment would need to be more detailed and contain a greater degree of verification, in order for it to be fair, reasonable and proportionate.

Indeed CONC defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. I think that this means a lender needs to do more than simply assess whether the loan repayments were technically affordable in the sense of a strict calculation.

I've also seen that George Banco's main dispute with our investigator centred on the fact that it thought Mrs H had £45 a month left over after the monthly repayment for loan one was taken into account. But having seen the details of the information recorded, I don't think that George Banco's income and expenditure questions came close to capturing all of Mrs H's expenditure.

Indeed I can see that George Banco used Office of National Statistics data to estimate Mrs H's normal monthly living costs rather than ascertained what they actually were. Equally the income and expenditure form George Banco asked Mrs H to complete when she said she was in financial difficulty – after she ran into difficulty repaying loan three - is far more detailed in relation to the information asked about Mrs H's monthly living costs and her payments to her existing creditors.

I'm also mindful that the partial copy of the bank statement, which George Banco says was requested to confirm that Mrs H received benefits also shows at least one payment to a bailiff. And I can't see that this is reflected in the income and expenditure either.

In these circumstances, I can't see how George Banco could fairly and reasonably have concluded that its calculation Mrs H would be left with £45 each month meant that she'd be able to make her repayments on time, without difficulty, and without having to borrow further, given the lack of detail in the income and expenditure assessment and what it had available in the information provided.

In my view, bearing in mind the term of the loan, the cost of the credit, what George Banco had seen or ought to have seen in the information gathered and the potential implications for the guarantor, George Banco needed to get a thorough understanding of Mrs H's financial position in order to properly assess whether she'd be able to sustainably make the loan payments she was being asked to commit to.

So as well as asking Mrs H about the details of her income and expenditure, I think that George Banco needed to verify what it was being told by Mrs H, rather than relying on what Mrs H declared for her rent and ONS data for her living costs. It could have done this by asking for information such as bank statements, copies of bills, or even proof of Mrs H's income. And when it obtained this information it needed to properly scrutinise it and ensure that Mrs H did have enough funds to be able to make the payments.

As there's no evidence that George Banco did properly scrutinise the information provided, or that it asked Mrs H to provide documentary evidence to support the expenditure declarations made – in relation to her rent and living costs, for any of these loans, I find that it didn't complete fair, reasonable and proportionate affordability checks before providing Mrs H with her loans.

Would reasonable and proportionate checks have indicated to George Banco that Mrs H would have been unable to sustainably repay these loans?

As reasonable and proportionate checks weren't carried out before any of these loans were provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told George Banco that Mrs H would've been unable to sustainably repay these loans.

Mrs H has provided us with evidence of her financial circumstances at the time she applied for these loans. Of course, I accept different checks might show different things. And just

because something shows up in the information Mrs H has provided, it doesn't mean it would've shown up in any checks George Banco might've carried out. But in the absence of anything else from George Banco showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mrs H's financial circumstances were likely to have been at the respective times.

As I've already explained, George Banco was required to establish whether Mrs H could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Mrs H has provided in light of all of this.

It isn't in dispute that Mrs H's credit file was showing considerable distress. She already owed a considerable amount to other creditors and having difficulty making the payments. She was making payments to a bailiff and third party debt collectors. Mrs H was also in arrears to her utility providers too. And her monthly income simply wasn't enough to meet her normal monthly expenses as well as her creditors. So I'm satisfied that the information provided shows that Mrs H wasn't in a position to meet her existing financial commitments let alone take on new ones.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mrs H would not have been able to make the loan repayments to loan one without undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted George Banco to the fact that Mrs H would not be able to sustainably make the repayments to loan one.

I haven't recreated individual, proportionate checks for loans two and three because I don't think that it is necessary to do so. I'll explain why this is the case in the next section.

Bearing in mind the circumstances, at the time of each application, was there a point where George Banco ought reasonably to have realised it was increasing Mrs H's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

To start with and for the sake of completeness, I think that it's would be helpful for me to explain that there is an argument for saying that as loans two and three were top-ups of loan one and I've found that loan one shouldn't have provided, it ought to follow that the complaint about loans two and three should automatically be upheld.

