

**Ombudsman Decision****CIFO Reference Number: 24-000312****Complainant: Miss C****Respondent: Cherry Godfrey Finance Limited**

The Complainant, whom I shall refer to as Miss C, complains that Cherry Godfrey granted her a loan that was unaffordable and asks that the interest on the loan of £1,071.32 be reimbursed to her, that she be awarded 8% interest on that sum and that Cherry Godfrey reimburse her with any late payment fees applied to the loan.

**Background**

On 28 August 2018 Miss C entered into a loan agreement with Cherry Godfrey to borrow the capital sum of £4,000 over a three-year term. Interest of £1,071.32 was payable along with an arrangement fee of £200 bringing the total amount of the debt to £5,271.32 repayable at £146.43 per month. The loan was noted to be for debt consolidation.

Miss C said that she expected that Cherry Godfrey would have carried out more enquiries than they did and that an undisclosed loan would have shown up on their credit checks which would have called the affordability of the proposed consolidation loan into question. She added that she didn't understand money management at that time.

Cherry Godfrey said that credit checks were undertaken at the time and that no affordability concerns were raised. Further a payment plan had been entered into when Miss C found herself unable to make the repayments as

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<sup>1</sup> Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

agreed and that no late payment charges had been applied. The loan has now been discharged.

Despite her initial claim for reimbursement of late payment fees, Miss C accepted that Cherry Godfrey had not applied any late payment charges. However, she remained dissatisfied with their response and complained to CIFO.

The adjudicator said that that Cherry Godfrey had made appropriate enquiries of Miss C and had obtained a credit report. She thought that appropriate affordability considerations had been applied and that, had Miss C disclosed the full extent of her indebtedness at the time of the application, the issues with affordability would have been evident and the application would have been declined.

Miss C remained dissatisfied and requested a Final Decision from an Ombudsman. She said:

- The arrears on an undisclosed loan should have been shown on the credit report; and,
- Applying a 70% affordability test was inappropriate given the state of her finances at the time.

## **Findings**

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint. Where necessary or appropriate, I reach my conclusions on the balance of probabilities; that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

I have firstly looked at the information collected by Cherry Godfrey from Miss C at the time of the loan application. Notes provided by them showed that the proposal was to consolidate Miss C's debts that were listed as a Payday

loan of £1,600, an overdraft of £900 and monies owed to family and friends totalling £1,400. The notes detailed that Miss C had an existing loan with her bank that she was repaying at £260 per month, was in employment and was renting premises. The monthly income and expenditure analysis prepared by Cherry Godfrey noted an after-tax monthly income of £1,850 and monthly expenditures listed as: mortgage (which is in fact the rental obligation) of £400, cost of living £300, bank loan repayments of £260 and proposed loan repayments of £146.43, totalling £1,106.43 in monthly expenditure. This equated to 60% of Miss C's monthly income and left a disposable monthly income of £743.57.

Cherry Godfrey obtained a credit report on Miss C which was provided to CIFO. The report listed her total indebtedness as £13,603. The report does not detail the names of creditors but showed the indebtedness was made up of a loan of £11,609 – the bank loan, an overdraft facility of £1,000 which matched with the disclosed overdraft, a loan for home credit of £996 – which Cherry Godfrey said would have been something purchased on credit for the home, and a credit of £2 from a mail order company.

CIFO asked Cherry Godfrey about the affordability test it applied to Miss C. They told CIFO:

*“The cost of living figure of £300 is the minimum applied for a single person (the figure would be higher if the customer has dependent(s)) which was to be allocated/set aside in our calculations in 2018 (as of 2024 we now use a minimum figure of £440) to spend on living expenses.”*

*“The ceiling on affordability in 2018 would have been 70% (as of 2024 it is now set at 75%, due to the higher provision now for cost of living). The 70% ceiling means basically that we would generally not lend (in the absence of mitigating/exceptional circumstances) if the borrower's total monthly expenditure (including Cherry Godfrey loan repayments) was taken to a level above 70% of their monthly income (i.e. leaving an unallocated margin of only 30% or less). However in this case the percentage was 60% so this was comfortably within Cherry Godfrey's affordability ceiling.”*

*“...our loans and collections team review our affordability assessment regularly in line with local market conditions and guidance provided from money advice service (see: <https://sfs.moneyadviceservice.org.uk/>). Cost of living is determined by the amount of adults and dependants living in a household as well as other costs evident from communications with the borrower(s).”*

The money advice service is a service provided by the UK government and sets out a Standard Financial Statement to be used to gather income and expenditure information and sets out best practice guidance for users. It is used by consumer credit lenders, government creditors, utilities and debt collection agencies in assessing applications for loans.

Lenders licensed in Guernsey must comply with the Lending Credit and Finance (Bailiwick of Guernsey) Law, 2022, under which they have a responsibility to observe high standards of integrity and fair dealing in the conduct of their business and to act with due skill, care and diligence towards its customers. Further guidance issued by the Guernsey Financial Services Commission requires lenders *“to take steps to understand the circumstances of their customers”* and to have regard to the vulnerability of customers.

Miss C has told CIFO that, at the time of the loan application, she had another outstanding loan that she did not disclose to Cherry Godfrey. She provided a copy of the loan agreement and a statement of the loan account. They show a loan totalling £22,402 was taken in June 2012 repayable at £261.06 per month over 58 months and requiring a final payment of £7,000 in April 2022. At the time of the loan application to Cherry Godfrey approximately £10,000 remained outstanding on that loan. This loan did not appear on the credit report but that is not the fault of Cherry Godfrey. Credit agencies compile reports from information reported by third parties and it is presumed that the lender had not reported the arrears. As Miss C did not disclose the loan to Cherry Godfrey, I cannot reasonably hold Cherry Godfrey responsible for a loan that she did not disclose and that was not visible on Miss C’s credit report.

Taking all of the above into account, I am of the view that Cherry Godfrey applied the standard industry practice in place at the time and acted fairly and reasonably and in accordance with their obligations in their assessment of the affordability of the loan. Further I consider that Cherry Godfrey were entitled to rely upon the information provided by Miss C along with that disclosed in her credit report.

The Cherry Godfrey loan application signed by Miss C contains the declaration “*that all statements in the proposal are true and not misleading and acknowledge that they will be relied upon in making any loan and shall form part of any agreement between us*”. Miss C readily accepts that she had fallen into arrears on that loan and was not making the repayments and should have disclosed the loan to Cherry Godfrey. Had she done so the 70% affordability ceiling applied by Cherry Godfrey would have been exceeded and the loan would likely have been declined.

Notwithstanding that Miss C told CIFO that she did not understand money management at the time, I am satisfied that she would have been aware of the need to disclose all of her debts when applying for credit from Cherry Godfrey. As such, I cannot find that her failure to fully disclose her indebtedness was as a result of Cherry Godfrey acting unfairly or unreasonably in the handling of the loan application. The Cherry Godfrey loan was approved by Cherry Godfrey without their knowledge of the undisclosed loan. I therefore cannot reasonably hold Cherry Godfrey responsible for any affordability issues that may have arisen with the Cherry Godfrey loan as a result of the other undisclosed loan still outstanding at the time of application.

### **Final decision**

My final decision is I do not uphold this complaint.

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: 14 March 2025