

complaint

Mr C complains about a debt recovery charge added to a fixed-sum loan agreement he took out with Harlands Finance Limited. Mr C says he was out of work, could not pay, and thinks the charge is excessive and unfair.

background

I issued a provisional decision on this case in which I concluded that Mr C's complaint should be upheld. This was because:

- I was not satisfied that Harlands had done enough to check the loan was affordable to Mr C. His common financial statement – completed by a debt adviser only a month after he took out the loan – indicated a low income and substantial priority and non-priority debts. So I considered it likely that Mr C was already in significant financial difficulties when he took out the loan.
- I was not satisfied that Harlands treated Mr C positively and sympathetically when he told it he had lost his job and could not pay. It did not try to find out what his financial position was, or offer him any option that would allow him to avoid a substantial debt recovery fee being applied to his account.

I therefore provisionally concluded that Harlands should re-work the account to remove all interest and charges from it, leaving the original £700 of credit borrowed less any payments Mr C had already made towards the debt.

I also concluded that Harlands should reduce the balance by a further £100 to reflect the distress and inconvenience caused to Mr C.

As Mr C's debt adviser had also said the £5 per month payment arrangement he was in was not fair or proportionate in comparison to the payments being made to his other creditors, I also said Harlands should liaise with Mr C and his debt adviser to come to an affordable, proportionate arrangement.

Mr C's debt adviser accepted my conclusions on his behalf.

Harlands (through its sister debt collection company) did not agree with my provisional conclusions. It said:

- Mr C's credit file from only a few months after he took out the loan does not give any indication that he was in great financial difficulties.
- It never received a common financial statement from Mr C or his debt adviser. Mr C made a promise to pay in September 2010 which he did not honour.
- Mr C has been making his £5 payments since January 2012 and has never said he can't afford to pay this.
- Harlands offered to reduce the balance of the account by £200 as a gesture of goodwill.

my findings

I have reconsidered this case from the outset, to decide what is fair and reasonable in the circumstances. In particular I have considered the further submissions put forward by Harlands. But, having done so, I am not persuaded to change my provisional conclusions.

I acknowledge Harland's comments about the lack of adverse information in Mr C's credit file. I think it's fair to say there is very little information at all in Mr C's credit file – which might tend to suggest that the credit file in this particular case was not a reliable gauge of Mr C's ability to manage and repay credit. Harlands has not said whether it checked Mr C's credit file before it granted the loan, or only after he had defaulted. And it has not said whether it carried out any other checks to satisfy itself that the loan was likely to be affordable to Mr C, before it granted it.

Mr C's debt adviser has provided a common financial statement completed only a month after he got the loan. This shows a low benefit income for Mr C (and low income for his partner) and the usual household commitments, with very little disposable income. It also shows substantial priority and non-priority debts, which were most likely to have been in existence before Mr C applied for the loan. Taking this into account I am not persuaded Harlands did enough to discharge its duty as a responsible lender. I don't think it should have granted the loan to Mr C.

Harlands says it never received the common financial statement or any other evidence from Mr C that he was in difficulties. It also says he made a promise to pay which he didn't keep.

However, Mr C's debt adviser has provided copies of letters it wrote to Harlands (and later to its sister company). These letters said Mr C was in financial difficulties and explained that he had asked his debt adviser to negotiate a payment arrangement. Later letters set out further information about Mr C's circumstances and enclosed the common financial statement. Harlands' (and its sister company's) contact notes refer to these letters and show they were received.

Harlands' contact notes also show that, before his debt adviser got involved, Mr C did contact Harlands and gave it information which should, reasonably, have put Harlands on notice that he was in financial difficulty. This included that he didn't have enough money in his account to make the payment, the broken promise to pay and a later call to say he had lost his job and could not pay.

As I said in my provisional decision, I cannot see that Harlands tried to find out more about Mr C's financial situation. The options it gave him left no ability to avoid the charges added to his account. I am not satisfied that Harlands dealt with Mr C positively and sympathetically.

I have noted Harlands' offer to reduce the debt by £200. However, I do not consider Harlands' offer is enough to remedy this situation. I am not persuaded to alter the conclusions I previously reached on the merits of this complaint, or on the appropriate redress.

An offer of £1 a month was made towards the debt in August 2011. Harlands said the minimum it would accept was £5 per month, despite the common financial statement showing this would be disproportionate in comparison to payments made to his other non-priority creditors. More recent correspondence from Harlands suggests Mr C is paying £5 per week. So, as I said in my provisional decision, Harlands should now liaise with

Mr C and his debt adviser to establish Mr C's current financial situation and come to an affordable payment arrangement which takes account of his other creditors and liabilities.

my final decision

My final decision is that I uphold this complaint and I direct Harlands Finance Limited to:

- re-work the account to remove all interest and charges from it, leaving only the original capital borrowed (£700), less any payments Mr C has already made; and
- reduce the resulting balance by a further £100 for the distress and inconvenience caused to Mr C

Harlands should also now contact Mr C, or his debt adviser, to assess his financial situation and come to an affordable payment arrangement for the remaining account balance. If Mr C feels Harlands does not treat him positively and sympathetically when negotiating a payment arrangement, he would be able to raise that as a new complaint with Harlands and, ultimately, with this service.

Dawn Griffiths
ombudsman