

## **complaint**

Miss Y complains about a personal loan she took out with Beneficial Finance (part of HFC Bank Limited and referred to here as "HFC Bank"). She says the loan was unaffordable when given to her and that she was unaware a County Court Judgement (CCJ) was later obtained against her. She understood the full balance of the loan had been paid off by her related insurance policy when she left work due to illness.

## **background**

I issued a provisional decision on this case in October 2013, setting out the background to the complaint and my provisional conclusions. A copy is attached and forms part of my final decision. Briefly I:

- did not uphold Miss Y's complaint that the loan was unaffordable; and
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- did not agree that HFC Bank should have re-worked the interest charged on the loan once Miss Y's insurance policy began to pay out.

However I did propose that HFC Bank pay Miss Y £100 for distress and inconvenience caused by the confusing information it has provided about the balance that is still outstanding on the account.

HFC Bank has not responded to my provisional findings in the time given.

Miss Y has responded and has provided supporting paperwork. In summary she says:

- HFC Bank didn't tell her the insurance had been cancelled, didn't tell her the account had been referred to the solicitors and has been rude and unhelpful throughout.
- Her recollections of how she came to take out the loan are very different to HFC Bank's account of events. HFC Bank has not provided her with a copy of the loan agreement. It has provided a copy of an agreement which is incorrectly dated 2004.
- She has been provided with confusing letters and statements showing various amounts outstanding on the account.
- She believes her own monthly payments, as well as the payments from the insurance policy, should have paid the loan off by now.

## **my findings**

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In particular I have considered the further submissions and papers Miss Y has provided. But, having done so, I am not persuaded to change my provisional findings.

Miss Y still believes this loan was taken out to 'tide her over' whilst she waited for a larger loan to be approved. But this is not supported by the information HFC Bank holds on the larger loan, or the information Miss Y got from her own mortgage provider – both of which suggest the larger loan was taken out and repaid well before this disputed loan was provided. There is nothing I can reasonably add to what I already said in my provisional decision about this. It seems Miss Y's recollection of events is simply not accurate.

Although Miss Y says HFC Bank has not provided a copy of her loan agreement I can see that she has included a copy of the agreement in the papers she sent in response to my provisional decision. I can also see that the agreement is correctly dated 2007, not 2004. I think this is just a handwriting issue. So I am satisfied that HFC Bank has sent Miss Y a copy of her agreement.

Miss Y also makes several points about her insurance claim and why it took so long to process and the fact that the insurance was cancelled when the premiums went unpaid.

Again there isn't much I can say that wasn't already covered in my provisional findings. HFC Bank did not have to put the loan on hold whilst waiting for the outcome of the insurance claim. The account was ultimately defaulted because the loan payments – and therefore also the insurance premiums – went unpaid for several months.

Although the insurance claim was ultimately paid (and it seems perhaps overpaid) this was after the account had been defaulted and after HFC Bank had obtained a CCJ. I have already explained that it would not be appropriate for this service to interfere with the court's judgement about the amount of the debt. The insurance payments were used to reduce the CCJ debt but they were not enough to clear it. This is why Miss Y still owes a further sum to the account and she is paying £5 each month to HFC Bank's solicitors under an agreed arrangement.

I acknowledged in my provisional decision that HFC Bank seems to have provided confusing information to Miss Y on more than one occasion. The statements it produces do not seem to properly show the account history. Although they show the payments received they do not seem to show some of the costs added to the account as a result of the default, the collections activity and the CCJ. Having said that, Miss Y has also sent in a copy of a statement she received from the solicitors in March 2012 which did show the correct outstanding account balance as at March 2010.

I think it would be helpful for HFC Bank to now ask the solicitors to send Miss Y an up to date statement of her account showing all the payments made and the amount she still owes. And I do still find that HFC Bank should pay Miss Y £100 for the distress and inconvenience caused by the confusing information it has at times provided. But I do not, otherwise, find that HFC Bank should adjust the outstanding balance owed on the account.

