Financial Ombudsman Service

complaint

Mr N has complained about eight logbook loans provided which were provided to him by Mobile Money Limited ("Mobile Money"). He says it was irresponsible for Mobile Money to give him these loans as he could not afford them at the time and proper checks that should've been made for affordability weren't completed.

background

Mr N was provided with an initial loan of £600 in July 2012. The loan had a 12 month term. There were, at least, four top-ups, which resulted in a new loan agreement being signed and funds from the new loan being used to settle the balance on the previous one.

Mobile Money provided Mr N with a total of eight log book loans between July 2012 and May 2015. Mr N's borrowing history is as follows:

Loan	Amount	Date taken	Settled	Consolidation	Term	Repayment
1	£600	July 2012	November 2012	None	12 months	£124.50
2	£300 (£492)*	November 2012	March 2013	Loan 1	18 months	£132.79
3	£800	May 2013	August 2013	None	12 months	£165.17
4	£150 (£868.49)*	August 2013	December 2013	Loan 3	12 months	£179.09
5	£550	March 2014	July 2014	None	6 months	£162.67
6	£300 (£559.32)*	July 2014	October 2014	Loan 5	6 months	£165.34
7	£500 (£794.66)	October 2014	March 2015	Loan 6	6 months	£198.64
8	£1000	May 2015	January 2016	None	12 months	£118.83

*includes funds borrowed to repay previous loan

Our adjudicator looked at Mr N's complaint and concluded Mr N shouldn't have been provided with any of his loans. Mobile Money 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 legal and regulatory framework

regulation by the Office of Fair Trading (up to 31 March 2014)

Mobile Money gave Mr N his first five loans in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

> *(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*

(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;

(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;

(c) practices and procedures that the applicant proposes to implement in connection with any such business;

(d) evidence of the kind mentioned in subsection (2A)

(2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*

(a) committed any offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under—

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) *[my emphasis]**.***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the **OFT to involve irresponsible lending** [my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Mr N’s case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
  - *the borrower's financial situation at the time the credit is sought;*
  - *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
  - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Sections 4.18 to 4.33 of the ILG set out some examples of "specific irresponsible lending practices" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

Section 55B of the Consumer Credit Act 1974

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. The ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an "Assessment of creditworthiness" was set out in section 55B of the Consumer Credit Act. It's important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor's creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement secured on land, or

(b) an agreement under which a person takes an article in pawn.".

By the time of loan two and for all of Mr N's subsequent loans (1 April 2014 onwards) this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority.

regulation by the Financial Conduct Authority (from 1 April 2014)

Mobile Money gave Mr N loans six to eight after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014.

Mobile Money initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation as a consumer credit provider. Mobile Money's 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 Mobile Money. 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 OFT's 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:

(b) 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]*

Section 140 of the Consumer Credit Act 1974

All of Mr N's loans were given to him after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor.

Section 140A says:

140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

> (2) *In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*
>
> (3) *For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.*
>
> (4) *A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.*
>
> (5) *An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

> (2) *An order under this section in connection with a credit agreement may do one or more of the following—*
>
> > (a) *require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*
> >
> > (b) *require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*
> >
> > (c) *reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*
> >
> > (d) *direct the return to a surety of any property provided by him for the purposes of a security;*
> >
> > (e) *otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*
> >
> > (f) *alter the terms of the agreement or of any related agreement;*
> >
> > (g) *direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

CONC and the ILG set out the regulatory framework that authorised/regulated consumer credit providers have to adhere to. But they represent a minimum standard for firms. And as I've explained, I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

the FCA's Portfolio Strategy Letter to firms providing high cost lending products

On 6 March 2019, The FCA wrote a '*Dear CEO'* letter to the Chief Executive Officer of all firms allocated to the 'High Cost Lenders' portfolio. The letter set out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in. On page two of this letter, the FCA sets out its view of the key causes of harm. It says:

"To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.

