

complaint

Mr and Mrs J complain that Nemo Personal Finance Limited isn't treating them fairly when they're in financial difficulties. They want Nemo to accept their repayment plan to pay an extra £50 each month towards the arrears.

background

Mr and Mrs J have a secured loan with Nemo Personal, and are in arrears. They aren't happy that it wouldn't agree to their repayment plan, and feel it hasn't treated them sympathetically by adding fees to their account. Mr and Mrs J also feel Nemo put pressure on them when it called in February 2017.

Mr and Mrs J complained to Nemo. It said that as interest was charged daily, it was in their interests to clear the arrears as soon as possible. Repayment plans had to be realistic, affordable and sustainable; Nemo said to ensure this it needed to know Mr and Mrs J's income and spending. It pointed out as it was secured, its debt should be paid before unsecured debts and it wouldn't accept repayment plans if its debt wasn't being made a priority. The call in February 2017 was difficult because Mr and Mrs J's spending was a concern for Nemo and it seemed that they were spending too much on clothing and unsecured creditors. It didn't accept that pressure was put on Mr and Mrs J.

Nemo also explained that the repayment plan was rejected because it would take just under three years to clear the arrears. It also explained when an earlier repayment plan ended, it couldn't keep taking the higher payments without Mr and Mrs J's consent. Nemo said it had tried to talk to them a number of times without success. Nemo accepted that it had made a mistake in not taking the agreed extra payment towards the arrears in February and March 2016, but it refunded the extra interest of £1.80, and paid £30 for the inconvenience. But as Mr and Mrs J spent the money they should've paid Nemo, it wouldn't compensate further.

Mr and Mrs J complained to us and explained that they had now offered to pay an extra £73.60 a month, but Nemo still refused it and demanded an extra £120 a month. Mrs J said it ignored the fact they needed a car for Mr J to work and sent a default notice as punishment for their inability to pay an extra £120. Mrs J also pointed out Nemo should accept any payments towards the arrears, not insist that the payment must be the amount it wants.

The investigator's view was that lenders must treat consumers in financial difficulties fairly. Nemo clearly believed that Mr and Mrs J were spending too much on unsecured debts and non-essential spending. The investigator pointed out that while Nemo said it was relying on guidelines from a debt advice organisation about what was reasonable spending, the debt advice organisation told this service that it didn't have specific guidelines and looked at cases individually. The investigator didn't think that it was reasonable to rely on non-official guidelines, particularly as Mr and Mrs J had reduced their spending and seemed to be acting reasonably. She accepted Mr J needed a car to earn income and only very small repayments were being made to the credit card debt. Mr and Mrs J only were left with a disposable income of £15 a month, and the investigator thought it was reasonable for them to pay an extra £50 and repay the arrears before the loan ended. If Mr and Mrs J felt that they could pay £73.60, that was their choice.

Nemo disagreed. It said the investigator didn't treat its debt as a priority and seemed fine with the arrears lasting longer than necessary. Nemo disagreed that repaying the arrears over 32 months was reasonable, and pointed out this would cost Mr and Mrs J £482.56 more in interest. It also said paying the arrears more quickly would improve their credit records. Nemo felt Mr and Mrs J were paying too much on luxury items and towards their credit card debt. And it said it did work closely with debt advice organisations, and was surprised to be told by the investigator not to rely on their guidelines and that Mr and Mrs J's spending wasn't unreasonable. The investigator accepted that the arrears needed to be paid by the time the loan ends but still thought Nemo was at fault.

my provisional decision

In my provisional decision, I set out why I intended to uphold the complaint. I said:

"I note Nemo has referred to other cases seen by this service, but even where cases look similar, we take into account the individual circumstances of each case.

Lenders have to treat consumers in financial difficulties fairly, but that doesn't mean that they can't have an honest discussion about whether the consumers are spending too much on non-essential spending. It isn't unreasonable for Nemo to ask questions about Mr and Mrs J's spending. But a secured loan is only a priority because unaddressed arrears can lead to possession proceedings; arrears which are being paid through an agreed repayment plan shouldn't lead to the loss of the property.

This doesn't mean a lender can demand a consumer stops paying a particular debt. Refusing to accept a repayment plan because a consumer could for example stop paying a car loan is fairly close to insisting a consumer stops paying that loan in my view. Equally though, if a consumer is spending clearly excessive amounts on non-essential items, the lender isn't unreasonable to expect a reduction in order for it to receive more.

In Mr and Mrs J's case, Nemo says their non-essential spending was excessive. But when I compared the guidelines it sent about reasonable food, housekeeping, communications and leisure, and personal costs, I noted Mr and Mrs J's family were spending less than the guidelines suggested was reasonable for those separate elements. So I don't think Nemo's review of Mr and Mrs J's financial position has been fair.

I'm satisfied that it's reasonable for Mr J to pay a car loan as he needs a car to work, and that it was reasonable to make a small payment towards the credit card debt to avoid legal action being taken. Nemo has claimed Mr J has unreasonably paid that car loan, but Mr and Mrs J have explained that due to Mr J's car being written off, the insurer had paid the loan. They then took out a new one as Mr J still needed a car to work. This isn't unreasonable in my view. Nemo hasn't sent convincing evidence proving its other allegations that Mr and Mrs J have been paying other debts first.

