

## **The complaint**

Miss C complains about the behaviour of Prestige Asset Finance Limited (“Prestige”) in relation to loans she took out with it.

## **What happened**

I set out below Miss C’s version of events and also Prestige’s version of the same events.

### *Miss C’s version of events*

In July 2019 Miss C was in need of an urgent loan. Miss C had been a loyal customer of Prestige having taken out loans with it before, therefore she went to Prestige to see what finance it could provide if she agreed to pledge certain goods belonging to her as security for the loan.

The total amount Prestige was willing to advance was £15,000. But it needed time to evaluate her goods and Miss C explains she needed £2,000 that very day. Therefore she agreed with Prestige that it would give her one loan for £15,000. However, it was also agreed that the payment would be staggered in that she’d get £2,000 that day and £13,000 later.

Miss C tells us she was therefore very surprised to find out, at a later date, that in fact she had signed up for two loans, one for £2,000 (I’ll call this “Loan 1”) and one for £13,000 (I’ll call this “Loan 2”). Miss C indicates she was therefore misled by Prestige, she also suggests it took advantage of her at a difficult time. Both loans were ultimately paid off by Miss C.

In February 2020 Miss C again wanted a loan and as before she was willing to pledge certain goods she owned as security for the new loan. This time the loan amount was £5,000. The loan was due to expire in September 2020 (I’ll call this Loan 3”).

However between February 2020 and September 2020 Miss C experienced a series of unfortunate and unexpected events. First the Covid-19 pandemic lockdown occurred which impacted badly on her business and consequently on her income. Then her mental health became impaired due to stress. Further, one of Miss C’s close family members died unexpectedly and she was grieving. Miss C had to pay for the funeral of her family member by herself. Therefore Miss C was not able to pay off Loan 3 in September 2020.

Miss C told Prestige all about the changes in her personal circumstances. Miss C had expected forbearance and understanding from Prestige. In particular, she wanted it to extend the loan expiry date and stop applying interest to Loan 3. But instead without her knowledge or consent it renewed Loan 3 for a further seven month term.

Thereafter Prestige continually contacted her, to let her know it would sell her goods if she was unable to pay off Loan 3 on the expiry date which kept on changing.

Whilst all of this was going on Prestige kept on adding interest to Loan 3 which Miss C believes was not permitted under the Covid regulations imposed by Prestige’s regulator the Financial Conduct Authority (“the guidance”) (I’ll talk about the guidance in the “what I’ve decided and why” section below). However, I’ll note here there was initial guidance issued in April 2020 and then subsequent updates were issued after this, but I when I refer to the guidance I mean all of the guidance collectively.

Also Miss C found the tone, content and frequency of the communications from Prestige to be inappropriate and designed to cause her stress. She indicates that it is her belief that Prestige piled pressure on her so that it could stop her redeeming her loan so that ultimately it would be able to sell her goods.

#### *Prestige's version of events*

Prestige responded by explaining its business model. It grants loans with a seven month term secured against the borrower's goods, monthly interest also accrues. When the agreement expires the borrower has two choices; they can either pay the interest due at the expiry date and renew the contract for a further seven months. Or the borrower can redeem the contract i.e. collect their goods. To do this they need to pay back the original amount borrowed and the interest due as at the expiry date. Therefore there is only one instalment payment due under the loan, but interest runs for the entire term of the loan until it is redeemed.

As to Loan 3 this had been renewed initially for a further seven months at Miss C's request. Thereafter it renewed the loan eight further times also at Miss C's request. Prior to the expiry date it sends a letter to the borrower to let them know the expiry is coming up. Just before or just after each new expiry date Miss C would contact it asking for a renewal. This had been her usual pattern of behaviour with previous loans she had taken out with it, including Loans 1 and 2. Therefore it did not find this behaviour unusual, nor did it think it indicated that her financial affairs had taken a turn for the worse or that she'd become a vulnerable consumer.

Prestige took into account the guidance and what Miss C told it about her circumstances when it granted these renewals. The final renewal was due to expire on 31 December 2021. Prestige advised Miss C on three separate occasions (10 November 2021, 21 December 2021 and 24 December 2021) that no further extension to repay would be granted beyond 31 December 2021.

After it notified Miss C on 10 November 2021 Prestige began to receive more and more emails from Miss C sometimes up to five per day. The volume and content of the emails led it to believe that Miss C was now experiencing such distress and indebtedness that it reinforced Prestige's opinion that it was no longer in Miss C's best interests to continue to renew the loan beyond 31 December 2021. As the loan was not redeemed and it did not consider it appropriate to renew again Prestige arranged to sell Miss C's goods.

