

complaint

Mr T complains that Mobile Money Limited ("MML") engaged in irresponsible lending to him.

background

Mr T says he took out a logbook loan with MML in March 2017 repayable over 18 months and he took out a top up loan with it in September 2017, repayable over 36 months. He says he managed to make the payments under the first loan, but he says he struggled with the top up loan payments.

Mr T also says when he applied for the top up loan MML only asked him basic questions about his outgoings and it accepted his explanation that he could get more work if he wanted. He says members of his family had serious health issues at the time. But he indicates he just said what MML wanted to hear, to get the money.

In addition, Mr T says his van that he used for work was written off in an accident recently. He says his loan was secured on the van. He says without replacing it he can't earn a living. And he says MML's demanded his insurance details so it can make sure it receives the insurance payment.

So, Mr T says he wants MML to agree he was vulnerable when he took out his loans; allow him to keep 50% of the insurance settlement; and agree a new affordable arrangement with him, moving forward.

MML says as a responsible lender it takes the suitability and affordability of loans very seriously. And it says from the documents and information Mr T gave it, together with the detailed and in-depth affordability assessment it carried out, it was able to deduce that the loans he'd applied for were affordable.

MML also says it's entitled to rely on any information a customer gives it, provided it's plausible and to accept this information's an up to date and accurate representation of the customer's circumstances. It says Mr T himself confirms that he gave inaccurate and misleading information to it at the time of his application. And it says he told it nothing about his vulnerability, instead he concealed it by for example, telling it his wife was working at the time.

In addition, MML says for these reasons it didn't uphold Mr T's complaint claiming irresponsible lending. But, it says in an effort to help Mr T, it will agree to pay him 50% of the insurance settlement figure for his van, providing the insurers liaise directly with it.

Mr T complained to MML about this matter. And, being unhappy with its response, he complained to this service.

Our investigator thought Mr T's complaint should be upheld. He said MML should cancel the loan agreement; refund the amounts Mr T had paid towards the interest on both loans; release the security on Mr T's van; remove any negative markers from his credit file; and pay him 8% simple interest on the amount due back to him.

MML disagreed with the investigator's conclusions. It said before lending to Mr T it had conducted a credit search with a reputable credit reference agency and a very large proportion of the information on that report either related to Mr T's wife or was historic. It said

Mr T had given it a plausible set of answers about his financial circumstances and it was entitled to rely on this information. It said in its opinion it could've done no more to ensure the loan was suitable and affordable for Mr T. It said he'd only very recently told it about his financial difficulty. And it said it had shown forbearance to him.

So, the matter's been referred to me to make a final decision.

I recently issued my provisional findings on this complaint. I said I could see MML obtained a report on Mr T from a credit reference agency. I acknowledged this report shows him as being associated with several debts in the name of a member of his family. But I was minded to conclude this doesn't mean MML should've concluded Mr T was responsible for those debts. And I could see Mr T's given us a report he obtained from another credit reference agency that shows a number of loans and defaults in his own name. However I was minded to conclude MML was entitled to rely on the contents of the report it obtained from a reputable credit reference agency. And I was minded to conclude it carried out proportionate checks before deciding to lend to Mr T.

I noted that MML also had a responsibility to assess whether the loans it made to Mr T were affordable. But there's no set list of checks that must be carried out when assessing affordability. I could see for both of Mr T's loans MML carried out an assessment of his income and expenditure. And I was minded to conclude these indicate his loan repayments should've been affordable, based on his disposable income. So, I was also minded to conclude MML's decision to lend to Mr T was reasonable, in the circumstances.

I also noted Mr T uses his van for work purposes. But I was minded to conclude that doesn't mean it was unreasonable for MML to take security over the van for its loans to him. And I said I'm not aware of any law or regulation that prevents a lender taking security over a vehicle in these circumstances. I was also minded to conclude Mr T was well aware MML was securing the loans on his van and he was also aware that if he failed to keep up the payments he could lose it.

I could see Mr T's acknowledged he gave MML inaccurate information about his personal circumstances when he took his loans out. And I thought those circumstances indicate he was vulnerable at the time. But MML had no knowledge of these matters due to Mr T's failure to disclose them in response to its questions. So, I was minded to conclude MML didn't knowingly lend to a vulnerable customer. But it's now aware of Mr T's vulnerability. And I noted Mr T wants MML to agree a new affordable payment arrangement with him, moving forward. Lenders are required to deal sympathetically with customers in financial difficulties, particularly when they're also vulnerable. And I was minded to conclude it's reasonable to expect that MML will take these circumstances into account and respond appropriately in its future dealings with Mr T. I noted that if this doesn't happen, Mr T will be able to bring a separate complaint about that matter, provided he complains to MML about it first.

I further noted Mr T says he wants MML to allow him to keep 50% of the insurance settlement. I could see it's agreed to proceed on this basis. And I was minded to conclude this is reasonable.

So, for these reasons I was minded not to uphold Mr T's complaint.

This was different from the investigator's opinion. So, I invited both parties to comment and provide any additional evidence for me to consider.

A copy of my provisional decision is attached and forms part of this final decision.

my findings

I've again 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 T says he still feels the second loan was mis-sold, due to his vulnerable position. He says he made MML aware of the health situation of members of his family. And he says the interest rate increased dramatically from the first to the second loan.

