

The complaint

Miss M complains that Omni Capital Retail Finance Limited didn't carry out proper affordability checks before approving a loan.

What happened

In November 2021 Miss M applied for a loan with Omni Capital to fund a purchase with a third party "P". Her application was approved and in February 2022 Omni Capital released a little over £7,000 to P.

In July 2022 Miss M contacted Omni Capital to complain about its decision to lend to her. She thought the lending had been irresponsible, saying that her take home pay had been insufficient to sustain her existing credit commitments and other household expenditure. Miss M said that as a result she was struggling to feed her family. She asked Omni Capital to write off the loan balance.

Omni Capital wasn't willing to do so. It acknowledged Miss M's current income and expenditure showed her financial position was unsustainable. It took steps to assist with her difficulties, including accepting reduced payments and referring her to debt management charities. But Omni Capital didn't think the situation was attributable to deficiencies in its lending process. It said it had undertaken suitable affordability checks, which included reviewing Miss M's existing credit arrangements as well as her income and ability to meet the loan repayments.

Miss M referred the matter to us. Our investigator thought that while Omni Capital's affordability checks were insufficient, more detailed checks wouldn't have made any difference. That is, even if it had had a fuller picture of Miss M's situation, it would still have agreed to lend to her. Miss M's bank statements, for example, showed that in addition to her own income she was receiving significant sums from her partner, and that the loan payments weren't obviously unsustainable.

Miss M did not accept the investigator's assessment. She asked that an ombudsman review the case, explaining that the money her partner was paying into her account was his contribution towards household bills and for her to pay his credit commitments. Miss M didn't think it was appropriate for Omni Capital to take her partner's income into account given that the loan was in her name only. She maintained that her monthly income had been insufficient to meet her commitments, let alone the loan payments to Omni Capital.

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.

Lenders should take steps to ensure that lending is affordable and sustainable before agreeing to it. The Financial Conduct Authority's Handbook contains provisions in relation to consumer credit (known as CONC), which require creditworthiness checks to be reasonable

and proportionate. What those checks involve will depend on the circumstances of the lending.

In this case, it was reasonable for Omni Capital to accept what Miss M had said about her income without enquiring further – for example, by examining bank statements or seeking copies of payslips. There was no particular reason to doubt what Miss M had said. And even with the benefit of having sight of Miss M's bank statements, they support what she told Omni Capital.

I can see that the checks Omni Capital made showed a substantial number of existing credit commitments. Although Miss M has pointed to additional commitments (including a mortgage) that Omni Capital should have taken into account, I need to determine whether Omni Capital was remiss in the checks it did undertake.

I've no reason to conclude that Omni Capital ought to have had cause to think there were other credit commitments that weren't shown on the credit information it obtained. I accept it could have done more to establish the true level of Miss M's non-discretionary expenditure (including matters such as her day-to-day living expenses). This is something it would be expected to do under CONC 5.2A.17R.

However, I share our investigator's view that it would have been reasonable for Omni Capital to take into account income Miss M was receiving from her partner to assist with these costs. CONC 5.2A.18G indicates this is an acceptable practice. And it's reasonable to think that Miss M was also taking this additional income into account when making her own decision about whether she could afford the loan repayments.

I accept that Miss M is having difficulty repaying the loan, although I haven't investigated how Omni Capital has dealt with that aspect as it wasn't part of Miss M's complaint to us. But even if the loan was unaffordable from the outset, it doesn't mean Omni Capital acted irresponsibly in the checks it undertook.

Overall, while I recognise Omni Capital could have done more checks, I'm satisfied that the creditworthiness assessment it carried out was reasonable and proportionate in the circumstances, and that its lending decision wasn't irresponsible.

In my view, the appropriate way to deal with the current situation is for Miss K and Omni Capital to discuss a mutually agreeable plan for repaying the balance, which may require the involvement of a third party debt management charity as Omni Capital has already suggested. I'm therefore not making any direction in relation to reducing the loan balance or waiving interest (though this doesn't prevent the parties from either option forming part of any such repayment plan).

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 27 November 2023.

Niall Taylor
Ombudsman