Prestige's stance is that it behaved appropriately at all times, and it is not in its best interests to sell a borrower's goods. It also strongly objected to Miss C's suggestion that it acted in bad faith. For all of these reasons it declined to uphold Miss C's complaint.

#### *What happened once Miss C's complaint was with us*

Dissatisfied with Prestige's response, Miss C complained to our service.

Once Miss C's complaint was with us we told Prestige that Miss C had told us she had been misled by it about Loan 1 and Loan 2 and that it took advantage of her.

In response, Prestige told us, Miss C had been fully aware that she had entered into Loan 1 and Loan 2. To support its stance Prestige pointed out that Miss C had signed separate agreements for each loan. Plus it had taken different security for each loan. Moreover, the terms and conditions of each of the loans were clearly set out in the loan agreements.

In addition, Prestige indicated that it was significant that Miss C had redeemed each loan and had not complained about any of this at the time. Rather, she only complained when she brought her complaint to us and raised it as a new matter. When Miss C complained to it she just complained about Loan 3. Nonetheless it was willing for us to look at these limited new points about Loan 1 and Loan 2 as part of this complaint.

One of our investigators looked at what had happened. She did not recommend that Miss C's complaint ought to be upheld.

Prestige accepted our investigator's recommendation, Miss C did not. In short, Miss C repeated her previous stance, expressed deep disappointment with our investigator's recommendation and asked that an ombudsman review her complaint.

I reviewed Miss C's complaint, and having considered the available evidence, I was minded to uphold Miss C's complaint in part. That being the case, I thought it was fair to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. Therefore, I issued a provisional decision and I've set out below what I decided provisionally - and why. This forms part of my final decision.

*"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.*

*First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.*

*Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.*

*New issues which I can't deal with in this complaint*

*Since the complaint has been with us Miss C has now also raised questions about the renewal of Loans 1 and 2 and a payment of £10,000 that she made towards all three loans which she says was misapplied.*

*These appear to be new matters and have not been considered by Prestige in its final response to Miss C or investigated within this complaint. It follows that I am unable to look at these matters in this decision.*

*Loans 1 and 2*

*Miss C complains that she was unaware that she took out two loans she thought she'd only entered into one loan for £15,000. It is not clear what difference it makes that it was two loans instead of one, for example Miss C has not been able to demonstrate that this arrangement disadvantaged her. Rather it seems she got the loan amounts she wanted using the security she had agreed to supply, albeit this was achieved via two loans as opposed to one.*

*In any event, Miss C had to sign both loan agreements. I think it is reasonable to assume, as a starting point, that when a person reads and signs an agreement – they understand the terms of the agreement and they are agreeing to be bound by them.*

*I note also that Miss C only complained about the two loans when her complaint came to us. Had she not known of the existence of the two loans she would, on balance, I think have complained much earlier than this.*

*Therefore, for all of these individual reasons, it seems unlikely to me that the two loans were taken out without her knowledge or consent. It follows I don't uphold this part of Miss C's complaint and I have no proper basis to tell Prestige it must do anything more in relation to this part of her complaint.*

*Loan 3*

*The FCA introduced the guidance on 24 April 2020. This guidance, amongst other things, built on Principle 6 ('A firm must pay due regard to the interests of its customers and treat them fairly'), and Principle 7 ('A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading'). It set out the FCA's expectations for firms to provide coronavirus related support for customers who were experiencing or reasonably expected to experience temporary payment difficulties solely due to coronavirus. When implementing the guidance, the FCA pointed out, firms should take account of the particular needs of their vulnerable customers. Meaning that potentially firms would have to take extra care in relation to these customers.*

*A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. It should be noted that being bereaved and/or experiencing temporary mental health difficulties, as was the case here, can both be a potential vulnerability.*

*The FCA expects firms to provide their customers with a level of care that is appropriate given the characteristics of the customers themselves. Therefore the level of care that is appropriate for vulnerable consumers may be different from that for others and firms should take particular care to ensure they are treated fairly. Moreover, firms should ensure they follow the relevant guides from the regulator on dealing with vulnerable consumers. The FCA's guides are a benchmark for the those providing consumer credit to consumers who may have vulnerabilities.*