I've noted Mr T's comments. I acknowledge he's now in financial difficulties and I've sympathy for him. But I note he previously told us when he applied for the second loan he said he could get more money if he wanted and he just said what MML wanted to hear, to get the money. I also note Mr T previously acknowledged he gave inaccurate and misleading information to MML at the time of his application. As I said in my provisional decision, I think Mr T's circumstances indicate he was vulnerable at the time he applied for his second loan. But I'm satisfied he didn't disclose these circumstances in response to MML's questions about the loan he was asking for, although I acknowledge he told it about his situation at a later stage. So, I don't think MML had knowledge of these matters at the relevant time. And this means MML couldn't be expected to take into account Mr T's vulnerability since it didn't know about it.

But as I also said in my provisional decision, MML's now aware of Mr T's vulnerability. And I note Mr T wants it to agree a new affordable payment arrangement with him, moving forward. Lenders are required to deal sympathetically with customers in financial difficulties, particularly when they're also vulnerable. So, I think it's reasonable to expect that MML will take these circumstances into account and respond appropriately in its future dealings with Mr T. And for the reasons set out in my provisional decision, I don't uphold Mr T's complaint.

my final decision

I don't uphold Mr T's complaint against Mobile Money Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 October 2018.

Robert Collinson
ombudsman

copy of my provisional decision

complaint

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background

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Mr T also says when he applied for the top up loan MML only asked him basic questions about his outgoings and it accepted his explanation that he could get more work if he wanted. He says members of his family had serious health issues at the time. But he indicates he just said what MML wanted to hear, to get the money.

In addition, Mr T says his van that he used for work was written off in an accident recently. He says his loan was secured on the van. He says without replacing it he can't earn a living. And he says MML's demanded his insurance details so it can make sure it receives the insurance payment.

So, Mr T says he wants MML to agree he was vulnerable when he took out his loans; allow him to keep 50% of the insurance settlement; and agree a new affordable arrangement with him, moving forward.

MML says as a responsible lender it takes the suitability and affordability of loans very seriously. And it says from the documents and information Mr T gave it, together with the detailed and in-depth affordability assessment it carried out, it was able to deduce that the loans he'd applied for were affordable.

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In addition, MML says for these reasons it didn't uphold Mr T's complaint claiming irresponsible lending. But, it says in an effort to help Mr T, it will agree to pay him 50% of the insurance settlement figure for his van, providing the insurers liaise directly with it.

Mr T complained to MML about this matter. And, being unhappy with its response, he complained to this service.

Our investigator thought Mr T's complaint should be upheld. He said MML should cancel the loan agreement; refund the amounts Mr T had paid towards the interest on both loans; release the security on Mr T's van; remove any negative markers from his credit file; and pay him 8% simple interest on the amount due back to him.

MML disagreed with the investigator's conclusions. It said before lending to Mr T it had conducted a credit search with a reputable credit reference agency and a very large proportion of the information on that report either related to Mr T's wife or was historic. It said Mr T had given it a plausible set of answers about his financial circumstances and it was entitled to rely on this information. It said in its opinion it could've done no more to ensure the loan was suitable and affordable for Mr T. It said he'd only very recently told it about his financial difficulty. And it said it had shown forbearance to him.

So, the matter's been referred to me to make a decision.

my provisional findings

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

I'm currently minded not to uphold Mr T's complaint and I'll explain why.

I see MML obtained a report on Mr T from a credit reference agency. I acknowledge this report shows him as being associated with several debts in the name of a member of his family. But I'm minded to conclude this doesn't mean MML should've concluded Mr T was responsible for those debts. And I see Mr T's given us a report he obtained from another credit reference agency that shows a number of loans and defaults in his own name. However I'm minded to conclude MML was entitled to rely on the contents of the report it obtained from a reputable credit reference agency. And I'm minded to conclude it carried out proportionate checks before deciding to lend to Mr T.

MML also had a responsibility to assess whether the loans it made to Mr T were affordable. But there's no set list of checks that must be carried out when assessing affordability. I see for both of Mr T's loans MML carried out an assessment of his income and expenditure. And I'm minded to conclude these indicate his loan repayments should've been affordable, based on his disposable income. So, I'm also minded to conclude MML's decision to lend to Mr T was reasonable, in the circumstances.

I note Mr T uses his van for work purposes. But I'm minded to conclude that doesn't mean it was unreasonable for MML to take security over the van for its loans to him. And I'm not aware of any law or regulation that prevents a lender taking security over a vehicle in these circumstances. I'm also minded to conclude Mr T was well aware MML was securing the loans on his van and he was also aware that if he failed to keep up the payments he could lose it.

I see Mr T's acknowledged he gave MML inaccurate information about his personal circumstances when he took his loans out. And I think those circumstances indicate he was vulnerable at the time. But MML had no knowledge of these matters due to Mr T's failure to disclose them in response to its questions. So, I'm minded to conclude MML didn't knowingly lend to a vulnerable customer. But it's now aware of Mr T's vulnerability. And I note Mr T wants MML to agree a new affordable payment arrangement with him, moving forward. Lenders are required to deal sympathetically with customers in financial difficulties, particularly when they're also vulnerable. And I'm minded to conclude it's reasonable to expect that MML will take these circumstances into account and respond appropriately in its future dealings with Mr T. If this doesn't happen, Mr T will be able to bring a separate complaint about that matter, provided he complains to MML about it first.

I also note Mr T says he wants MML to allow him to keep 50% of the insurance settlement. I see it's agreed to proceed on this basis. And I'm minded to conclude this is reasonable.

So, for these reasons I'm minded not to uphold Mr T's complaint.

my provisional decision

For the reasons set out above but subject to both parties' responses to this provisional decision I'm currently minded not to uphold Mr T's complaint against Mobile Money Limited.

Robert Collinson
ombudsman