

## Case study

### When the going gets tough

#### Background

Arapeta had been struggling with his financial situation for most of his adult life. He is the sole caregiver for four young children and works when he can fit it in around the children's needs. He receives the Sole Parent Support benefit and Accommodation Supplement from WINZ and some income from employment when he can get work but his total income from both sources is only enough to meet his family's day-to-day needs. Whenever he needed money for additional or unexpected items such as vehicle repairs, Christmas and birthday presents for the children or back-to-school expenses, Arapeta borrowed the amount required from a small local lender. He managed to make most of the payments required by the lender but not without some defaults or dishonours along the way.

Last year, Arapeta borrowed about \$10,000, some of which was new lending but most of which was a rollover of existing lending with the small local lender. The interest rate, initial fees and ongoing fees were at the high end of the range and Arapeta only made the first few payments before defaulting on the loan and he was never able to make up the default.

Arapeta realised that he was struggling and approached a budget advice service to assist him. He was allocated a financial mentor with whom he got along well with and felt confident would be able to help him.

The financial mentor repeatedly made contact with the lender and requested disclosure of all lending documents so she could work with Arapeta to improve his financial position. The lender refused to provide the requested disclosure documents because they had a poor history of working with this particular financial mentor and refused to engage with her. When the financial mentor requested that Arapeta be considered for hardship assistance, the lender twice refused to do so until Arapeta had filled in their prescribed form. As a result of the lack of information and engagement, the financial mentor was not able to work with her client to improve his position and a complaint was made to FDRS.

The complaint related not only to the lack of disclosure but also to concerns about the affordability of the loan at the time it was taken out and the lender's conduct when Arapeta got behind with his payments.

#### Next steps

FDRS contacted the lender and, after a significant delay, obtained the disclosure documents which the financial mentor had been trying to obtain for several months. The documents disclosed information which raised considerable cause for concern as the lender had included Arapeta's Sole Parent Support benefit and accommodation supplement as well as full-time wages as his income. This did not accord with Arapeta's own account of the amount of paid work he was able to do while caring for the children and it did not accord with WINZ's policy on abatement for beneficiaries who are working while receiving a main benefit.

Based on the lender's calculation which incorporated both sources of income, Arapeta could easily afford the loan and it seemed that the lender did not question the sustainability of him continuing to receive both sources of income for the entire period of the loan.

## Outcome

The parties were unable to reach an agreement and so FDRS formally adjudicated the matter.

FDRS concluded that the lender's reason for refusing to provide disclosure to the financial mentor was irrelevant and the lender had breached its obligations to the client.

In addition, FDRS concluded that the lender had also breached its legal duties to act with care, competence, diligence and skill when assessing affordability during the loan approval process and when handling Arapeta's hardship circumstances once it became aware that he was not able to repay the loan at the agreed rate.

After considerable analysis a decision was made that Arapeta remained liable to repay the principal sum borrowed but not any interest, costs or penalties associated with it. The remaining principal sum was then reduced by \$2,500, the amount awarded to Arapeta as compensation for the stress and inconvenience caused by the lender's conduct. The parties were then given a period of time to reach a mutually satisfactory repayment arrangement for the remaining debt. If they were not able to reach an agreement, FDRS would mediate a solution or make a further adjudication on the repayment matter.

## Lessons learned

This complaint shows that some lenders are not aware of the need to undertake and document a robust affordability assessment before lending is authorised or of their disclosure obligations on request. Borrowers can sometimes put lenders under pressure for a quick turnaround because they want the loan funds as soon as possible but lenders are required to withstand this pressure in order to meet their legal obligations.

The second learning point from this decision is that a lender who becomes aware that a borrower is in hardship cannot require that the borrower make them inform them of this in any particular format. The obligation to consider hardship assistance arises when the lender is informed (in any format) by the borrower of the need for the assistance. The lender cannot make hardship assistance contingent on any particular form being submitted.

*\* Names and identifying details have been changed to protect our customers' identities*