Financial Ombudsman Service

complaint

Mrs P has complained that Mobile Money Limited ("MML") was irresponsible to have agreed credit for her.

background

MML provided Mrs P with a loan of £840 in November 2018. The total repayable including interest and charges came to £2,383, to be repaid over 18 months at £132 a month (all figures rounded).

This was a 'log book' loan, in other words it was granted on the basis that Mrs P provided MML with a bill of sale for her car. This meant that if Mrs P didn't make her loan repayments MML could potentially recoup its losses through the sale of the vehicle. In this case I understand Mrs P didn't actually own a car – the loan was secured on her partner's car.

Mrs P said that MML didn't carry out proper checks when making its lending decision. She said that, had it done so, it would not have agreed credit for her as she couldn't afford to repay it. Mrs P said that she was not working at the time and her income consisted solely of state benefits. She also said that she didn't have a bank account or a debit or credit card but relied on the use of her partner's facilities and his mobile phone.

Mrs P also complained that MML didn't treat her fairly when she missed payments on her loan – she says that the person she spoke to about her financial difficulty had a "threatening demeanour" and threatened to repossess the car if she didn't meet her repayments. Mrs P also says MML overcharged her when she repaid the loan early, which she did by borrowing from elsewhere.

MML does not agree that it was irresponsible and says that it carried out an in-depth interview with Mrs P before agreeing to lend to her. It says it asked her about her income and expenditure and evidence of the former. MML also says that Mrs P didn't object to the use of her partner's bank account and, while its customer service fell below its expected standards on one occasion , its representative did not threaten repossession. MML apologised for its customer service but didn't uphold the other aspects of Mrs P's complaint. Mrs P wasn't happy with this response and so brought her complaint to this Service.

The last communication on the complaint from this Service was a provisional decision in December 2020 by one of our ombudsmen in which she upheld Mrs P's complaint in part. She found that MML had been irresponsible to lend to Mrs P but that it didn't act unfairly in any other regard. Both Mrs P and MML responded to the ombudsman's provisional decision. Mrs P accepted the provisional findings, MML didn't say whether or not it accepted them but confirmed it had nothing further to add.

The ombudsman who issued the provision decision is now unavailable to review the complaint and issue her final decision on the matter. Under these circumstances the decision has to pass to another ombudsman, and so the complaint has come to me to review and resolve

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about this type of lending – including all of the relevant rules, guidance and good industry practice – on our website. I've followed that approach here.

Having considered everything I am upholding Mrs P's complaint in part for broadly the same reasons as it was provisionally upheld in part. I appreciate that will be disappointing for MML and I will explain how I've come to this conclusion.

The Financial Conduct Authority (FCA) was the regulator when Mrs P took out her loan. The relevant rules and guidance at the time as set out in its Consumer Credit Sourcebook (CONC) said that MML needed to check that Mrs P could afford to meet her repayments as they fell due over the lifetime of the agreement, while meeting her other commitments and without her having to borrow further or experience significant adverse consequences.

Neither the law nor the FCA specified what level of detail was needed or how such a check was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors. In other words the checks needed to be proportionate and borrower-focused. This suggests that the same checks might not be the appropriate thing to do for all consumers, or for the same consumer in all circumstances. The checks were to assess the risk to the consumer of not meeting the repayments in a sustainable manner, not the risk to the lender of recouping its money.

In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying carry out more detailed checks

- 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).

Bearing all of this in mind, in coming to a decision on Mrs P's case, I have considered the following questions:

- did MML complete reasonable and proportionate checks when assessing Mrs P's loan application to satisfy itself that she would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- overall, did MML make a fair lending decision?
- did MML act unfairly or unreasonably in some other way?

As mentioned above, when Mrs P applied for a loan, MML says it asked her about her income and expenses and verified her income. It has provided a copy of the income and expenditure figures Mrs P declared on a call. The income was based on child tax credits and MML provided a copy of part of a letter setting out the figures, which vary. MML took the lowest weekly figure listed to estimate a monthly income of £1,194 and Mrs P's total declared expenditure amounted to £784. It would seem, on the face of it, even building in a contingency amount, that Mrs P had enough money left over each month to meet the loan repayments of £132.