*I find it likely that Miss C was a vulnerable consumer by reason of her mental health and her bereavement from September 2020. I am also satisfied that Miss C told Prestige by September 2020 about the circumstances that made her a vulnerable consumer, and it ought reasonably therefore have treated her as a vulnerable consumer. That means It should have taken account of the particular needs of Miss C as a vulnerable consumer when applying the guidance. Moreover, it should also have treated her as a vulnerable consumer even when the guidance no longer applied.*

*The guidance applied for part of the time that Loan 3 was live. And it seems her financial circumstances were impacted by the Covid-19 pandemic. Therefore I would have expected Prestige to have followed the guidance. However, Miss C seems to think the guidance said that Loan 3 should have been put on hold and interest suspended until such time as she was able to make payment, no matter how long that took. That is not what the guidance said. When Loan 3 initially was due to come to an end the guidance that applied was the guidance issued in July 2020, it provided:*

*"Where a customer who has not yet had a payment deferral is experiencing or reasonably expects to experience temporary payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a full payment deferral, a firm should grant the customer a payment deferral for 3 months' worth of payment unless the firm determines (acting reasonably) that it is obviously not in the customer's interests to do so.*

*Where a customer is granted a payment deferral on a pawnbroking agreement, the firm should implement this by extending the redemption period (irrespective of when the redemption period is due to end) for the period of the payment deferral or, if the redemption period has already ended, agree not to give notice of intention to sell an item of pawn for that period. If notice of intention to sell has been given, the firm should suspend the sale for the period of the payment deferral. References to 'payment deferral' in this guidance should, where appropriate, be read accordingly."*

*In other words, Prestige only had to extend Miss C's redemption period for three months, instead it went further than it had to do and gave Miss C an initial further seven months. By the time that seven months was up, updated guidance was in force that potentially possibly gave Miss C the right to a further three month extension of the redemption period. But again,*

*in any event Prestige went well beyond this and extended the redemption period a further eight times until December 2021.*

*Miss C is upset that Prestige did not waive interest during the periods where the redemption period was extended and the guidance applied, but the guidance did not oblige Prestige to waive the interest. Therefore, I've no proper basis for saying that Prestige acted incorrectly in continuing to apply interest during the first redemption period extension.*

*Further, when I take account of Miss C's vulnerable status I don't agree that Prestige did not do enough during the time the guidance applied. She indicates that she was struggling with her mental health and with her bereavement and what she needed at that point, as a vulnerable consumer, was temporary breathing space and sensitive communication and from what I've seen she got both from Prestige at this stage. In other words nothing I've seen shows that it treated her inappropriately at this point.*

*However, once the guidance no longer applied and Miss C continued to experience financial difficulties, Prestige was obliged to consider the normal forbearance provisions that a regulated business such as Prestige is obliged to think about when a consumer tells it that they are experiencing financial difficulties.*

*Miss C has suggested that Prestige acted improperly without treating her with appropriate forbearance, with the intention of ultimately taking ownership of the goods she'd pledged. She also suggests that its communications put undue pressure on her. I've looked carefully at the communications between them, and I think her characterisation of their communications and Prestige's behaviour cannot be substantiated. Rather it seems to me that Prestige contacted her when appropriate. And it was aware that her goods were important to her and kept this at the forefront of its thinking when dealing with her. So much so that I think it went too far, albeit with good intentions. I say this because it appears from those communications that it was obvious that Miss C had little realistic prospect of recovering the goods she'd pledged and that there was significant equity in those goods that was depleted due to the successive redemptions.*

*I also take account of the fact that Miss C was vulnerable, and that Prestige knew this. or ought to have known. Miss C did, as Prestige indicates make contact with it before or just after expiry dates asking for more time, sometimes using emotive language but crucially she gave no indication of how she might pay off the loan. And I think bearing her vulnerability in mind, Prestige might reasonably have asked more questions about how the loan was ultimately going to be paid off because in the end Miss C could not pay off the loan, but she was so focused on safeguarding her goods she did not appear to recognise the inappropriateness of continuing to push back the redemption date.*

*I take on board that making a decision about where Prestige ought to have drawn the line is not a science. But I think it should have been obvious to Prestige by 5 July 2021 that Miss C had little or no prospect of being able to pay off the loan and was so vulnerable that the appropriate course of action would be to sell the pledge. I therefore find it fair and reasonable that Prestige refund all interest that Miss C incurred from 5 July 2021 onwards.*