Following our analysis, we see two key ways that consumers may be harmed across the High Cost Lenders portfolio:

- *a high volume of relending, which may be symptomatic of unsustainable lending patterns*
- *firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".*

On page three of the letter, in the section entitled ***'Complaints'*** it says:

"We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service's relevant decisions. We gave further detail about what we expect from firms' complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio".

the FCA's Dear CEO letter on affordability of High-Cost Short-Term Credit ("HCSTC") loans

On 15 October 2018, the FCA wrote a '*Dear CEO'* letter to the Chief Executive Officer of all HCSTC providers. The letter was about the issues surrounding the increase in complaints about unaffordable lending.

The third paragraph of this letter said:

"We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: https://www.financial-ombudsman.org.uk/publications/technical.htm). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)".

Paragraph eight of the letter went on to say:

"We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible assessments of the sustainability of borrowing".

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, guidance, good industry practice and law, I think there are three overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did Mobile Money, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr N 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 N would've been able to do so?
- Bearing in mind the circumstances, at the time of each application, was there a point where Mobile Money ought reasonably to have realised it was increasing Mr N's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?
- Did Mobile Money act unfairly or unreasonably in some other way?

If I determine that Mobile Money didn't act fairly and reasonably in its dealings with Mr N and that he has lost out as a result, I will then go on to consider what is fair compensation.

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

Regulations in place throughout the period when Mobile Money was lending to Mr N required it to carry out a reasonable assessment of whether Mr N could afford to repay his loans 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 Mobile Money had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mr N*. In other words, it wasn't enough for Mobile Money to think only about the likelihood that it would get its money back without considering the impact of repayment on Mr N himself. The loans being secured on Mr N's 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 Mobile Money's checks reasonable and proportionate?

For loan one, Mobile Money appears to have gone through an income and expenditure questionnaire with Mr N. And he was asked to provide his P60 to verify the monthly income he declared. Mobile Money says the income and expenditure information showed that Mr N had a monthly disposable income of £1079 which meant that it could easily afford the monthly payments of £124.50.

It appears to have relied on similar checks being carried out on the remaining loans. Indeed it says:

"Overall, MML based its decision to lend to Mr N on the documentation requested and provided. Mr N was continually asked about his circumstances, asked to provide evidence of income and also for details regarding his expenditure. Mr N was able to repay MML back with minimal issues and did not inform MML that he was ever experiencing any financial difficulty. I would highlight that credit checks were not and still are not a regulatory requirement".

I've thought about what Mobile Money has said. But both the ILG and CONC make 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 are having trouble accessing mainstream credit), they are expected to make repayment for a more extended period of time and there is the potential for the borrower 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 N was provided with expensive high-interest loans and there was the possibility of him losing his car, I would've expected Mobile Money to have verified the expenditure information provided as well as his income. Mobile Money might have thought that a light touch check was proportionate because Mr N's car provided security. But I don't think that this was enough to constitute a borrower focused assessment. And I don't see how this considers the impact of the repayments on Mr N.

As Mobile Money failed to take steps to verify the Mr N's monthly expenditure for loan one and the subsequent ones even though he kept coming back for further expensive loans, some of which were for amounts that were less than what Mobile Money concluded was his monthly disposable income, I don't think the checks it carried out before providing any of these loans were fair, reasonable or proportionate.

Would proportionate checks on Mr N's loans have indicated to Mobile Money that he would have been unable to repay his loans in a sustainable manner?

I've already explained that I think a proportionate check for the earlier loans would've involved verifying Mr N's normal monthly outgoings and regular financial commitments. And as the lending continued, I would've expected Mobile Money to have found out more about why Mr N kept having to come back for further loans despite what was being declared indicating he had no need for such expensive borrowing.

As Mobile Money didn't carry out proportionate checks for these loans, I can't say for sure what proportionate checks would most likely have shown. So I need to decide whether it is more likely than not that fair, reasonable and proportionate affordability checks would've told Mobile Money that it was unfair to offer these loans to Mr N.

To help us understand for ourselves what Mobile Money would more likely than not have discovered if it had completed reasonable and proportionate checks on Mr N's loans, we asked Mr N to provide us with his bank statements.

