

Case study

Unsafe relationship and unaffordable loan

Background

A customer was in unsafe relationship when, together with his partner, they took out a loan. The customer felt his partner pressured him into applying for the loan but did not say anything to the financial institution about the physical and mental abuse they were experiencing.

The financial institution, unaware of the abusive relationship, worked closely with the customer's partner to verify security assets, income, and expenses. The financial institution had very little contact with the customer during the application process because his partner was the main contact. The loan was approved, and the funds were paid out.

Days later, the customer realised his partner had gambled away all the funds. The customer was very upset and approached the lender for support. The customer wanted to know if he could be released from the loan but was told since it was a joint application, he was jointly liable for the repayment of the loan. The customer was not satisfied with this answer and approached the Financial Dispute Resolution Service (FDRS) with the support of a financial mentor.

Next steps

Mediation was arranged for the customer and lender. The customer brought along their financial mentor to support them during the mediation and the mentor argued that the lender should have supported the customer more when it learned about his hardship, and that the lender had not done a proper assessment to determine if the customer and his partner could afford the loan. The parties could not agree during mediation. The customer asked FDRS to adjudicate the matter.

Coercion and hardship support offered

Adjudication is where an independent person investigates the complaint and makes a decision. The decision is binding on the financial service provider. The adjudicator reviewed all the information provided by both the customer and lender. They found that the lender was not aware of the customer's abusive relationship and that there was no evidence that the lender had coerced the customer into taking out the loan. If there was any coercion it may have been from the customer's partner, but since the lender had not applied undue pressure, the lender had not done anything wrong. The adjudicator also found the lender acted reasonably by informing the customer about the hardship support it could offer and the process for accessing the support.

Affordability

The adjudicator found the lender did not consider the actual spending patterns of the customer and his partner. This meant that the lender under recorded certain expenses or completely excluded others. The adjudicator held that in some instances it may be appropriate to rely on average-expenses, but not if this was contradicted by the actual spending patterns reflected on the applicants' bank statements.

Not doing a proper affordability assessment meant the customer and his partner were granted a loan they could not afford to repay. The adjudicator held the lender did not observe the principles of section 9C of the Credit Contract and Consumer Finance Act 2003 (CCCFA), as the lender did not act with care, diligence, and skill before entering into a credit agreement.

Outcome

The adjudicator concluded the lender's failure to act with care and skill resulted in financial hardship. To recognise the impact the adjudicator granted compensation to the value of 25% of the loan.