### **my final decision**

My final decision is that I uphold this complaint in part, but only in relation to the distress and inconvenience caused by HFC Bank Limited giving Miss Y confusing information about the outstanding balance due under her loan.

I therefore direct HFC Bank Limited to:

- pay Miss Y £100 for distress and inconvenience; and
- send Miss Y an accurate, up to date statement showing the outstanding balance owed on her account.
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Dawn Griffiths  
**ombudsman**

## **COPY**

### **PROVISIONAL DECISION**

#### **complaint**

Miss Y complains about a personal loan she took out with Beneficial Finance (part of HFC Bank Limited). She says the loan was unaffordable when given to her and that she was unaware a County Court Judgement (CCJ) was later obtained against her. She understood the full balance of the loan had been paid off by her related insurance policy when she left work due to illness.

#### **background**

*what does Miss Y say happened?*

Miss Y says she took out a £1,000 personal loan in 2005 as an interim loan while she waited for HFC Bank to grant a larger loan. She says the larger loan was not granted and that this caused her difficulties repaying the smaller loan.

In 2008 she had to stop work due to illness and she made a claim under the insurance covering the loan. She says there was a delay paying the claim but she heard nothing further so assumed the insurance had paid off the loan. Miss Y says she found out in 2012 that a CCJ had been obtained. She says she was told by HFC Bank that a balance of £19.26 remained and she has had several statements either stating this balance, or saying the loan has been paid off. However, HFC Bank's solicitors are asking her to pay around £900.

*what does HFC Bank say happened?*

HFC Bank says Miss Y did take out a personal loan in 2005, which was later paid off. She also applied for a large loan in 2006, which was granted and Miss Y made two payments towards that loan. That loan was then repaid with money from Miss Y's mortgage provider. Miss Y told us she had no recollection of these events, but has since had this information confirmed by her own mortgage provider.

HFC Bank has provided documents – including the loan agreement, application details and assessment of income and expenditure – for a further personal loan Miss Y took out in June 2007. That loan was for £2,405.85 and was the subject of the later CCJ. The documents provided show that the loan consisted of £1,500 for Miss Y's own use, £500 to pay off her credit card and a premium for payment protection insurance on the loan. With interest, the total amount Miss Y should have paid back if the loan had run for its full term would have been £3,764.52.

Miss Y made monthly payments to the loan until April 2008. She then told HFC Bank she had lost her job and was unable to pay. She also told it she had submitted an insurance claim. However, Miss Y has indicated that the claim took a long time to process because the insurer had difficulty getting information from her employer.

In late 2008 HFC Bank defaulted the loan and referred the account to its solicitors. A CCJ was obtained in December 2008. As the full balance of the loan was due and as no payments had been received after April 2008 the amount of the judgement, plus costs, was £3,573.82. Miss Y did not submit a defence to the CCJ. She says she knew nothing about it.

In February 2009 the insurer began to pay the claim. It is unclear why, although HFC Bank's contact notes indicate that Miss Y submitted a backdated claim in January 2009. Despite the policy having been terminated when the loan was closed, the insurer subsequently paid £2,331.90. These payments were used to reduce the outstanding amount owed under the CCJ. However, they were not enough to clear the full balance.

#### *our initial conclusion*

Our adjudicator upheld the complaint. He felt it would have been fair and reasonable for HFC Bank to have re-worked the interest charged on the loan once the backdated insurance payments were received. He recommended it settle the remaining balance owed on the CCJ and pay Miss Y £200 for distress and inconvenience.

HFC Bank did not agree. It said there was a substantial delay in Miss Y submitting her insurance claim and that she remained responsible for paying the monthly loan payments until her claim was accepted. It also said the outstanding balance owed to the solicitors was correct and later provided a statement showing how this figure was arrived at.

#### **my provisional findings**

I have considered what Miss Y and HFC Bank have said and provided, to decide what is fair and reasonable in the circumstances. Having done so – and whilst I realise this will not be the outcome Miss Y hopes for – I am not persuaded her complaint should succeed to the extent that the adjudicator felt it should.

