

complaint

Mr V and his representative complain that Microcredit Limited (trading as MiniCredit) should not have granted him a loan, it was unaffordable and about how it has treated him when experiencing mental health issues and financial difficulties.

background

Mr V applied online to MiniCredit for a short term loan. He completed an online application and provided information about his income and expenditure. MiniCredit says it checked his credit file and credit score and it granted the loan. Mr V could not pay the loan back on the due date and he authorised his representative to deal with matters on his behalf. Despite his representative telling MiniCredit that Mr V had mental health issues and financial difficulties it continued with recovery action. It also refused to deal with a debt counselling charity that Mr V and his representative sought assistance from.

Mr V's representative says that MiniCredit should not have granted the loan to Mr V, it was unaffordable and once aware of his mental health issues it should not have pursued him for the debt as it did.

Our adjudicator recommended that the complaint should be upheld. In summary, he considered that:

- The "Mental capacity - OFT Guidance for creditors" says that lenders should not refuse to lend on the basis that a consumer suffers from mental health difficulties – that would be discriminatory. But a lender needs to be satisfied the borrower is able to understand the nature of the agreement they are entering into.
- MiniCredit is primarily an online lending facility and does not have the opportunity - like a high street lender - to observe whether a consumer might have a mental capacity limitation. But the OFT Guidance says there are some factors that may enable a lender to notice such as when self-provided information is substantively inconsistent with other information already held on the borrower.
- In this case Mr V declared in his application that his sole monthly income of £500 was from benefits and that he lived with his parents and had no expenditure. This may have put MiniCredit on notice that it should at least query this.
- MiniCredit says it carried out a credit file search which confirmed a satisfactory credit score and no defaults. But it had also shown he had two active accounts one of which was an advance on income. This information contradicts Mr V's self-declared income and expenditure information and sufficiently put MiniCredit on notice that there were inconsistencies in the information given. The outstanding debt and repayment to MiniCredit on the due date were more than his declared monthly income and would have proved difficult for him to pay. The loan was unaffordable based on the information Mr V supplied.
- Mr V could not pay on the due date and he told MiniCredit to deal with his representative. She explained that Mr V had mental health problems and financial difficulties. She completed a hardship application which confirmed his monthly income as being only £25 more than his outgoings. But he also owed a significant amount to three creditors.

- MiniCredit also refused to deal directly with a debt counselling charity she consulted to assist. This is contrary to the OFT Guidance which considers a refusal to deal with a third party representative including a debt adviser or debt management business to be an unfair practice unless there is an objectively justifiable reason for doing so. MiniCredit should have engaged with Mr V's chosen debt counsellor at a much earlier stage rather than continuing to send debt collection correspondence and allowing the debt to accrue further interest and charges.
- The OFT Guidance also considers it an unfair practice to fail to suspend pursuit of a debt when the debtor might not have the mental capacity to make relevant decisions or engage in the debt recovery process. Despite this MiniCredit sent a "final doorstep collection notice", a "final notice before legal action" and referred the debt to collectors who continued to seek recovery of it.
- MiniCredit should have taken a more positive and sympathetic approach once it became aware of Mr V's severe and enduring mental health problems and that his financial difficulties impacted on his mental health. Once MiniCredit was aware of Mr V's mental health difficulties it was inappropriate to continue recovery action.
- MiniCredit should therefore refund all interest and charges applied to Mr V's loan and remove any data relating to the loan from his credit file. It should also pay him £250 for the distress and inconvenience caused by continuing debt recovery action after being made aware of his mental health difficulties.

MiniCredit does not agree and has asked for an ombudsman review. In summary, it disagrees the loan was unaffordable based on the information shown on Mr V's credit report.

Mr V was paying off another loan and the balance was decreasing. Being on benefits does not indicate that he was suffering mental health issues. It accepts that once contacted by his representative and proof of his mental health problems was given it could have stopped sending debt notifications but as she had not decided whether the debt would be repaid through her or the counselling charity the allocation of the account was delayed. It has not received a copy of a court order that Mr V cannot enter into legal agreements and it considers its agreement with him is valid. MiniCredit is willing to waive interest and charges added to the balance after it was told of Mr V's health problems and it has already removed some fees. It is only prepared to agree to reduce the balance owing by £100 as compensation for the fact it could have done more in the situation.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

MiniCredit says that when Mr V applied for the loan it carried out a credit check which did not show adverse information. But I note that it did show he had another loan which he was paying off by instalments despite Mr V having declared he was on a limited income and had no outgoings. Consequently, I am not persuaded that MiniCredit did enough to assess or consider Mr V's financial situation, difficulties and the affordability of the loan. Had it done so, as I find would have been reasonable, I consider it is more likely than not that it would have been reasonably apparent that the information he had declared was both incomplete and substantively inconsistent. Such enquiries may also have revealed Mr V's mental health

problems. I find on balance that MiniCredit would have been likely to have concluded that the loan was unaffordable, should not have been granted and that he would struggle to repay it.

But the loan was granted and Mr V has received the benefit of the money.

Furthermore, I am not persuaded that MiniCredit engaged in practices which were compatible with its obligations under the OFT Guidance. I agree with the adjudicator that MiniCredit should have responded more positively and sympathetically to Mr V's financial difficulties when it was made aware of them and his mental health issues. I consider it would have been reasonable for it to have suspended its recovery action at that time and dealt more productively with his various representatives.

I note that MiniCredit has recently made an offer of settlement but I do not consider it goes far enough. Overall taking account of all the circumstances and the level of award we make I consider the redress and award recommended by the adjudicator is fair and reasonable. So, I see no compelling reason to change the proposed outcome in this complaint.

my final decision

My decision is that I uphold this complaint and I order Microcredit Limited (trading as MiniCredit), if it has not already done so:

1. To refund all interest and charges applied to Mr V's loan account;
2. To remove any data relating to the loan from his credit file; and
3. To pay Mr V £250 compensation.

Stephen Cooper
ombudsman