

complaint

Ms B complains about a finance agreement she took out with Creation Financial Services Limited so her daughter-in-law could buy a new car. She says the repayments on the loan were unaffordable to her and she is unhappy that Creation did not perform any affordability assessments before granting the loan.

background

In 2009 Ms B took out a loan so her daughter-in-law could buy a car. The finance was in Ms B's name and her daughter-in-law was to make the required loan repayments each month as she was using the car.

The loan repayments were made at the start of the agreement but after some time Ms B's daughter-in-law stopped making the repayments. As the repayments have not been made when due Creation has asked Ms B to make the repayments. Ms B says however that she cannot afford to make the loan repayments each month, nor does she have the car or have contact with her daughter-in-law.

Ms B complained to Creation and as she remained unhappy with its response referred her complaint to our service. The adjudicator who considered the complaint did not recommend it be upheld. He noted that the arrangement Ms B had with her daughter-in-law was for her daughter-in-law to make the required repayments and this is what happened for some time after the finance was taken out. He also noted that Ms B had had a similar arrangement with her daughter-in-law before. He considered the overall circumstances, which included Ms B's daughter-in-law making the payments to the finance, and he did not think it was unreasonable for Creation to lend the money to Ms B.

Ms B did not accept the adjudicator's conclusions and asked for the case to be reviewed.

Ms B has another complaint with our service against a different business that is associated with this complaint. A separate decision will be issued for that complaint and will be sent separately.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not upheld this complaint.

Creation is required to lend responsibly but there is no specific requirement that says it must perform a detailed assessment of a potential borrower's income and expenditure when lending money. It should however ensure that any lending is actually affordable. When considering Ms B's loan application Creation has said that it did perform a credit check on her, but there was however no specific affordability assessment. Even though Creation did not perform an affordability assessment this would not, in isolation, mean that the loan was unaffordable.

I have considered what Ms B has told us about her income and expenditure at the time she took out the loan, along with her overall circumstances. Her expenditure was similar to her income and there was not sufficient disposable income to meet the £230 monthly

repayments. When considering Ms B's circumstances it does suggest the loan was not affordable to her.

However, although Ms B took out the loan she was not intending to make any repayments under the loan agreement. She had an arrangement with her daughter-in-law where every monthly repayment to the loan would be met by her daughter-in-law. I think it only fair to factor this into any consideration of affordability and this meant that there was no regular financial commitment or requirement for Ms B to meet any of the loan repayments.

Ms B had a previous arrangement with her daughter-in-law on the same basis and I understand this arrangement worked perfectly well with the loan repayments being made each month when they were due. The loan repayments were made to the new agreement Ms B took out and it was only after her daughter-in-law stopped making the agreed repayments that Creation contacted Ms B. Had Ms B's daughter-in-law continued to make the payments as agreed then there would not be an issue.

Having very carefully considered the circumstances of this complaint I am not persuaded that it was irresponsible of Creation to lend the money to Ms B. Nor do I think the arrangement was actually unaffordable – when considering the repayments were to be made by Ms B's daughter-in-law. There are therefore no grounds for me to instruct Creation to cancel or write off the money that is owed.

If Ms B is now unable to afford the loan then Creation should consider her circumstances in a positive and sympathetic way. This does not mean that it should write off some or all of the outstanding loan but it may mean coming to an agreeable repayment plan.

The car that was bought with the loan proceeds is not secured against the loan and there are no legal grounds for Creation to try and recover the car from Ms B, or her daughter-in-law. Ms B may be able to try and recover the car from her daughter-in-law and then sell the car to reduce the amount required under the loan. This will however be a private matter between Ms B and her daughter-in-law and is not something that I can become involved in. I note Ms B has had assistance bringing her complaint and she may be able to seek further guidance or advice from that party.

I appreciate Ms B now finds herself in a very difficult position and although I have a great deal of sympathy for her, there are no grounds for me to uphold this complaint.

my final decision

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

Mark Hollands
ombudsman