However, MML needed to take reasonable steps to ensure that Mrs P could meet her repayments without experiencing significant impacts on her financial situation. So I think it needed to not only look at the pounds and pence of the matter but also take into account what it knew about Mrs P's financial circumstances. MML knew that Mrs P didn't have her own bank account and therefore would not be in a position of control over the loan repayments for which she was solely responsible. She also had limited control over her income as it was paid into her partner's sole account. And, I think it's fair to say in this case, she potentially had little control over the loan capital as it was also paid to her partner's account. It may be that Mrs P had the benefit of these loan funds. However, under these circumstances where she had no discernible control over how and when the repayments would be made, I don't think it was fair of MML to enter into a financial agreement with her.

At the least, it would have been reasonable and proportionate for MML to have looked into Mrs P's finances in more detail, which would necessitate gathering an understanding of her partner's finances, at least how he operated his bank account. Mrs P provided copies of bank statements[1] for her partner's account and told this Service that he had a serious online gambling addiction. It's clear from these bank statements that his pattern of spending and the way he managed his money meant that there was a risk that there wouldn't be enough money available in his account to meet these loan repayments as they fell due along with everything else.

To be clear, I'm not suggesting that MML should have asked Mrs P for her partner's bank statements but this is information I have which I think is a reasonable proxy for what MML was likely to have found out, had it acted appropriately. However, as I've explained, I don't think looking into Mrs P's circumstances in more detail would have provided any reassurance to MML about the sustainability of this loan for her, and it would likely have declined to lend to her. So I find it was irresponsible to have agreed to lend on this occasion.

Mrs P has also complained that MML didn't treat her fairly when she had difficulty managing her repayments in that it charged her more than she expected when she wanted to repay the loan early, and it threatened to repossess her partner's car when she was late with a payment. MML says that it didn't do anything wrong when it charged Mrs P two month's interest on early repayment. I can see from the statement of account that Mrs P didn't pay more than she would have done had the agreement run to term and, altogether, I can't say that MML didn't treat her fairly in this regard.

MML has provided a call recording with Mrs P's partner in which there is a discussion about a late payment. I have listened to this call and while I think it can be fairly described as a fractious exchange, MML's representative doesn't actually go so far as to say that the car would be repossessed if Mrs P didn't make the full repayment. I think an apology was an appropriate response in the circumstances of this case.

Mrs P said that repaying this loan to MML caused her "upset and anguish" to the extent that she began to self-harm. I don't doubt that Mrs P has had a very difficult time regarding her finances and her health, and I'm sorry to hear it has been so hard for her. I appreciate this will be disappointing for Mrs P but I am not going to ask MML to pay her compensation

[1] Mrs P's partner agreed to the sharing of his bank statements. He had previously shared these documents with this Service and disclosed that he gambled heavily.

beyond the refund of interest and charges set out below. I can't hold MML solely responsible for the stress she says she was under because of her financial circumstances but I can direct it to put her back into the position she would have been in, had it not agreed to lend to her.

what MML needs to do to put things right

I've found that MML was irresponsible to have agreed credit for Mrs P in November 2018. I understand that the loan has now been repaid. In order to put things right for her MML needs to:

a) Refund to Mrs P all interest and charges she paid for the loan;
b) Add 8% simple interest per annum to these amounts from the date they were paid to the date of refund; and
c) Remove any adverse information about this loan from Mrs P's credit file; and
d) Revoke the Bill of Sale for Mrs P's partner's car if this is still in place and return any relevant documents to her if it hasn't already done so.

*HM Revenue & Customs requires MML to deduct tax from this interest. It should give Mrs P a certificate showing how much tax it has deducted, if she asks for one.

my final decision

For the reasons given, I am upholding Mrs P's complaint about Mobile Money Limited in part and direct it to put things right for her as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 4 March 2021.

Michelle Boundy
ombudsman