I accept Nemo's point that the longer the arrears exist, the more interest they will pay. But Nemo has refused to accept the repayment offers made, and ignores that fact that it keeps suggesting that if the arrears aren't dealt with, possession proceedings might follow. It isn't unreasonable for arrears to be cleared in less than three years, and by the time the secured loan ends, if the repayment plan accepted is affordable and sustainable. The courts have said similar. Nemo says it won't refuse to accept overpayments, but in my view its actions have indicated to Mr and Mrs J that it won't accept overpayments unless it receives the amount it wants.

Based on the information given to me, it seems if Mr and Mrs J pay an extra £99.37 in addition to the monthly payment, they would clear the arrears by the time the loan ends. The most recent offer from Mr and Mrs J to pay an extra £73.60 would not clear the arrears in time. I don't think it's reasonable to require Nemo to accept an offer which will not see the arrears cleared by the time the loan ends. The investigator asked Mr and Mrs J if they could afford the extra £99.37 a month. Mr and Mrs J say that they can't afford to pay more than an extra £75 a month – that isn't enough to clear the arrears by the time the loan ends. I can't say it's unfair for Nemo to refuse to accept an offer which won't see the arrears paid by the time the loan ends. This means I won't require Nemo to accept the offer from Mr and Mrs J.

I do think it would be helpful if I point out to both parties that they should try to find a way forward together about the arrears. I accept Nemo's point that the arrears need to be addressed, otherwise it may take legal action, including possession action. While it isn't for a lender to instruct consumers to stop paying particular debts, I can understand that there are aspects of Mr and Mrs J's spending which fairly and reasonably concern Nemo, such as the spending on TV, internet and phones. But I equally don't think in this case an offer to pay the arrears over the time left before the loan ends would be unreasonable. And any overpayment to reduce the arrears should be accepted, though this is not the same as agreeing a repayment plan which prevents legal action being taken.

But I don't think Nemo has acted fairly when dealing with Mr and Mrs J for the reasons I've given above. Nemo should also have been clearer that overpayments can be made, even if a repayment plan hasn't been agreed. I think its failures has caused Mr and Mrs J trouble and upset over several months. I'm of the view that it would be fair and reasonable for Nemo to pay £250 compensation for the trouble and upset suffered by Mr and Mrs J."

my findings

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

In response to my provisional decision, Mr and Mrs J accepted my view but Nemo explained why it disagreed with my provisional view. It said that I upheld the complaint on a basis which wasn't complained about by Mr and Mrs J, so it hadn't had the opportunity to investigate that issue. Nemo said that awarding £250 compensation for it failing to be clearer that overpayments could be made even when a repayment plan has not been agreed was accordingly outside my jurisdiction.

Nemo also denied that it had demanded that Mr and Mrs J stopped paying other creditors, but accepted that it had asked Mr and Mrs J to negotiate with their other creditors who could be more flexible. It felt my view was contradictory as I had noted that it wasn't unreasonable to ask consumers to reduce their spending on clearly excessive non-essential spending. It also noted my view differed from the adjudicator's as I was able to comment to Mr and Mrs J's spending.

Nemo said it could provide other evidence about Mr and Mrs J's other debts (but did not provide it). Nemo also referred me to other decisions by an adjudicator in support of its position.

Having considered Nemo's response, I remain of the view that my provisional view is fair and reasonable. First, I will point out again that decisions of this service are based on the individual facts of each case, and the facts set out in the other case referred to by Nemo are not the same as this case. Secondly, neither the adjudicator nor I have commented on Mr and Mrs J's spending in detail, but it was necessary to look at the whole picture in order to deal with the complaint.

Nemo says that I have no jurisdiction to uphold the complaint on the basis I proposed because it wasn't the complaint made by Mr and Mrs J. But this service has a broad remit to ensure that consumers are treated fairly and reasonably. Mr and Mrs J's complaint is that Nemo hasn't treated them fairly when they're in financial difficulties, and more specifically about how it has behaved in relation to their offers to make overpayments to reduce their arrears. Consumers are not required to spell out on a point by point basis every possible issue raised by their complaint. I'm satisfied that I have the jurisdiction to make the finding which I have made. In any event, Nemo has had the chance to respond to the finding.

Nemo in its dealings with Mr and Mrs J challenged their decision to make any payments towards their credit card debt, and strenuously objected to their car loan repayments. By any reasonable definition, this is suggesting that Mr and Mrs J used the money they were paying to clear the car loan to clear to clear their arrears more quickly instead. My view is not contradictory when it suggested that a lender wouldn't be unreasonable in raising concerns about "clearly excessive" spending on non-essential spending – the point is that the spending would need to be clearly excessive, not debatable. For example, a car loan taken out to enable Mr J to work is neither clearly excessive nor non-essential.

It appears Nemo has evidence which it hasn't sent to this service about Mr and Mrs J. That is its choice, but in any event this doesn't appear relevant to the failing which I have identified concerning the overpayments to clear the arrears. I remain of the view that Nemo should've been clearer that overpayments could be made even if a repayment plan was not agreed and £250 compensation would be fair and reasonable for the trouble and upset caused as a result.

my final decision

My final decision is that I uphold the complaint and Nemo Personal Finance Limited should pay £250 compensation to Mr and Mrs J. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 30 October 2017.

Claire Sharp
ombudsman