After all if matters had played out as they should have done, it wouldn't have been possible to top-up loan one if it wasn't provided in the first place. That said, I'm not upholding the complaint about these loans solely because of this.

I say this because in addition to assessing the circumstances behind each *individual* loan provided to Mrs H by George Banco, I also think it's fair and reasonable to look at the *overall pattern* of lending and what unfolded during the course of Mrs H's lending history with George Banco.

I'm mindful here that the relevant rules and guidance – as summarised in the earlier part of this decision - make it clear that a lender shouldn't continue lending where the loans are unsustainable or otherwise harmful and/or it's apparent that the customer may be experiencing financial difficulties. And I think that by loan two, George Banco ought fairly and reasonably to have realised that Mrs H's financial position was so distressed that further loans were simply unsustainable for her.

The factors that lead me to conclude that George Banco ought fairly and reasonably to have realised loan three was unsustainable or otherwise harmful are:

- Mrs H still had an outstanding payday loan when she applied for loan two (for a larger amount than the one outstanding at the time of loan one). So, in my view, George Banco ought to have realised Mrs H was still using payday loans even though she was supposed to have cleared her balance with some of the funds from loan one;
- the increasing number of accounts on Mrs H's credit file – she had 28 at the time of loan one, 37 at the time of loan two and 45 at the time of loan three. This was indicative of someone who was constantly applying for credit. And when taken together with the rest of the information ought to have alerted George Banco to the fact that Mrs H was struggling;
- the increasing balance to limit ratio in relation to Mrs H's utilisation of revolving credit. She was at 105% of her limits at the time of loan one, 179% at the time of loan two and 382% at the time of loan three. This was indicative of someone who was struggling to keep to the limit on their existing accounts because they were struggling financially and George Banco ought to have realised this;
- Mrs H had an increasing amount of arrears to utility providers.

I think that all of the above, whether taken individually or together as a whole, were clear indicators of Mrs H being in a difficult financial position. And bearing in mind George Banco's obligation to monitor Mrs H's repayment record and offer assistance should it appear that she might've been experiencing financial difficulties, I think that George Banco should've offered assistance and/or a product that would allow her to sustainably repay what she already owed it.

But instead of doing this, George Banco instead kept consolidating Mrs H's borrowing into further loans and extending the term. Indeed Mrs H started out with a loan requiring 36 monthly payments of around £121 in September 2015. And by the time of loan three, Mrs H was required to make payments of around £173 (approaching 150% of the initial monthly payment amount) for sixty months.

I'm also concerned by the fact that when she was given loan three, Mrs H had already made £1788.59 in payments and had received a total of £4595.48 in funds. Yet despite already having paid a significant chunk of the amount borrowed, after she was provided with loan three, Mrs H now owed just under £10,400.

I also have to call into question the fairness of George Banco adding £1272 in document fees to the loans (and charging further interest on them) in circumstances where it ought to have realised Mrs H may have been experiencing financial difficulty. I'd even go as far as saying that George Banco arguably took advantage of Mrs H's financial situation by requiring the previous loans to be paid by later ones (and offering further ones which were declined) and then adding document fees to the loans in this way and in these particular circumstances.

Taking all of this together, I find that George Banco ought fairly and reasonably to have realised that the loans from loans two onwards were unfairly provided because they were unsustainable or otherwise harmful for Mrs H and unfairly and excessively increased her overall indebtedness.

Did George Banco act unfairly or unreasonably towards Mrs H in some other way?

I've carefully thought about everything provided. Having done so, I've noted that George Banco has already accepted that it unfairly and unreasonably continued to send text messages to Mrs H offering further loans and top-ups even though she'd refused them.

As these messages and offers of further funds were sent at a time when Mrs H was already struggling to make ends meet and manage her finances, I think that this will have caused Mrs H additional distress and inconvenience.

So I also find that George Banco acted unfairly or unreasonably towards Mrs H in some other way.

conclusions

Overall and having carefully thought about the three overarching questions, set out on page eight of this decision, I find that:

- George Banco *didn't* complete reasonable and proportionate checks on Mrs H to satisfy itself that she was able to repay any of these loans;
- reasonable and proportionate checks *would* more likely than not have individually shown Mrs H was unable to sustainably make the repayments for loan one;
- George Banco ought fairly and reasonably to have realised that the loans from loans two onwards were unsustainable or otherwise harmful for Mrs H and were unfairly and excessively increasing her overall indebtedness;
- George Banco also acted unfairly or unreasonably towards Mrs H in some other way.

