Financial Ombudsman Service

complaint

Mr C complains that Creative Finance Corp Ltd irresponsibly lent to him. Mr C has also said that he's unhappy with the level of service Creative Finance provided, specifically surrounding his logbook and the attempted debit of his account.

background

From the information provided, Mr C took out three loans with Creative Finance between August 2018 and February 2019. As I understand it, Mr C has an outstanding balance with Creative Finance.

The loan details are as follows:

Loan number	Start date	Amount (£)	Term	Monthly repayment (£)
1	25/08/2018	600	12 months	82.50
2	17/12/2018	1,200	24 months	115
3	19/02/2019	400	12 months	55

This complaint was looked at by one our adjudicators who thought that Creative Finance wasn't wrong to lend Mr C the first two loans, but our adjudicator thought that a closer look at Mr C's finances at the time of the third loan would have shown that Creative Finance shouldn't have lent him that loan.

Our adjudicator also thought that Creative Finance dealt fairly with Mr C on the issue of his logbook and that it would have been reasonable for Creative Finance to adjust the automated payment date of Mr C's loan as he had recently made a manual payment.

Creative Finance didn't agree that it incorrectly lent loan 3. As the complaint hasn't been resolved, it's been passed to me, an ombudsman, for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Mr C's logbook and service issues

Mr C contacted Creative Finance to request his logbook which was used as surety for his loan. Mr C said he wanted to renew his road tax and needed the logbook to do this. Creative Finance confirmed that it had lost Mr C's logbook and it offered Mr C £25 to get a replacement logbook which it said it'll credit his account with. Mr C was unhappy about this as he feels Creative Finance should have paid the £25 compensation to him directly rather than deducted that amount from his loan balance.

When a business makes an error, this service looks to put the consumer back in the position they would have been in had an error not been made. In this case, Creative Finance acknowledges it made an error and to put Mr C back in the position he'd have been in but for that error, it has offered compensation to replace the logbook. Mr C has said he wanted the cash as he was struggling financially. But that doesn't mean that Creative Finance had to make the payment into his bank account. Ultimately, Mr C owed Creative Finance on two loans and it could apply that one-off payment to his account. Overall, I don't think it was unreasonable for Creative Finance to apply the compensation to Mr C's outstanding balance he owed.

So, while Creative Finance made an error in losing his logbook, I think it didn't act unreasonably in the way it put things right for Mr C here.

Mr C also says on 18 November 2019 that he paid Creative Finance £350 manually and within two days, it attempted to debit his account for another payment. I have to say that there's very limited information available to me to understand what happened here.

Creative Finance has suggested that this was an automated payment and that it attempted to debit Mr C's account on the payment due date although it hasn't told this service what the payment due date was here. I'll say that apart from Mr C and Creative Finance's testimony about what may have happened here, I haven't seen evidence of this and whether Mr C incurred an unpaid direct debit charge as a result.

However, I think that it seems Mr C had recently made a manual payment towards his account, which was likely towards his arrears, and so payment may have still been due on the contractual payment date. Essentially, the manual payment Mr C had made was an extra payment. But, while Creative Finance may have been acting within the terms of the loan in taking the usual payment, I think it wouldn't have been unreasonable for it to have considered a later payment date. In saying this, I'm especially conscious of the fact that Mr C had been in arrears and may have been struggling financially at this point.

As stated above, there's limited information about what happened here, and I can't say that Creative Finance was wrong to carry on with the contractually agreed payments, or that Mr C suffered a detriment as a result of this attempted collection. As I understand it, the direct debit failed, and I haven't seen evidence to show that Mr C was charged a return item fee by the bank. So, overall, there isn't anything that I can see needs to be put right.

Creative Finance's lending decisions

Turning to Creative Finance's lending decisions, before lending money to a consumer a lender should take proportionate steps to ensure the consumer could repay without borrowing further or suffering significant adverse consequences.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves didn't set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key thing was that any checks needed to be proportionate and had to take into account a number of different things, including things such as how much was being lent and when what was being borrowed was due to be repaid. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Creative Finance should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- 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 *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 be used to determine how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Creative Finance did what it needed to before agreeing to lend to Mr C.

From what I can see, Mr C signed a statement of truth and Creative Finance asked him about his income and expenditure before lending loans 2 and 3. There's limited information about loan 1 and so I don't know what information Creative Finance obtained before agreeing to lend that loan. For both loans 2 and 3, Mr C's declared monthly income was £1,600 and his monthly expenses were £831.

This was Mr C's first loan with Creative Finance, it was for 12 months and the monthly repayments were relatively low compared with his declared income; and his monthly living costs suggest he had sufficient disposable income. So, taking all of that into account, I don't think it was unreasonable for Creative Finance to lend this loan in those circumstances.

