The complaint

Mr C complains about a guarantor loan provided to him by UK Credit Limited ("UKC") which he says was unaffordable.

What happened

UKC provided Mr C with a loan of £10,000 on 30 October 2017 which was secured by a guarantor. The loan was to be repaid over five years with monthly repayments of £348.84 and the total amount to be repaid was £20,930.40. The loan hasn't been repaid. In its September 2020 statement, UKC said there was a balance of £8,014.45 outstanding.

Mr C says that UKC should have seen from his credit report that he was unemployed and had zero income. He said that UKC didn't ask him for enough information about his expenses and proof of his income.

UKC told this service that Mr C didn't tell it in his complaint that he was unemployed and had zero income when he applied for the loan. The lender said that Mr C had supplied it with a payslip to evidence his income, confirmed his employer's details and had a conversation around his job, length of service, and the monthly income he received. UKC also said that it had established in its assessment that Mr C had previously relied on short term credit in the past for funding his training. Since then he had demonstrated that he had rehabilitated his credit, with no payday/short term credit taken out in the previous six months. During its assessment, it was able to evidence that Mr C's current commitments were being met without the need to borrow more and that the frequency of Mr C applying for credit had reduced. Based upon the information available to it, the lender was satisfied that it had an understanding of Mr C's circumstances, and that the loan was affordable.

Our adjudicator assessed the complaint and recommended that it be upheld.

UKC disagreed. It said that the adjudication didn't make any reference to a key consideration which was that Mr C had applied for the loan with the knowledge that he was no longer in employment. It only became aware of this through Mr C's own admission in his complaint to this service and from an open website forum. At the time of his loan application Mr C had provided it with his payslip dated 23 September 2017 and had told it in a phone conversation on 30 October 2017 that he was employed, had provided details of his employer and said that he saw no change in his circumstances.

The adjudicator responded to say that if proportionate checks had been carried out, then UKC would have seen that the loan wasn't sustainable. Had UKC required further evidence such as bank statements, UKC would have seen that Mr C was experiencing financial difficulties. The adjudicator didn't think that Mr C would have been able to make the loan repayments in a sustainable manner.

UKC then referred to a decision of this service in which the ombudsman rejected a complaint where the consumer had failed to disclose his existing loans to the lender.

As this complaint hasn't been resolved informally, it has come to me, an ombudsman, to review and resolve.

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.

When UKC lent to Mr C the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

The relevant rules said that a lender must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. So even in this case, where Mr C had provided security for his loan in the form of a guarantee and indemnity agreement, this didn't absolve UKC of its obligation to assess whether in the first instance Mr C could meet his repayments without undue difficulty over the term of the loan.

The rules don't set out any specific checks which must be completed to assess creditworthiness. However, the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts and any indications of vulnerability or financial difficulty. Whilst it is down to the lender to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit.

So, UKC's assessment needed to be flexible – what was reasonable for one borrower might not be so for another, or what might be reasonable for a borrower for one loan application might not be so for the same borrower for a different loan.

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- the *lower* a borrower's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of credit is likely to be greater and the borrower is required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr C's case, I've considered the following questions:

- Did UKC complete reasonable and proportionate checks when assessing Mr C's loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did UKC make a fair lending decision?

UKC gathered some information from Mr C before it agreed the loan. It asked him for details of his income and asked for his payslip. Mr C provided a payslip dated 23 September 2017 which showed his net pay as £1,328.63. UKC also asked Mr C about his normal expenditure. This totalled £666.66 including credit card repayments of £230. Mr C said that he lived with his parents and they paid normal household expenses.

UKC also checked Mr C's credit file. It was aware from this that Mr C had four credit cards with total balances over £12,000. Two of his card balances exceeded the credit limits on those cards and the other two were very near their respective credit limits. I think this shows that Mr C's finances were showing signs of possible strain which should have caused UKC some concerns.