The above findings leave me concluding that George Banco unfairly and unreasonably provided Mrs H with all three of her loans.

Did Mrs H lose out as a result of George Banco unfairly and unreasonably providing her with her loans?

I find that Mrs H did suffer adverse consequences as a result of George Banco unfairly giving her these loans. I think this is the case for two key reasons.

Firstly, these loans had the effect of unfairly increasing Mrs H's indebtedness to George Banco by allowing her to take expensive credit for significant sums. These loans were expensive – especially when the document fees were added to the loans - and as a result the increasing monthly payments took up a significant proportion of Mrs H's income at a time where she was already struggling to make ends meet.

Secondly, the number of loans in the period of time (even those successfully repaid by refinancing) is likely to have had implications for Mrs H's ability to access mainstream credit. The greater the presence of these loans on Mrs H's credit file the less likely Mrs H was able to rehabilitate her finances and regain access to mainstream credit.

In my view, George Banco giving Mrs H this many loans (which it shouldn't have done) in this period of time when she was already overstretched financially, unfairly placed her in a position where she was trapped into taking expensive high-cost loans over an extended period as no-one else would lend to her.

I think that, in these circumstances, Mrs H had little choice other than to keep turning to George Banco (and other similar high-cost providers) for further loans, because other cheaper mainstream providers weren't prepared to lend to her bearing in mind everything that had gone on previously.

So overall and having carefully thought about everything provided and what's fair and reasonable in the circumstances of this case, I find that Mrs H lost out because George Banco unfairly gave her these loans, which it ought to have realised were unsustainable and harmful for her. And this means I find that George Banco needs to put things right.

fair compensation – what George Banco needs to do to put things right for Mrs H

I've carefully thought about what George Banco should do to put things right in this case.

Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean George Banco putting Mrs H in the position she'd now be in if she hadn't been given these loans.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mrs H was given the loans in question and she used the funds – albeit some of them went towards repaying earlier loans. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mrs H back in the position she would be in if she hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for George Banco to put things right in the following way.

interest and charges on the loans

As I've explained throughout this decision, George Banco lending to Mrs H, in these circumstances, left her in a position where her debt was increasing. And Mrs H kept having to find additional funds to pay the (increasing) monthly payments on her George Banco

loans. In reality it's the interest and on these loans that led to Mrs H's indebtedness increasing and her financial position worsening.

I'm also mindful Mrs H then took out further loans which resulted in her having to borrow more to repay previous loans. So I think that the fairest way to ensure that Mrs H is refunded any interest and charges that she may have paid is to add the total amount of money she received as a result of being provided loans these loans. George Banco should then deduct any payments Mrs H made from this amount.

George Banco should treat any payments made after what Mrs H paid reached the total of the money she received, if there were any, as overpayments. And to start with, I think that George Banco should refund any such overpayments as they will represent the interest Mrs H unfairly paid as a result of being given her loans.

Mrs H will also have lost the use of the funds she used to pay any interest and charges, George Banco may need to refund to her. As Mrs H will have lost the use of these funds, I think she should be compensated if she made any interest payments.

We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid (in other words any overpayments over and above the amount of money Mrs H received if there were any), is fair and reasonable in the circumstances of this case.

Mrs H's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

So to start with I think that George Banco should remove any adverse information recorded on Mrs H's credit file as a result of the interest and charges on loan one, as Mrs H wasn't in a position to sustainably repay this loan and she shouldn't have had to pay those interest and charges.

But I'm upholding Mrs H's complaint about loans two and three because I think the overall pattern of lending increased Mrs H's indebtedness in a way that was unsustainable or harmful in some other way. I explained that there were two main adverse consequences of George Banco having given Mrs H these particular loans, in these circumstances. Firstly it caused her indebtedness to increase unsustainably as a result of the interest and charges. And I've already explained how Mrs H should be compensated for this.

