DRN-4668228

## The complaint and what happened

Mr C complains that a business whose liabilities have now been acquired by Link Financial Outsourcing Limited trading as Asset Link Capital (No.9) (“Asset Link”) lent to him irresponsibly and without carrying out proper affordability checks. He would like all the interest and charges associated with the loan refunded.

I’ve included relevant sections of my provisional decision from March 2024, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint. In brief that was because I thought the evidence ought to have led the lender, for whose actions Asset Link is now liable, to conclude that this loan was unaffordable for Mr C.

I asked both parties to let me have any more information they wanted me to consider. Mr C accepted my provisional findings. Asset Link came back with a couple of additional points, which I will respond to.

## What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so, I’m upholding it, and I’ll reiterate why, but first I’ve included here the relevant sections of my provisional decision:

> ***“What happened***
>
> *In October 2016 Asset Link approved a loan of £15,000 for Mr C, which was intended to enable him to pursue a post-graduate course. The money was to cover both tuition fees and his living costs while studying. The loan was structured to be repaid at £75 per month while he was studying, and for a few months after that. Then it was to increase to about £203 for the remainder of the 138-month term (that is, 11 years, 6 months). Asset Link carried out some high-level checks on Mr C’s financial situation in 2016, and then modelled his likely earnings following completion of this course to project whether the repayments would be affordable and sustainable for him. In its interests, Asset Link also required a guarantor.*
>
> *Immediately after the loan was agreed, Mr C was requesting an early release of the funds as he told Asset Link that he had no money, was hungry, and couldn’t afford to buy food. By March 2017 it was clear that he was struggling with the reduced £75 per month repayment. In July 2017 he requested a payment holiday, which was denied by Asset Link. He then continued to struggle to make payments and the first payment holiday was granted by Asset Link in March 2018, immediately followed by a further one. Payment problems recurred in 2019 and another payment holiday was agreed as soon as he was eligible. Following a Covid-19 payment holiday in 2020, Asset Link completed an income and expenditure assessment after Mr C requested a reduction in his repayments. A repayment plan was put in place for three months, after which there seems to have been a period of stability with repayments. However, Mr C then experienced some difficulties in 2022 and ultimately complained to Asset Link that the borrowing was never affordable for him. It refunded some interest repayments and*

*released Mr C's guarantor as a gesture of goodwill, but did not accept that the borrowing was unaffordable from the outset.*

*The investigator looked at the evidence and thought Asset Link hadn't done anything wrong in approving the loan, but that it ought to have reassessed his ability to repay when he finished his course and his repayments nearly trebled. Asset Link disagreed, saying it was only required to assess affordability in 2016, and that those checks had shown that the borrowing ought to have been sustainable for him in the long term. So it asked an Ombudsman to look at this complaint.*

***What I've provisionally decided – and why***

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so, I'm currently planning to uphold it, but for different reasons, and I'll explain why.*

*Asset Link is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Mr C would be able to repay the borrowing it was making available to him in a sustainable way. As set out in CONC 5.3.1G(2) that means that he could manage the repayments,*

> *"…without…incurring financial difficulties or experiencing significant adverse consequences"*

*Essentially, he needed to be able to meet his financial commitments and not have to borrow elsewhere to repay Asset Link for the entire length of the agreement for the loan to be considered affordable and sustainable.*

*There are two questions I need to consider when deciding this case, which I will deal with separately below.*

*Did Asset Link carry out proportionate checks before granting this loan?*

*Asset Link has explained several times that this product is different from standard loans in that it is premised on the customer borrowing money based on future circumstances. In 2016 it was clear to everyone that Mr C was about to leave his job to study, and his income would temporarily reduce while he was studying. So it gathered as much information as it could about his likely future earnings to try and predict long-term affordability. I accept and understand this.*

*The investigator thought that it then needed to reconsider whether those predictions seemed reasonable at the point that Mr C finished his course and got a job. Asset Link denied this, saying it was only required to assess affordability at the initial point of application. Whilst it isn't relevant to the outcome in this case, I would like to confirm that the rules and regulations in force at the time did not, and do not, stipulate that affordability assessments are one-off, stand alone, activities, limited to lending decisions. Lenders are instead required to keep affordability in mind throughout the life of any credit agreement. (See, for example, CONC 6.7.2R(1))*

*The amount being borrowed, and the term of the loan, were both significant in this instance. So I would generally expect to see relatively extensive checks by a responsible lender in order to satisfy itself about the long-term affordability of repayments. But I also accept that the nature of this product means that the usual sources of evidence for in-depth checks, such as existing bank statements, may well be of somewhat limited use for a lending decision predicated on future circumstances. However, in this instance I think that Asset Link had enough information to be able to anticipate that this borrowing would **not** be affordable for Mr C, which I'll go on to explain.*

*Was Asset Link right to conclude that the lending was affordable and sustainable for Mr C?*

*Asset Link has shared the high-level credit file information it gathered on Mr C in 2016, along with the factors it relied on in predicting his likely future earnings after he had completed his post-graduate course. And these factors simply do not fit together to form a coherent assessment which suggested that repaying this borrowing would be affordable and sustainable for Mr C.*

