

## **complaint**

Mrs O complains about a loan she took out with Career Finance 4 Trade Skills Limited ('CF4TS'). She says the loan was unaffordable and that she was put under considerable pressure from a debt collection agent to make payments.

## **background**

Mrs O took out the loan in September 2011 to pay for a training course for her son. She defaulted very soon after and her son did not undertake any part of the course.

Our adjudicator concluded that the complaint should be upheld. He considered the loan was unaffordable and recommended that CF4TS refund all monies paid to it by Mrs O, in addition to its agreement to write off the outstanding balance. He also considered that the debt collection agent employed by CF4TS had acted in breach of Office of Fair Trading ('OFT') guidance on debt collection. He recommended that it pay Mrs O £350 compensation for the distress and inconvenience she experienced as a result.

CF4TS did not agree with that conclusion. It considers its decision to write off the remainder of the loan is reasonable. It says it did *'everything reasonably possible to establish Mrs O's credit worthiness'*. It also questions whether the behaviour of the debt collection agency is something that should be taken up with the agency direct.

## **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 uphold Mrs O's complaint.

## **affordability**

The OFT's guidance for creditors on irresponsible lending states that creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner. That is, without undue difficulty, out of their income and/or available savings. The steps a business chooses to assess affordability are at its discretion. However, the extent and scope of any assessment of affordability will depend on and should be in proportion to a number of factors, including the type and amount of credit.

In relation to Mrs O's application, CF4TS says it carried out a credit check with a credit reference agency and relied upon information it says Mrs O provided about her employment and the fact that she was able to provide a valid credit card for payment. Whilst it subsequently came to light that Mrs O was in financial difficulty and had already been seeking debt advice and assistance from a third party not-for-profit advice agency, it could not reasonably have known about her financial situation. In essence, it believes it had all necessary information to enable it to assess Mrs O's application appropriately.

As part of this service's investigation into Mrs O's complaint, CF4TS has provided us with a number of call recordings with its appointed debt collection agent. During these calls Mrs O says that at the time of the application she was not able to work because of disability caused by incidents at work. However, it appears she was still technically employed at the time.

Mrs O's debt adviser has also independently told this service that she was in receipt of employment support allowance at the time she applied for the loan, her statutory sick pay having expired. In addition, her mortgage statement for the relevant period shows that she was in arrears.

During these calls Mrs O says that the broker was aware of her employment circumstances.

Certainly, Mrs O has appeared very willing to discuss her work situation with CF4TS's debt recovery agent. Whilst CF4TS suggests that Mrs O might have lied to the broker, there is no evidence that she deliberately withheld information. The business has not provided any evidence that it looked into what might have occurred during the sales process and it would now be difficult to investigate what was said at the time.

CF4TS's records indicate that it consulted a credit reference agency before it accepted Mrs O's application. However, it has been unable to produce a copy of the credit report itself or results of the credit check. These ought to have shown that Mrs O's mortgage account was in arrears, as she had begun to miss payments several months before the loan was approved.

However, even if the arrears were not apparent from the credit report, CF4TS's enquiries into Mrs O's financial circumstances appear to have been very limited. Its records indicate that Mrs O had been in employment for two years with an annual income of between £10,000 and £19,000. They also show that she is an owner/occupier, but there is no record that she was asked about her outgoings, including mortgage commitments.

On balance, I think it would have been reasonable and proportionate, given the amount and nature of the loan, for CF4TS to have asked Mrs O for information about her financial commitments. I am not persuaded that it could properly assess her ability to repay the loan in a sustainable manner from her income, which is unclear given the breadth of the recorded salary band, and also relatively low, without this information as well. A more thorough assessment would, in my view have revealed the truth about Mrs O's financial circumstances.

Whilst I accept that Mrs O willingly entered into a credit agreement, this does not negate CF4TS's own responsibility to lend responsibly. The decision whether or not to advance credit rests with the business.

For these reasons, I find that Mrs O should not have been granted the loan because she could not afford it. I therefore agree with the recommendation of the adjudicator that CF4TS must refund all payments made by her, totalling £315, plus interest. In reaching this conclusion, I have also taken into account that Mrs O defaulted early in the life of the loan and no benefit was derived from the course to be funded by the loan.

### **debt collection**

CF4TS questions how the activities of the debt recovery agent are connected with Mrs O's complaint about affordability. It also queries whether CF4TS is answerable for the behaviour of the debt collectors.

Mrs O's complaint was that CF4TS had passed her account to a debt recovery company despite having been told about her financial difficulties. During the course of investigating the complaint, including listening to call recordings provided by CF4TS, it became clear that

Mrs O felt that she should not have been granted the loan in the first place. Therefore, this service was entitled to consider whether CF4TS's decision to lend was reasonable. It is also entitled to consider how CF4TS treated Mrs O after it became aware of her financial difficulties. This includes having regard to the behaviour of its appointed agents, for which it is responsible.

I have listened to the call recordings of Mrs O's conversations with CF4TS's debt collection agent. I accept that Mrs O's responses might have appeared somewhat evasive at times.

However, in my view, this does not change the fact that Mrs O was clear from the outset that she did not have any money, was not working, or able to work, and was receiving benefits and crisis loans.

It is entirely reasonable for a debt recovery agent to ask the borrower to substantiate what they say with proof of income/benefits and expenditure. However, it should not question a person's honesty, as happened in Mrs O's case, without evidence.

CF4TS's agent did not ask Mrs O for more information about her circumstances, despite the fact that she had given several indications that she was being advised by more than one not-for-profit debt advice agency. Although he allowed Mrs O to talk at length about her issues, CF4TS's agent seemingly ignored everything she said and persistently pressed her for payment, including threatening her with 'doorstep recovery'.

Moreover, even after it became clear that Mrs O had been telling the truth about her financial circumstances, the debt recovery agent persistently asked her to pay a sum that she said she could not afford because, in his words, all benefit recipients were expected to pay this amount. Although it represented a substantial reduction from her contractual liability, Mrs O repeatedly explained that she could not afford to make payments at this level given her inability to meet other priority expenses.

I consider CF4TS or its agent ought to have worked with Mrs O from the outset to ascertain whether the loan should have been granted in the first place. Instead, it waited until she raised a complaint before writing off the remainder of the loan.

I also find that CF4TS's agent disregarded Mrs O's reasonable requests that it contact her in writing. The adjudicator has already transcribed the relevant statements in his assessment, so I will not repeat them here.

For these reasons, I find that CF4TS, through its agent, failed to comply with the OFT's debt collection guidance. It is clear that this caused Mrs O distress, particularly in light of her health issues at the time, of which the debt recovery agent was aware.

In all the circumstances, I consider an award of compensation of £350 is fair.

### **bank charges**

Mrs O has said that she incurred bank charges because CF4TS did not refund the £315 she paid to it under the loan. However, Mrs O has not provided evidence that this was the sole reason her account attracted charges. So I am unable to conclude that is a loss which CF4TS should compensate her for.

**my final decision**

For the reasons given my final decision is that I uphold Mrs O's complaint. I direct Career Finance 4 Trade Skills Limited to:

1. refund Mrs O the £315 she paid under the loan, plus interest at 8% simple per year from the date of each payment until the date of settlement; and
2. pay Mrs O compensation of £350 for the distress and inconvenience she has experienced.

Athena Pavlou  
Ombudsman