I also explained that these loans having been provided in these circumstances are likely to have had implications for Mrs H's ability to access mainstream credit. The greater the number of these loans on Mrs H's credit file the less likely Mrs H was able to rehabilitate her finances and regain access to mainstream credit. And I think my direction in relation to Mrs H's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Mrs H's credit history and creditworthiness so that a lender can make an informed decision on whether

lend to her, I think that the mere presence of loans two and three on Mrs H's credit file, in itself, constitutes adverse information. And I think that these loans appearing on Mrs H's credit file is likely to continue unfairly adversely affecting Mrs H going forwards.

In these circumstances, I think that it is fair, reasonable and proportionate for George Banco to remove all reference to loan two to Mrs H's credit file, as this loan being present in these circumstances, in itself, is adverse information. If the payments Mrs H has already made is enough to ensure that she has no outstanding balance on loan three, then all reference to loan three should also be removed from her credit file.

any potential outstanding balance on loan three

If an outstanding balance remains on loan three – once all interest, charges and document fees have been removed from the outset – I think that George Banco should consider whether it is even worth pursuing any debt given it now accepts the precarious position of Mrs H's finances and her ability to make payments. But if George Banco decides that it does wish to pursue any debt, I would remind it of its obligation to treat Mrs H positively and sympathetically given it accepts she's experiencing financial difficulty.

compensation for the distress and inconvenience George Banco acting unfairly and unreasonably towards Mrs H caused

As well as unwinding any wrongdoing caused by George Banco having provided these loans, I also have the power to make an award to reflect the emotional and practical impact George Banco's actions in sending Mrs H text messages at a time where she was already struggling, have had.

Our website contains detailed examples of distress and inconvenience awards we might make and the reasons why might make them. These are set out in different categories and levels – to show the range of awards we make.

I've carefully considered whether George Banco should make an additional payment to Mrs H with reference to these distress and inconvenience awards and categories.

All parties agree that Mrs H was sent text messages offering further loans even after she'd refused them. As I see it, Mrs H would've suffered the stress of being offered further credit when she already owed a considerable amount of money (more than £10,000) – which my investigation has concluded she had no means of repaying – at a time where she was already suffering financial difficulty. And as I've explained, George Banco continued sending these messages even after Mrs H asked it not to do so.

Having considered all of this in the round, I think that George Banco's actions caused Mrs H a moderate amount of distress, inconvenience, anxiety and suffering.

Our website sets out a compensation range of up to £500 where a consumer has suffered moderate distress and inconvenience. As these messages appear to have been sent before George Banco was provided with actual awareness of Mrs H's inability to make the repayments to loan three, I think an award at the mid-point of this scale is fair and reasonable in all the circumstances of this case.

So having carefully considered everything, given the particular circumstances of Mrs H's complaint, I'm awarding Mrs H £250 for the distress and inconvenience that George Banco's actions in acting unfairly and unreasonably towards her caused.

All of this means that I think it would be fair and reasonable in all the circumstances of Mrs H's complaint for George Banco to put things right by:

- adding up the total amount of money Mrs H received as a result of having been given these loans. For the avoidance of doubt this added up amount should not include any interest, charges, document or any other administration fees. The payments Mrs H made (to these loans) should be deducted from this amount. Any payments made, if any, after the total amount repaid exceeds the amount of money Mrs H was given should be treated as overpayments;
- add interest at 8% per year simple on any overpayments made, if they were, from the date they were paid by Mrs H to the date of settlement†;
- removing any adverse information recorded on Mrs H's credit file as a result of loan one;
- removing all reference to loan two (and loan three if the payments Mrs H has made is enough to have cleared the balance) from Mrs H's credit file.
- treating Mrs H positively and sympathetically should an outstanding amount remain on loan three even after all of the above is done;
- paying Mrs H a sum of £250 to reflect the distress and inconvenience it acting unfairly and/or unreasonably towards Miss W caused her.

† HM Revenue & Customs requires George Banco to take off tax from this interest. George Banco must give Mrs H a certificate showing how much tax it has taken off if she asks for one.

my final decision

For the reasons I've explained, I'm upholding Mrs H's complaint. George Banco Limited should put things right for Mrs H in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 14 June 2019.

Jeshen Narayanan
ombudsman