Having carefully considered the information, I think that a detailed review of Mr N's financial circumstances before loans one and two, would have shown that he was making payments to unsustainable short-term financers. In my view, fair reasonable and proportionate checks would more likely than not also have shown that Mr N was struggling to make ends meet as most of his income was going towards repaying his existing creditors. And he was regularly paying returned direct debit and unarranged overdraft fees.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr N would not have been able to make the loan repayments to loans one and two without undue difficulty or the need to borrow further. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Mobile Money to the fact that Mr N wouldn't be able to sustainably make the repayments to loans one and two.

Bearing in mind the circumstances, at the time of each application, was there a point where Mobile Money ought reasonably to have realised it was increasing Mr N's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

For the sake of completeness, I think that it's also helpful for me to explain that even though I did do so, I don't think that it was necessary for me to have recreated affordability checks for loans three to eight. I say this because in addition to assessing the affordability of each *individual* loan provided to Mr N by Mobile Money, I also think it's fair and reasonable to look at the *overall pattern* of lending.

I'm mindful here that the relevant rules and guidance – as summarised in the earlier part of this decision make it clear that a lender shouldn't continue lending where the loans are unsustainable or otherwise harmful and/or it's apparent that the customer may be experiencing financial difficulties. And I think by loan three, Mobile Money ought fairly and reasonably to have realised that Mr N's loans had become unsustainable or otherwise harmful.

The factors that lead me to conclude that Mobile Money ought to have realised the loans from loan three were unsustainable or otherwise harmful are:

- the amount borrowed for loan three was significantly more than previous ones;
- the defaults on Mr N' credit file;
- the increasing regularity Mr N was returning for further funds before having paid off what he already owed Mobile Money
- Mr N's continued reliance on payday loans and other forms of high-cost credit.

All of the above were clear indicators of Mr N being in a difficult financial position. Mobile Money says that Mr N was able to repay his loans with minimal issues and did not say that he was experiencing financial difficulty. But I think his need to borrow further within the existing term three and five, in itself, was an indication that he had issues making his payments and that he may have been experiencing financial difficulty.

And bearing in mind Mobile Money's obligation to monitor Mr N's repayment record and offer assistance should it appear that he might've been experiencing financial difficulties, I think that Mobile Money should've offered assistance and/or a product that would allow him to sustainably repay what he owed. But instead of doing this, Mobile Money instead kept lending and regularly consolidated Mr N's borrowing into further loans. Increasing the amount he had to find each month as well as his overall indebtedness.

Indeed Mr N started out with a loan requiring 12 monthly payments of around £124.50 in July 2012. Yet by the time of the final loan – approaching three years later - Mr N was borrowing for the eighth time. He owed Mobile Money for most of this period and even then he was now required to make similar repayments for a further 12 months too. So he clearly wasn't freeing himself from his reliance on expensive credit.

So I think that Mobile Money ought fairly and reasonably to have realised that the loans from loans three onwards were unsustainable or otherwise harmful for Mr N and were unfairly and excessively increasing his overall indebtedness. And so it shouldn't have provided these loans to Mr N.

Did Mobile Money act unfairly or unreasonably towards Mr N in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Mobile Money acted unfairly or unreasonably towards Mr N in some other way.

Did Mr N lose out as a result of Mobile Money's shortcomings in relation to these loans?

I think that Mr N did suffer adverse consequences as a result of Mobile Money unfairly giving him these loans. I think this is the case for two key reasons.

Firstly, these loans had the effect of unfairly prolonging Mr N's indebtedness to Mobile Money by allowing him to take expensive credit over an extended period of time. These loans were very expensive. I've already spoken about the impact this had on his finances. And I think that the overall cost of these loans unfairly prolonged what was an adverse and precarious financial position for Mr N.

Secondly, the sheer number of these high-cost loans is likely to have had implications for Mr N's ability to access mainstream credit. The greater the presence of these loans on Mr N's credit file the less likely Mr N was able to rehabilitate his finances and regain access to mainstream credit. This is especially the case when bearing in mind his other affordability issues.

In my view, Mobile Money giving Mr N such a large number of loans (which it shouldn't have done) over such an extended period of time at a rate normally reserved for short- term borrowing, placed him in a position where he was unfairly trapped into taking further loans from Mobile Money as no-one else, other than similar providers, would lend to him.

I think that, in these circumstances, Mr N had little choice other than to keep turning to Mobile Money and other similar providers for further loans, because he had little other real choice bearing in mind everything that had gone on previously. And, in my view, Mobile Money took advantage of the situation.

