Complaint

Mr M has complained about a loan which was provided to him by Christian Paul Gachet (trading as “easylogbookloans”.tv). He says the loan was irresponsibly provided to him as it was unaffordable.

Background

Mr M was provided with a loan of £2,500.00 in October 2015. The loan was to be repaid in 24 monthly payments of £250 month and had a quoted Annual Percentage Rate (“APR’) of 170%. This meant that the total amount to be repaid was £6,000.00. Easylogbookloans describes the loan as a logbook loan. But as it was provided in Scotland it wasn’t secured by way of a Bill of Sale on Mr M’s car. Instead Mr M was asked to sign a document described as an “Agency Appointment and Power of Attorney”.

Our adjudicator looked at Mr M’s complaint and concluded Mr M shouldn’t have been provided with this loan as Easylogbookloans ought reasonably to have realised that it wasn’t affordable for him. Easylogbookloans disagreed and asked for an ombudsman’s decision. As a result, the complaint has been passed to me for a final decision.

In reaching my decision, I have taken into account the relevant law and regulations; relevant regulators’ rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The regulatory framework

Easylogbookloans gave Mr M this loan while it had interim permission from the industry regulator – the Financial Conduct Authority (“FCA”) to carry out credit related regulated activities. Easylogbookloans’ interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business (“PRIN”)*

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to providers of consumer credit like Easylogbookloans. CONC also replaced the requirements set out in Section 55B CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

It's clear there is a high degree of alignment between the Office of Fair Trading's ("OFT") Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

*[**Note**: paragraph 4.1 of ILG]*

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

*[**Note**: paragraph 4.3 of ILG]*

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

*[**Note**: paragraph 4.11 and part of 4.16 of ILG]*

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability.

CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

*[**Note**: paragraph 4.2 of ILG]*

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

*[**Note**: paragraph 4.1 (box) and 4.2 of ILG]*

CONC 5.3.1G(6) goes on to say:

For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:

(a) without undue difficulties, in particular:
(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and
(ii) without having to borrow to meet the repayments;

(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and

(c) out of income and savings without having to realise security or assets; and

"unsustainable" has the opposite meaning.

*[**Note**: paragraph 4.3 and 4.4 of ILG]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(a) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

*[**Note**: paragraph 4.31 of ILG]*

My findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, and my remit to decide what's fair and reasonable in all the circumstances of Mr M's complaint, I think there are two overarching questions I need to consider in order to decide this case. These questions are:

- Did Easylogbookloans complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his loan in a sustainable way?
    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Mr M would've been able to do so?
- Did Easylogbookloans act unfairly or unreasonably in some other way?

If I determine that Easylogbookloans didn't act fairly and reasonably towards Mr M and that he lost out as a result, I will then go on to consider what is fair compensation.

Did Easylogbookloans, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his loan in a sustainable way?

Regulations in place when Easylogbookloans lent to Mr M required it to carry out a reasonable assessment of whether Mr M could afford to repay his loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should've been "borrower-focused" – so Easylogbookloans had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mr M*. In other words, it wasn't enough for Easylogbookloans to think only about the likelihood that it would get its money back without considering the impact of repayment on Mr M himself. The documentation suggesting to Mr M that the loan was secured on his car didn't alter, lessen or dilute this obligation.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've thought about all the relevant factors in this case.

Were Easylogbookloans's checks reasonable and proportionate?

From what I've seen, Easylogbookloans appears to have asked Mr M for evidence of his income in the form of three months' worth of payslips. Mr M appears to have also been asked for details of his monthly expenditure. It also looks like Mr M's wife's income and child benefit payments were also included in Easylogbookloans' assessment. But I can't see that Mr M's wife expenditure was factored into the assessment.

I've also seen that Mr M provided a letter from an insurer showing that his direct had been cancelled and he needed to make alternative arrangements to pay his home insurance otherwise cover would cease. I'm assuming that this was obtained as a proof of address. Easylogbookloans says the income and expenditure information it obtained showed that Mr M had a monthly disposable income of in excess of £1,100.00 which meant that he could easily afford the monthly payments of £250.

