

complaint

Mr B is represented by his parents.

Mr B's parents complain that Lombard engaged in irresponsible lending in relation to a conditional sale agreement on a new car. Mr B has been diagnosed with Asperger's syndrome and says he was unduly pressured into the purchase by a third party. Mr B's parents say he has a relatively low income, cannot legally drive and has had no control over the car.

Mr B's parents further complain that Lombard acted unreasonably in response to a request to allow him either to voluntarily terminate the contract, or to transfer the debt to the person who has had possession of the car.

Mr B's parents also complain about the way that Lombard handled their complaint. They say information requests have been ignored. Mr B's parents say Lombard continued to ignore their son's vulnerabilities and acted purely in its own favour.

background and our initial conclusions

Our adjudicator did not uphold the complaint. He accepted it was likely that Mr B had been exploited by someone he thought was a friend. But the adjudicator did not think there was sufficient evidence to show Mr B lacked the necessary mental capacity to enter into the loan agreement. He thought the loan repayments were a significant amount in relation to Mr B's income and outgoings, but the adjudicator thought in practice Mr B had been able to keep up repayments. The adjudicator also did not think Lombard had acted unreasonably when dealing with Mr B's attempts to end the agreement.

Mr B's parents disagreed. They said Lombard did not do enough to check their son's financial and personal circumstances when issuing the credit. They add that this loan meant that over 50% of Mr B's outgoings were to cover credit payments and that guidance from the Finance and Leasing Association means this should be considered high risk.

Lombard for its part had accepted the voluntary termination of the car and offered to write off the remaining balance due under the account.

On February 2013 I issued a provisional decision saying that I intended to uphold the complaint. I noted the issues concerning Mr B's mental capacity, but said in my view this issue came down to the details of the lending decision itself. I provisionally concluded that Lombard had acted irresponsibly in lending money to Mr B.

I noted that it was down to creditors to choose what information they sought in order to make their lending decisions. However, I also noted that the concept of irresponsible lending had been explicitly written into the Consumer Credit Act 1974 in April 2008, and that therefore I concluded that Lombard had clear responsibilities to make lending decisions based on the risk to the consumer not just on the risk to the company. I noted that Lombard had not asked for any details of Mr B's income and expenditure, and had not therefore considered that the loan might be unaffordable given Mr B's very low income.

I concluded that had Lombard undertaken proper checks it would have seen that a £40,000 loan was likely to have been unaffordable for Mr B, given that he was on a minimum wage. I also concluded that had Lombard asked basic questions then it would also have seen that

Mr B lived with his parents, could not legally drive, and was not going to be able to keep the car within his possession or control.

I concluded that Lombard should put Mr B back into the position he would be in had the loan not taken place.

I proposed that Lombard should repay the costs directly incurred by Mr B under the agreement. I also proposed Lombard pay Mr B £300 compensation for distress and inconvenience. I noted that Mr B had received money from the third party for the car, and I did not propose that Lombard should have to repay the money which came from the third party.

Both Lombard and Mr B's parents have responded to my provisional decision.

Lombard says it did not engage in irresponsible lending. Lombard says the OFT guidance on irresponsible lending says it would be unreasonable for creditors to have to check all information, and creditors should take a view on what is appropriate based on the circumstances.

Lombard says that whilst it did not seek information on Mr B's income or outgoings, it did have reliable information that Mr B was in full time employment, and that he was able to meet his credit commitments. Lombard also says that Mr B had a previous hire purchase loan which he was paying regularly, and the new loan only represented a £148.73 monthly increase. Lombard says this is not so significant as to warrant a full investigation into Mr B's income and expenditure. Lombard says that even if it had undertaken a full check into Mr B's income and expenditure then it would still have considered the loan to be affordable and responsible.

Lombard further asks, should I still consider this complaint should be upheld, that I take into account the following:

- It calculates the amount Mr B paid as being different from the figures I had. It says he paid £14,013.94 rather than £14,434.17;
- Mr B was in breach of the contract by allowing the third party to take possession of the car. It says this has caused significant problems;
- Lombard has incurred other end of contract charges, for recovery agents, excess mileage and damage. Lombard says it will not pursue these charges further as long as it does not have to pay a refund to Mr B.

