

## **Complaint**

Mr O has complained about a personal loan Creation Consumer Finance Limited (Creation) provided to him. He says that the loan was unaffordable and so shouldn't have been provided to him.

## **Background**

Creation provided Mr O with a loan for £10,000.00 in March 2018. This loan had a term of 60 months and the total amount to be repaid of £13,951.20, including interest, fees and charges of £3,951.20, was due to be repaid in 60 monthly instalments of £232.52.

One of our investigators reviewed Mr O's complaint. He thought that Creation ought to have realised that it shouldn't have provided Mr O with his loan and so he recommended that Mr O's complaint should be upheld.

Despite having been provided with a significant amount of additional time to do so, Creation didn't respond to our investigator's assessment. It simply asked for further information which it was provided with.

As Creation didn't respond, the case was passed to an ombudsman for review as per the next stage of our dispute resolution process.

## **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 explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr O's complaint.

Having carefully considered everything I've decided to uphold Mr O's complaint. I'll explain why in a little more detail.

Creation needed to make sure it didn't lend irresponsibly. In practice, what this means is Creation needed to carry out proportionate checks to be able to understand whether Mr O could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

The information Creation has provided suggested that it asked Mr O about his annual income and carried out credit checks before providing this loan. It concluded that as Mr O had an annual income of £24,000.00 he would have £614.11 left each month, when what it calculated to be his monthly expenditure of £1,385.89 was deducted from his monthly income of £2,000.00.

I've considered what Creation has said. However, I'm afraid that its calculations simply don't add up here. I say this because it has concluded that Mr O had a monthly income of £2,000.00 a month, even though he declared an annual income of £24,000.00. On the face of things, it appears as though Creation simply divided Mr O's declared income by the number of months in the year. However, this means that it took no consideration of the fact that £24,000.00 would clearly have been over Mr O's tax-free allowance and therefore the gross amount of £2,000.00 he was due to receive each month, was subject to deductions.

Furthermore, despite being asked for a breakdown on its figures, Creation hasn't provided any of the raw data that it relied on to arrive at the fact that Mr D had a committed monthly expenditure of £1,385.92 either. As this is the case, I think that there are clear errors on both the income and expenditure sides of assessment Creation carried out. And as Creation has chosen not to respond to our requests for clarification or provide a response to our investigator's assessment, I'm simply not in a position to place any weight at all on what it says it found out about Mr O.

As this is the case, I'm satisfied that Creation didn't carry out reasonable and proportionate checks, before providing Mr O with his loan. As proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Creation that it shouldn't have provided this loan to Mr O.

Mr O has provided us with evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr O has provided, it doesn't mean it would've shown up in any checks Creation might've carried out.

But in the absence of anything else from Creation indicating what this information would have shown (and despite the fact that it has been provided with plenty of time to challenge our investigator's conclusions), I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr O's financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mr O's bank statements and the other information he's provided because I think that Creation ought to have obtained this before lending to him. I've consulted this information because it is readily available at this stage and it contains what I now need to reconstruct the proportionate check Creation should have, but failed to carry out.

Having considered this information, I'm satisfied that had Creation carried out a proportionate check here (by finding out about his actual income as well as his committed regular expenditure) it would have seen that Mr O already committed expenditure of close to what he earned each month.

In these circumstances, I'm therefore satisfied that it is unlikely – and less likely than not – that Mr O was in a position to make the payments to this loan in a sustainable manner. So, in my view, reasonable and proportionate checks would more likely than not have shown Creation that Mr O couldn't afford to make the payments to his loan.

I'm therefore satisfied that reasonable and proportionate checks would more likely than not have shown Creation that it shouldn't have provided Mr O with his loan. As Creation provided Mr O with his loan, notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards him.

Mr O ended up paying interest, fees and charges on a loan he shouldn't have been provided with. So I'm satisfied that Mr O lost out because of what Creation did wrong and that it should put things right.

### **Fair compensation – what Creation needs to do to put things right for Mr O**

Having thought about everything, Creation should put things right for Mr O by:

- refunding all interest, fees and charges Mr O paid on his loan;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr O to the date of settlement†
- removing any and all adverse information that it recorded about this loan from Mr O's credit file.

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

### **My final decision**

For the reasons I've explained, I'm upholding Mr O's complaint. Creation Consumer Finance Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 18 March 2024.

Jeshen Narayanan  
**Ombudsman**