I've thought about what Easylogbookloans has said. But CONC makes it clear that the extent to which a lender's checks are proportionate will depend on the type of credit, the associated cost and the risks to the *borrower* bearing in mind their financial situation. Equally the rules and guidance also suggest that when income or expenditure is taken into account, checks are less likely to be proportionate where the lender relies solely on a statement of those matters made by the borrower.

So bearing all of this in mind, in my view, a less detailed affordability assessment, without the need for verification, is far more likely to be fair, reasonable and proportionate in circumstances where the amount to be repaid is relatively small, the consumer's financial situation is stable and they will be indebted for a relatively short period.

But, in circumstances where a customer's finances may be less stable (for example where they appear to be having difficulty making payments to existing creditors - such as an insurer), they are expected to make repayment for a more extended period of time and there appears to the borrower at least to be the potential for them losing their car if they run into difficulty making payments, I think it's far more likely that any affordability assessment would need to be more detailed and contain a greater degree of verification, in order for it to be fair, reasonable and proportionate.

So given the circumstances in this case, where Mr M was provided with a very expensive high-interest loan and he was at least told there was the possibility of him losing his car, I would've expected Easylogbookloans to have verified the expenditure information provided as well as his income. Easylogbookloans might have thought that a light touch check was proportionate because Mr M believed his car provided security and so he might've been more willing to pay. But I don't think that this was enough to constitute a borrower focused assessment. And I don't see how this considered the impact of the repayments on Mr M.

Equally I'm concerned that Easylogbookloans' decision to lend was based on an assessment, which any reasonable scrutiny ought to have alerted it to the fact that it was at best overoptimistic and at worst wholly inaccurate. After all why would someone need to borrow £2,500.00 at such rates and sign documentation suggesting their car was at risk if they genuinely had a monthly disposable income of approaching £1,200.00, unless there was some other problem. And I think that Easylogbookloans' decision to simply proceed with Mr M's application on the basis of what at face value appears to have been an overoptimistic declaration of his expenditure meant that it didn't complete reasonable or proportionate checks before providing this loan.

Would proportionate checks on Mr M's loan have indicated to Easylogbookloans that he would more likely than not have been unable to repay his loan in a sustainable manner?

I've already explained that I think a proportionate check for this loan would've involved verifying Mr M's normal monthly outgoings and regular financial commitments. But as Easylogbookloans didn't carry out proportionate checks for this loan, I can't say for sure what such verification of Mr M's normal monthly outgoings and regular financial commitments would more likely than not have shown.

So I need to decide whether it is more likely than not that fair, reasonable and proportionate affordability checks would've told Easylogbookloans that it was unfair to offer this loan to Mr M. To help us understand for ourselves what Easylogbookloans would more likely than not have discovered if it had completed reasonable and proportionate checks on Mr M's loans, we asked Mr M to provide us with information on his financial circumstances.

Having carefully considered the information, I think that a detailed review of Mr M's normal monthly outgoings and regular financial commitments, would have shown that he was in arrears on his mortgage and that he'd had previous problems paying credit. To the extent that he'd recently defaulted on two accounts. It's also clear that Mr M was gambling significant sums of money. And his ability to make his payments to this loan would in large part be dependent on his success as a gambler.

In these circumstances, I think there was little reasonable prospect of Mr M being able to make his payments without undue difficulty or borrowing further. And as I think that reasonable and proportionate checks would more likely than not have shown Easylogbookloans all of this, it follows that I think reasonable and proportionate checks would more likely than not have alerted it to the fact that Mr M wouldn't have been able to sustainably make the repayments to this loan.

Did Easylogbookloans act unfairly or unreasonably in some other way?