*I recognise neither party is likely to find my decision fair, Miss C because her position is that her pledge should never have been called in and Prestige because from its perspective it worked very hard to help Miss C retain the pledge and it explained clearly what it intended to do at every stage. However, I think Prestige did not act in Miss C's best interests in extending the redemption period as often as it did. In other words I don't think it demonstrated appropriate forbearance. Rather I think its approach, after a certain point, made Miss C's situation worse.*

*My provisional decision*

*My provisional decision is that I currently intend to issue a final decision that Prestige Asset Finance Limited must refund all interest it charged Miss C from 5 July 2021 onwards.*

*It must pay the total compensation within 28 days of the date on which Miss C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of the final decision until the date of payment at the rate of 8% simple per year.*

*If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Miss C can reclaim the tax if she is able to.*

*Miss C should refer back to Prestige if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation. “*

Both Miss C and Prestige chose to respond to my provisional decision, I've summarised their respective responses below.

Miss C told us she'd been ill and asked for more time therefore to respond to my provisional decision. Miss C was given more time to respond.

In her response, Miss C repeated her previous stance. Moreover, Miss C urged me to look at the new matters as part of this complaint. In addition, Miss C also told us that she'd borrowed from friends and family to make her repayments to Prestige. She has not been able to fully pay back these informal loans, this in turn has caused her further distress. Miss C also sent us information she had already sent to us and some new information about the discussions she'd had with Prestige about renewing and redeeming Loans 1, 2 and 3. Miss C told us, that from her perspective, Prestige had “*bullied*” her.

In its response Prestige also repeated its previous stance. In addition, Prestige made it clear that it objected to some of the things Miss C had told us about her complaint, it said what she'd said in these instances was factually incorrect. It particular, it pointed out that:

With regards to Loans 1 and 2 it could never have staggered the payments to Miss C as she suggested as its systems and processes did not allow it to operate like that. Rather, Miss C had needed money urgently on the very day she applied for Loan 1. Miss C wanted to pledge several items. However it could only assess some of the items on that day, it needed more time to assess the remainder of the items before it could offer her loan secured on them. Therefore it had to do two loans. It gave her Loan 1 secured against the items it could assess on the day, in order that Miss C could get money immediately. And it gave Miss C Loan 2 once it had had a chance to assess the remaining items.

It pointed out that it was obliged to let a consumer know when a loan was coming up to the expiry date and that is all that it had done. In any event, it did not agree its communications with Miss C were inappropriate in tone or content. Neither did it agree that it had engaged in behaviour which was designed to force Miss C to allow it to sell her items.

Moreover, in its opinion Miss C's communications with it had led it to believe the reason she'd been unable to redeem Loan 3 was because she was overseas. It only became aware in September 2021 that Miss C might be vulnerable and because it thought she was vulnerable it felt obliged to renew Loan 3 at this point. It underlined that Miss C had threatened suicide at this point, and “*therefore [it] granted one last extension to give [an] opportunity for Miss C's mental state to calm*”.

Prestige added” *if you decide not to [up]hold the original judgment [i.e. our investigator's recommendation to reject the complaint] it then calls into question the whole pawnbroking industry as well as the standard contracts issued, and guidelines given to us by the FCA in respect of treating customers fairly.”*

### **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I thank Miss C and Prestige for their respective detailed responses to my provisional decision. It has been particularly helpful that each of the parties took the time to set out their views on the reasoning and the redress which I set out in my provisional decision, so that I have been able to gain a fuller understanding of their respective positions and concerns. On another note, I regret to hear about Miss C's recent illnesses, and I wish her a swift recovery.

I've reviewed the file again and revisited my provisional decision and thought about the responses I've received.

#### *New issues which I can't deal with in this complaint*

I recognise that Miss C wants me to deal with the new issues. But I have no power to do this. The reason for this, as I have already explained, is because these appear to be new matters. Miss C has not demonstrated that she raised these matters when she complained to Prestige. Therefore because these new matters were not raised originally by Miss C they have not been considered by Prestige in its final response to Miss C or investigated within this complaint. It follows that I am unable to look at these matters in this decision.

#### *Loans 1 and 2*

The new information that Miss C has sent in about her communications with Prestige only underlines that she knew about these two loans. In those communications she asks Prestige for the loan balances, she talks about what she is trying to do to pay off these loans, she thanks it for its help. Nowhere in these communications, which are detailed and span many months, does she express surprise about the existence of two loans or say she never agreed to this. I would have expected her to have mentioned these points in this correspondence if she did not agree to Loans 1 and 2. Therefore this information does not persuade me that Miss C did not consent to these loans.