*And that is because of the extent of Mr C's existing unsecured debt in 2016, along with his poor credit score (categorised in the files I've been given as "Borrower Equifax Rn4 Score"). That low score ought to have indicated to Asset Link that Mr C was probably not successfully managing his existing credit, which is borne out by some additional information I have seen from his full credit file, showing arrears on three different accounts. It also recorded that Mr C already had over £56,000 worth of unsecured debt in 2016 – to which it was then adding a further £15,000 by way of this loan. Somewhat inexplicably, despite this level of unsecured debt, Asset Link appears to have anticipated that Mr C's monthly debt burden "at repayment" would be under £100. That doesn't seem commensurate and I have been given nothing to demonstrate how that figure was arrived at.*

*What is clear is that Asset Link appears to have accurately set out that "at repayment" (I take this to mean the point at which Mr C stops studying and starts working), Mr C's "total debt balance" of unsecured lending would be just under £75,000. Alongside that, it estimated that he would have an annual income of just under £20,000, and a monthly income of just over £1,600.*

*Had Asset Link done extremely thorough checks, setting out in detail Mr C's repayments against his unsecured borrowing; his projected living expenses; and how he would then be able to afford the additional £200 repayment it would require, I accept the theoretical possibility that it could have concluded that this borrowing was indeed affordable under the rules in force at the time.*

*But there is absolutely no evidence to support that conclusion. And indeed it seems to me to be unlikely in the extreme. Instead, what is known is that Mr C had a poor credit history, and would be in a position of having levels of unsecured debt almost four times his projected/hoped for annual income at the point that he would be required to make the substantive repayments on this borrowing. As set out in CONC 5.2A.35G (1), exactly this situation is one which potentially indicates a high "level of affordability risk…" to the consumer. A risk which quickly and clearly crystallised in this instance and was predictable based on the evidence Asset Link had in 2016. It therefore follows that I plan to uphold this complaint."*

Asset Link has raised several points, which I will deal with in turn.

Firstly, it highlights that it was not, in fact, the lender which carried out this affordability assessment. I am fully aware of that, and indeed set it out in my provisional decision. However, for ease, having explained that Asset Link is now liable for the acts and omissions of that lender, I went on, and will now go on, to refer to Asset Link as the relevant business in this dispute.

However, Asset Link's other point is a relevant one. It says, correctly, that it appears that the vast majority (£48,000) of Mr C's unsecured debt in October 2016 was in fact as a result of student loans, and so wouldn't have created the same monthly repayment burden as normal unsecured debt.

Whilst I don't have confirmation of the exact nature and terms of the student loans in question, I agree it is more likely than not that any repayments would have been contingent on Mr C's earnings. However, ultimately that fact doesn't lead me to conclude that there was no mistake here. The extent of Mr C's unsecured debt in 2016 was only one issue which led to my provisional conclusions.

Even if I entirely discount the existing student loans at the point of application, this borrowing would have left Mr C in the position of having about £23,000 of unsecured debt at the point he finished his course, with a hoped-for annual income of under £20,000. Taking that in tandem with the clear evidence that Mr C was already struggling to manage his existing credit, and was about to effectively lose his income whilst studying, it should still have been obvious that even the limited £75 repayments were going to be unaffordable for him. And then the standard £203 repayment once he'd completed the course would be entirely unsustainable.

Asset Link have posited an income and expenditure assessment in retrospect in an attempt to demonstrate that in 2016 this borrowing appeared to be affordable. However, that exercise is effectively worthless. Firstly, there is zero consideration of reasonable living expenses such as housing costs; household bills; groceries; and travel expenses. So how much of the £942 Asset Link has described as "disposable income" would be required for Mr C to simply to be housed and fed is entirely unclear.

Secondly, the retrospective assessment ultimately anticipates that Mr C would have needed to spend more than 40% of his income servicing debt after his course had finished, even with his large student loans excluded from consideration. That in and of itself is no indicator of a low affordability risk, particularly when the income in question was not anticipated to be particularly high one.

Therefore I have seen nothing which alters my findings as set out in my provisional decision. And so it follows that I uphold this complaint.

**Putting things right**

I direct Asset Link to do the following:

A) Asset Link must rework the account and remove all interest, fees and charges from it, and treat any repayments made by Mr C as though he had been repayments of the principal on the outstanding loan.

B) If this results in Mr C having made overpayments then it must refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the payments were made, to the date the complaint is settled.

C) If after the adjustment an outstanding balance remains, Asset Link must try to arrange an affordable repayment plan with Mr C. Once the balance has been fully cleared, should there be adverse information about the account on Mr C's credit file, that should be removed.

*HM Revenue & Customs requires Asset Link to deduct tax from this interest. It should give Mr C a certificate showing how much tax it's deducted, if he ask for one.

**My final decision**

For the reasons I've explained, I uphold this complaint and direct Link Financial Outsourcing Limited trading as Asset Link Capital (No.9) 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 5 April 2024.
Siobhan McBride

**Ombudsman**