Having carefully thought about everything, while I have significant concerns about the fact that Easylogbookloans, on more than one occasion, told Mr M that he could have sold his car if he was experiencing financial difficulty when it got him to sign documentation purportedly providing an undertaking that he wouldn't, I've also seen that Easylogbookloans did attempt to exercise forbearance when Mr M explained that he was struggling to make payments.

In these circumstances, I'm not persuaded that Easylogbookloans acted unfairly or unreasonably towards Mr M in some other way.

Overall and having carefully thought about the two overarching questions, set out on page four of this decision, I find that Easylogbookloans unfairly and unreasonably provided Mr M with his loan.

As Mr M ended up paying and is being expected to pay interest and charges on a loan he shouldn't have been given, I think that he lost out because of what Easylogbookloans did wrong.

So I think that Easylogbookloans now needs to put things right.

fair compensation – what Easylogbookloans needs to do to put things right for Mr M

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Easylogbookloans putting Mr M in the position he'd now be in if he hadn't been given this loan.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr M *was* given the loan in question and he used the funds. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr M back in the position he would be in if he hadn't been given this loan in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Easylogbookloans to put things right in the following way.

interest and charges on the loans Mr M shouldn't have been given

As I've explained, Mr M was provided with a very expensive loan which meant that he had to pay a significant amount in interest and charges on a loan that he should never have been given. So to start with, I think that Easylogbookloans should refund the extra – over and above the amount Mr M was lent – paid by Mr M.

I'm also mindful that Mr M lost the use of the funds he used to pay the interest and charges, I now think that Easylogbookloans needs to refund to him. As Mr M lost the use of these funds, I think that he should be compensated for this. We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong.

Easylogbooklons has said that our general approach doesn't take into consideration any of the costs it incurred by providing Mr M with his loan *"such as; loss of interest on the capital sum, cost of HPI registration, administration fees, office overheads, advertising costs, staffing costs, etc"*.

I've thought about what Easylogbook has said and I don't dispute that it would have incurred costs providing this loan. But that doesn't alter the fact that it shouldn't have provided this loan in the first place or the fact that Mr M has lost the use of the funds he paid the interest and charges on this loan with.

Bearing in mind these facts, I see no reason to depart from our usual approach here and I think that awarding 8% per year simple interest, on the interest and charges that were paid, is fair and reasonable in the circumstances of this case.

So Easylogbookloans should pay Mr M 8% per year simple interest on the interest and charges he paid from the date any overpayments were made to the date it settles Mr M's complaint.

Mr M's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe. Bearing in mind my direction in relation to the refund of interest and charges, I'm satisfied that removing any adverse information recorded on Mr M's credit file is fair and reasonable in this case.

The Agency Appointment and Power of Attorney document/agreement

I've found that this loan should be unwound as far as possible. And while I'm not wholly persuaded about the validity and enforceability of the Agency Appointment and Power of Attorney document Easylogbookloans got Mr M to sign, it follows that any agreement should be terminated – especially as Mr M's liability in relation to what he has to pay will be discharged should he accept this decision.

All of this means that I think it would be fair and reasonable in all the circumstances of Mr M's complaint for Easylogbookloans to put things right in the following way:

- remove all interest, fees and charges applied to Mr M's loan from the outset. The payments Mr M has made should be deducted from the new starting balance. Easylogbookloans should treat any payments made once the new starting balance has been cleared as overpayments. And any overpayments should be refunded to Mr M.

- add interest at 8% per year simple on the above overpayments from the date they were paid by Mr M to the date of settlement†;

- remove all adverse information about this loan from Mr M's credit file;

- terminate any agreement as a result of the Agency Appointment and Power of Attorney document.

† HM Revenue & Customs requires Easylogbookloans to take off tax from this interest. Easylogbookloans must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above, I'm upholding Mr M's complaint about Christian Paul Gachet. Christian Paul Gachet should pay Mr M compensation as I've set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 20 April 2020..

Jeshen Narayanan
ombudsman