Moreover, I have no reason to doubt Prestige when it says it could never have staggered the payments to Miss C in the way she describes because it just is not set up to do that. This further strengthens the finding I made about this point in my provisional decision. Namely, that on balance Miss C did consent to these loans.

In addition, I am satisfied that Miss C did sign the separate agreements for Loans 1 and 2. I would not have expected her to sign two loan agreements if she thought she only had one loan. For this reason too I'm satisfied on balance that Miss C did consent to these loans.

#### *Loan 3*

Prestige's response indicates it only ought reasonably to have been aware that Miss C was a vulnerable consumer in September 2021. I disagree. I say this because the information I've seen demonstrates that Miss C told it about her mental health and how it was impairing her judgement and about her bereavement much earlier than this that is in September 2020.

That said, nothing I've received in response to my provisional decision, suggests that Prestige ought to have done more for Miss C taking into account of her vulnerability and the guidance and her financial difficulties before 5 July 2021. Indeed Prestige went further than it had to do when I take account of the guidance, even when I take on board that Prestige had to take particular care with Miss C as she was vulnerable, and it ought to have known this.

As I have mentioned before the communications between Miss C and Prestige during the life of Loan 3 were detailed. There was a general pattern to this communication, namely Miss C would make promises to repay the loan close to the expiry date or having just missed it. She'd not really explain why she'd not paid the loan off on the expiry date instead she would express the sincere hope that she could pay off the loan in future, but never explained how she'd do this.

The fact is that Miss C had to borrow from friends and family, to pay off the previous borrowing with Prestige. And the fact that Miss C has not yet been able to pay back those creditors in full underlines that she had no realistic and appropriate plan for repaying Loan 3. Rather, she continually put off the day of reckoning by asking to put back the redemption date, often using very emotional language. The fact that Miss C said she was overseas is not an explanation for why she missed expiry date after expiry date.

All of this indicates to me that on balance she'd no plan or means to pay off Loan 3 and that Prestige ought reasonably to have recognised this and questioned her further. I think on balance this would have revealed what was going on.

Therefore for these reasons and those I set out in my provisional decision, I think by 5 July 2021 Prestige ought to have realised that Miss C just had no realistic prospect of being able to pay off Loan 3 and it should have called in the pledge.

I can well understand why Prestige became concerned when Miss C threatened suicide. I can also understand its motivations in wanting to keep Miss C calm. But nonetheless for the reasons I've outlined I think it should have acted sooner than it did.

Miss C has used strong language to describe Prestige's behaviour towards her. I note at the time though she felt very differently. For example Miss C writes to Prestige and says, *"I love working with your company as I have been with you and the kindness you have shown towards me during this difficult time. Thanks for your support"*. Another time she says to it *"I have been a family member in Prestige not a client"*. All of this suggests to me that far from behaving inappropriately towards Miss C, Prestige behaved courteously and with understanding during a very tough time for her. Moreover nothing I've seen suggests that Prestige wanted to force Miss C into a corner so it could sell her items, quite the opposite.

The underlying premise of pawnbroking contracts is that a contract will be renewed only where there is a realistic prospect of the consumer being able to redeem the contract on the new expiry date. Otherwise all that will be achieved is that any equity in the pledge will be unnecessarily and avoidably depleted. That principle is echoed in the FCA guidelines that apply to Pawnbrokers. Therefore for me to say that Loan 3 should not have been renewed from 5 July 2021 because, amongst other things, Miss C had no realistic prospect of redeeming the pledge, is within the spirit and letter of that premise. And it is in line with relevant guidelines. I know that Prestige says otherwise, but I don't agree with it.

I've not been persuaded by the responses to my provisional decision. It follows I've reached the same conclusions for the reasons set out in my provisional decision (which forms part of this final decision) and also for the additional reasons I've set out in this final decision.

I just want to take this chance to clear up any misunderstanding about what Miss C was entitled to under the guidance. The guidance talks about six months in total of payment deferrals. Prestige granted Miss C far in excess of this and nothing in that guidance would have entitled Miss C to more than six months of payment deferrals in total.

### **My final decision**

My final decision is that Prestige Asset Finance Limited must refund all interest it charged Miss C from 5 July 2021 onwards.



It must pay the total compensation within 28 days of the date on which Miss C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Miss C can reclaim the tax if she is able to.

Miss C should refer back to Prestige if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 8 August 2023.

Joyce Gordon  
**Ombudsman**