#### *was the loan affordable?*

Miss Y says she took out this loan whilst she waited for HFC Bank to approve a larger loan. She suggests she was effectively misled into taking out the smaller loan which she says she couldn't afford to pay back. However, the paperwork provided by HFC Bank – as well as the information Miss Y has obtained from her mortgage provider herself – does not support her recollections.

According to HFC Bank's records the larger loan was approved in 2006. But it was paid off a short time later by Miss Y's mortgage provider. Miss Y presumably secured a further advance from her mortgage provider, even if she doesn't recall doing so. The smaller disputed loan which is the subject of the CCJ appears to have nothing to do with the larger loan taken the previous year – despite Miss Y's insistence that they are connected.

HFC Bank has also provided evidence that it assessed Miss Y's income and expenditure and considered what she would be using the 2007 loan for, before it was granted. Looking at the evidence HFC Bank considered at the time, I do not find that HFC Bank acted irresponsibly in granting the loan to Miss Y. It seems it was affordable to her and she did make the monthly payments for nine months. It is unfortunate that she then lost her job. But that was not something HFC Bank could have been expected to predict when it gave her the loan.

I therefore do not uphold Miss Y's complaint that the disputed loan was unaffordable.

#### *the CCJ and the outstanding balance now owed*

I can see that Miss Y did tell HFC Bank in May 2008 that she had claimed under the insurance. She also indicated that she was dealing with a number of insurers at the time about different accounts. So I can understand that she may have become confused.

However, the loan terms and conditions did not require HFC Bank to put the loan on hold whilst any pending insurance claim was processed. And I don't think it would be appropriate to expect HFC Bank to have done that. Ultimately there could be no guarantee the insurance claim would be accepted and paid. And in the meantime the loan account would fall further into arrears.

HFC Bank does seem to have shown a degree of forbearance, as it defaulted the loan only after it had fallen substantially into arrears. The account was then referred to the solicitors and a CCJ applied for. Miss Y should have had the chance to defend the CCJ and submit a statement to the court. I think it is likely, on balance, that Miss Y would have been sent notice of the claim. As the court has already found that Miss Y owed the outstanding balance to HFC Bank, it would not be appropriate for this service to interfere with that judgement.

The payments which were later received from the insurer were used to reduce the CCJ balance. The statement provided by HFC Bank shows that no further interest has been added since the account defaulted. And no costs have been added after March 2009. Miss Y has been making payments of £5 per month and those had reduced the outstanding balance to £871.01 as at September 2013.

I am not persuaded that HFC Bank was required to back date the insurance payments and adjust the interest on the account. It is not clear why there was such a long delay in paying the claim. However, I am not currently persuaded it was due to an error on HFC Bank's part.

So I am not persuaded, in these circumstances, that HFC Bank should now be required to adjust the outstanding balance – or pay off any part of it.

I do note that Miss Y has been caused some confusion by statements HFC Bank has sent to her at various times; which show either a balance of £19.26 or no balance at all owing. It seems she has also been told over the phone that her balance has been cleared when this is not the case. Although Miss Y is aware of the outstanding balance held with the solicitors – and has been making payments to it – I can see that the confusing information she is sometimes being given by HFC Bank may cause her distress. So I do propose to make a modest award for that.

**my provisional decision**

My provisional decision is that I intend to uphold this complaint in part, but only in relation to the distress and inconvenience caused by HFC Bank Limited giving Miss Y confusing information about the outstanding balance due under her loan.

I therefore currently propose to direct HFC Bank Limited to pay Miss Y £100 for distress and inconvenience. I do not, however, propose to uphold the remaining elements of Miss Y's complaint, or propose to make any other order or award.

Miss Y and HFC Bank Limited now have until 21 November 2013 to present their further submissions. I will then consider those submissions and either issue my final decision or further directions.

Dawn Griffiths  
**ombudsman**