There was also one loan shown on the checks on which Mr C was paying monthly payments of £119.

I also note that UKC discussed the credit commitments it had seen on its checks with Mr C. UKC also based its assessment on the expenditure information Mr C had provided to it. I don't think it was reasonable for UKC to rely on expenditure information from Mr C without verifying it given the cost of the credit, that the loan repayments would take up over 26% of Mr C's declared monthly income, that he needed to be able to meet this level of repayment for five years, and that his finances were showing signs of possible strain. UKC didn't say that it took steps to do this.

So, I don't think the checks UKC carried out on this occasion were reasonable and proportionate. It needed to do more to get a thorough understanding of Mr C's financial position to reasonably assess the risk to Mr C of not managing to meet his repayments sustainably. It could have done this by, for example, requesting bank statements from Mr C or by asking for copies of bills and/or receipts for his expenses.

Mr C has provided his bank statements from around the time he applied for the loan. I'm not suggesting here that this is the check that UKC should have done. But I think looking at his bank statements gives me the best picture of what the lender should have seen.

I've reviewed Mr C's bank statements to see what I considered to be proportionate checks would have shown. I note from Mr C's bank statements in the month before the loan that Mr C's account was overdrawn at the beginning and end of the month and he was paying unplanned overdraft fees. There were also seven returned direct debit payments. Mr C had taken out a payday loan for £700 two weeks prior to UKC's loan. There were repayments to four credit cards, a long term loan and another payday loan. Mr C's other expenses were higher than he'd disclosed to UKC. Mr C has told us that he was gambling at the time, but I can see only limited evidence of those transactions on his bank statements.

Other available information on Mr C's own credit report shows that Mr C had a payday loan account defaulted two weeks prior to UKC's loan. Altogether he had three outstanding payday loans at the time of applying for UKC's loan.

I note that the purpose of the loan was to pay off some of Mr C's credit card and payday loan debt. But I can see that the new loan wouldn't have covered all of Mr C's outstanding debt. UKC was aware of this and had taken it into account in its assessment. But further checks would likely have shown that Mr C had other debts it didn't know about as I've set out above. It would also have seen that Mr C was paying bank charges for an unplanned overdraft and had returned direct debit payments.

I don't think that UKC treated Mr C fairly when it agreed to lend to him as it was likely that agreeing more credit for him would simply add to his debt levels. Furthermore, I think proportionate checks would have shown there was a risk that Mr C wouldn't be able to meet his repayments on UKC's loan sustainably over the lifetime of the loan, given that he'd need to set aside about a quarter of his monthly income for this loan and still continue to repay some existing debts.

I note that UKC was concerned that Mr C had provided it with false information about his employment and had withheld information about his gambling. UKC has also referred to another decision of this service. However, as UKC knows, we assess each case on its own merits and it isn't appropriate to compare the outcomes of complaints as the circumstances may be very different. In this case if UKC had carried out the independent view of Mr C's circumstances that I think was needed for this loan, it was likely to have seen that the loan wasn't sustainable.

Putting things right

In line with this Service's approach, Mr C shouldn't repay more than the capital amount of £10,000 he borrowed for his loan. To put things right for Mr C, UKC should:

1. Remove any interest and charges applied to Mr C's account from when it was opened;
2. Consider all payments made by Mr C as payments towards the capital amount.
3. If Mr C has made payments above the capital amount, then these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*;
4. If there is a shortfall in repayments which leaves a capital amount outstanding, then UKC needs to treat Mr C sympathetically and fairly, which might include coming to a new arrangement about how best to repay this; and
5. Remove any adverse information on Mr C's credit file in relation to this loan when it has been settled.

*HM Revenue & Customs requires UKC to take off tax from this interest. UKC must give Mr C a certificate showing how much tax it has taken off if he asks for one.

My final decision

My decision is that I am upholding Mr C's complaint for the reasons set out above and require UK Credit Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 October 2020.
Roslyn Rawson
Ombudsman