So overall and having carefully thought about everything provided and what's fair and reasonable in the circumstances of this case, I think that Mr N lost out because Mobile Money unfairly gave him these loans, which it ought to have realised were unsustainable, harmful and unaffordable for him.

conclusions

Overall and having carefully thought about the three overarching questions, set out on page twelve of this decision, I find that:

- Mobile Money *didn't* complete reasonable and proportionate checks on Mr N to satisfy itself that he was able to repay his logbook loans in a sustainable way;

- reasonable and proportionate checks would more likely than not have shown Mobile Money that Mr N would not have been able to repay these loans in a sustainable way;
- in any event, the overall pattern of lending ought fairly and reasonably to have alerted Mobile Money to the fact that the loans from loans three onwards were unsustainable or otherwise harmful for Mr N and that they were unfairly and excessively increasing his overall indebtedness;
- Mobile Money didn't act unfairly or unreasonably towards Mr N in some other way;
- Mr N lost out as a result of having been provided with these loans.

These findings lead me to conclude that Mobile Money unfairly and unreasonably provided Mr N with all of these loans and that he lost out as a result. So Mobile Money needs to put things right for Mr N.

fair compensation – what Mobile Money needs to do to put things right for Mr N

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 Mobile Money putting Mr N in the position he'd now be in if he hadn't been given these loans.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr N *was* given the loans in question and he used the funds – albeit in reality what he's effectively done is repaid previous loans with them. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr N back in the position he would be in if he hadn't been given these loans 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 Mobile Money to put things right in the following way.

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

As I've explained throughout this decision, Mobile Money continually lending to Mr N left him in a position where he wasn't able to properly settle his debt. This was because Mr N kept having to find additional funds to pay the (increasing) interest and charges on his Mobile Money loans. And then he had to borrow again from Mobile Money as making the payments was preventing him from meeting his other commitments, which meant he incurred more interest and charges when he did this. So to start with, I think that Mobile Money should refund the interest and charges Mr N paid on these loans.

I'm also mindful that Mr N lost the use of the funds he used to pay the interest and charges, I now think that Mobile Money needs to refund to him. As Mr N 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.

Bearing in mind my conclusions in the paragraph above, 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 Mobile Money should pay Mr N 8% per year simple interest on the interest and charges he paid from the date those charges were paid to the date it settles Mr N's complaint.

Mr N'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.

But I'm upholding Mr N's complaint about loans three to eight because (as well as them being individually unaffordable) I think that what had happened by this stage ought fairly and reasonably to have led Mobile Money to realise that it was increasing Mr N's indebtedness in a way that was unsustainable or harmful in some other way. I explained that there were two main adverse consequences of Mobile Money having given Mr N so many loans. Firstly it caused him to pay an excessive amount of interest. And I've already explained how Mr N should be compensated for this.

I also explained that the sheer number of loans and refinances involved and the extended period of time is likely to have had implications for Mr N's ability to access mainstream credit. The greater the presence of these loans on Mr N's credit file the less likely Mr N was able to rehabilitate his finances and regain access to mainstream credit. And I think my direction in relation to Mr N's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Mr N's credit history and creditworthiness so that a lender can make an informed decision on whether lend to him, I think that the mere presence of this many loans on Mr N's credit file, in itself, constitutes adverse information. And I think that this many high-cost loans appearing on Mr N's credit file is likely to continue unfairly adversely affecting Mr N going forwards.

In these circumstances, I think that it's fair and reasonable for Mobile Money to remove all reference to loans three to five from Mr N's credit file, as the number of loans in itself is adverse information.

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

- refund all the interest, fees and charges Mr N paid on these loans.

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

- remove any adverse information recorded on Mr N's credit file as a result of loans one and two;

- remove all reference to loans three to eight from Mr N's credit file.

† HM Revenue & Customs requires Mobile Money to take off tax from this interest. Mobile Money must give Mr N 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 N's complaint about Mobile Money Limited and telling it to pay Mr N compensation as I've set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr N to accept or reject my decision before 17 June 2019.

Jeshen Narayanan
ombudsman