Mr B's parents ask that I do not discount the payments which Mr B received from the third party, or which the third party made direct to Lombard. They say a refund of these payments should be considered as being in lieu of Mr B's other credit debts. Mr B's parents add that Lombard continued to take money from the third party even after Mr B's parents requested termination of the agreement. Mr B's parents say Lombard ignored their request for its own financial benefit, and this added to Mr B's distress.

Mr B's parents further ask that I consider Mr B's credit reports, and the fact that Lombard has not recorded the loan with the credit reference agencies. They ask that I consider how this will affect any subsequent applications for credit.

Finally Mr B's parents ask for clarification over whether any award would include the amount which Lombard has already agreed to waive.

my findings

I have reconsidered the case in its entirety. Having done so I do not change the decision that I uphold this complaint, however I do propose to change the redress, reflecting the correct amount Mr B paid under the agreement.

I agree with Lombard that it would be unreasonable for creditors to have to check all information, and creditors should take a view on what is appropriate based on the circumstances. However, in my view whilst there is discretion for the creditor in deciding what information it seeks, there is also consequence to its decision. And if a creditor does not seek information which might have led it to refuse credit as being unaffordable in inappropriate, then it takes a large amount of responsibility if that credit does later turn out to be problematic.

So, whilst I accept that Lombard have reliable information that Mr B was in full time employment, and that he was able to meet his previous credit commitments, I do not consider Lombard acted responsibly when it chose not to ask for actual details of Mr B's income or his circumstances. I remain of the position as stated in my provisional decision: that had Lombard undertaken proper checks it would have seen that a £40,000 loan was likely to have been unaffordable for Mr B, given that he was on a minimum wage. And that had Lombard asked basic questions then it would also have seen that Mr B lived with his parents, could not legally drive, and was not going to be able to keep the car within his possession or control.

I therefore conclude that in these particular circumstances Lombard's lending decision was irresponsible and the lending should not have taken place. I therefore need to consider the latest submissions from both parties on the redress which is suitable given the error in the lending.

I do not agree that the redress should be limited due to Mr B's failure to keep possession of the car, or the additional costs which Lombard has incurred. As I have concluded the loan should not have taken place, I do not think Mr B should be held liable for any additional costs which arose because of the error.

Equally I also do not agree with Mr B's parents' view that Lombard should be liable for additional losses which Mr B incurred through other irresponsible lending, or that it should have to return any money to Mr B it received from the third-party, or which he received originally from the third-party and then used to pay Lombard. I believe that the only redress which is appropriate is that which covers the losses which Mr B has incurred as a result of Lombard's error. Our role is not to regulate or punish a business, and I do not think Lombard can or should be required to pay additional money as general recompense or as a punitive fine.

On the exact sum which Mr B paid to Lombard, I am satisfied that the correct figure is £14,013.94, rather than the £14,434.17 submitted by Mr B. I calculate this as being the sum of the monthly payments made to Lombard from June 2008 through September 2010. I am also satisfied that Mr B also paid a £1,000 deposit for the car. I am satisfied that the amount Mr B paid to Lombard which he originally received from the third party is £6,030. I conclude that the amount Mr B has paid for the car is $£14,013.94 + £1,000 - £6,030 = £8,983.94$.

I conclude that this episode has caused Mr B considerable distress and inconvenience, which I do not think would have happened had Lombard taken a more responsible lending approach in this instance. Our awards for distress and inconvenience are typically modest, and in this case I conclude that Lombard also pay Mr B £300 for the distress caused to him.

I confirm that the award includes that Lombard must write off the outstanding account and remove Mr B from the agreement, both of which Lombard has already offered to do.

Mr B's parents have asked that I consider Lombard's failure to record the loan with the credit reference agencies. I note this, however I conclude that as this loan should not have happened then it is acceptable for no information to be recorded on Mr B's credit files. I accept this may mean that Mr B might in the future be granted more credit which might be inappropriate, however I think this is a matter for Mr B to discuss with the credit reference agencies and whether he wants to put a note on his files recording additional information about his personal circumstances.

my final decision

For the reasons set out above, my final decision is that I uphold this complaint. I direct Lombard Vehicle Management (1) Limited to:

- pay Mr B £8,983.94 to cover his costs in relation to the car, and;
- remove Mr B from the agreement at no further cost to him, and;
- pay Mr B £300 compensation for distress and inconvenience.

Nigel Cates
ombudsman