Loan 2 was for double the amount of loan 1, and also for a longer term. Essentially, Mr C was entering into a contract with Creative Finance to repay £115 every month for the next two years. Given the length of this commitment, that this was a second loan within four months of borrowing a previous loan, and the increase in the monthly repayment amount, I think Creative Finance should have taken its checks further. I don't think in those circumstances it was reasonable for Creative Finance to rely on Mr C's signed statement of truth and his declared income and expenses. It had an obligation to carry out checks to make sure Mr C could repay the loan without borrowing further or suffering significant adverse consequences, not just ensure that it was likely to get its money back.

Before lending this loan, I would have expected Creative Finance to gain a clear understanding of Mr C's financial circumstances, including verifying at least some of the income and expenditure information Mr C provided.

Mr C has provided a copy of his bank statement from the time of loan 2 and from what I can see, Mr C's income was around £1,600. The living expenses I can make out from the statement were around £900. I think that, had Creative Finance taken its checks further by verifying some of the information Mr C provided, it's likely to have concluded that Mr C could afford this loan. So, I don't think Creative Finance was wrong to lend loan 2.

It seems loan 3 was approved at a time when Mr C was still repaying loan 2. So, for each month he had to make the repayments for both loans totalling £170. For the similar reasons as loan 2, I think Creative needed to take its checks further by verifying some the information Mr C provided.

From the bank statements provided, Mr C's income around the time of the loan 3 was around £1,755, I can see that Mr C's living expenses around the time of this loan were around £600. But I'm concerned at the level of cash withdrawals Mr C was making when he was granted this loan. In the month before this loan was granted, Mr C made around £1,200 worth of case withdrawals. I can also see that in November 2018, Mr C withdrew around £1,350 at various times throughout the month, this was in addition to his direct debit payments for his bills. This pattern continued in December 2018 – and in fact increased to around £1,580 – more than his actual income in that month.

I think that had Creative Finance carried out sufficient checks it's likely to have found this and should have been concerned. Our adjudicator asked Mr C what the purpose of these withdrawals were, and he has said he had a gambling addiction and these monies were used to fund the addiction. I would say that I haven't seen any direct evidence to show that these specific withdrawals were spent on gambling, but that doesn't change the significance of these transaction. Given the sheer number of withdrawals in question, I don't think it would have been reasonable for Creative Finance to conclude Mr C would more likely than not have been able to make his payments for loan 3 without borrowing further or suffering significant adverse consequences, without first receiving a plausible explanation for these withdrawals.

The cash withdrawals were regular and significant, Creative Finance now says it questioned the cash withdrawals and Mr C didn't say he was gambling but Creative Finance hasn't told this service what explanation Mr C gave about the cash withdrawals. Also, I haven't seen any evidence to show that Creative Finance requested Mr C's bank statements at the time of lending. These withdrawals were going towards paying for something and they show that loan 3 was unaffordable for Mr C as his financial position was unsustainable.

So, I think that Creative Finance lent loan 3 in circumstances where proportionate checks would more likely than not have shown Mr C was unlikely to sustainably make the repayments of his loan. And I think Creative Finance needs to put things right.

I can see that Creative Finance sent Mr C several letters notifying him of the arrears on his account and a default notice was served to Mr C on 22 December 2019, as the account wasn't brought up to date As Mr C fell into arrears, Creative Finance took possession of his car used as security for the loan.

What's happened since the adjudicator's view?

Creative Finance has confirmed that it has now sold the car for £1,500, which is disappointing as this service was considering the complaint and the adjudicator had recommended that this loan should be upheld. It would have been fair for Creative Finance to hold off selling the car until the conclusion of this complaint. Creative Finance lent to Mr C when it shouldn't have done and as a result, he no longer has use of his car as Creative Finance sold it in the middle of an ongoing complaint about the related loan.

I've considered whether Creative Finance got a fair price for the car in the circumstances and given the condition of the car at the time of sale (the car had no keys or MOT certificate), I think it was a fair price. Given the manner Creative Finance handled the sale of Mr C's car and he has now suffered loss of use of his car, I think it needs to pay Mr C some compensation for this.

Putting things right – what Creative Finance needs to do

To put things right for Mr C, Creative Finance should:

- pay Mr C £300 for loss of use of his car;
- refund all the interest and charges applied as a result of loan 3;
- add interest at 8% simple per year on the above interest and charges from the date they were paid, if they were, to the date of settlement*;
- as the proceeds from the sale of the car were sufficient to repay the capital of £400, Creative Finance can deduct the loan amount from the proceeds of sale and pay Mr C the surplus;
- Creative Finance issued Mr C with a default notice for this loan, but it's not clear if it has recorded a default on his credit file. As I think it shouldn't have lent Mr C this loan, it should remove any adverse information it may have recorded on Mr C's credit file as a result of this loan.

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

my final decision

For the reasons stated above, I'm partially upholding Mr C's complaint and require Creative Finance Corp Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 March 2021.

Oyetola Oduola
ombudsman