DRN-2116718

The complaint

In summary, Mr F has complained that Nine Regions Limited (NR) provided him with a loan when he wasn't able to afford it.

What happened

In September 2009 NR gave Mr F a loan for £1,000 repayable over 18 months. It was a log book loan secured on his car. The total amount repayable by Mr F for the £1,000 he was borrowing, was £2,922.66. The weekly repayments were £37.47. The interest rate for the loan was 10.68% a month.

Since the sale of the loan, NR has gone into liquidation. Mr F's concerns were investigated by one of our adjudicators. They asked the liquidator to provide its file so that the complaint could be investigated. No response was received, so the adjudicator investigated the complaint based on the limited information that was available. This included information provided by Mr F about his finances and the loan, at the time the loan was taken out.

They explained why they thought NR had been wrong to lend the money to Mr F. No response was received from the liquidator. Our service wrote to the liquidator about this case in December 2020. In response, the liquidator said Nine Regions was not in a position to refund any interest and charges, and this would need to be claimed in the liquidation. In respect of the credit history, the debt had been sold onto a third party and the purchaser of the loan would need to make that decision.

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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr F's complaint.

Having done so, I've decided to uphold Mr F's complaint. I'll explain why.

There are several questions that I've thought about when deciding if NR treated Mr F fairly and reasonably when it provided him with the loan.

1) Did NR complete reasonable and proportionate checks to satisfy itself that Mr F would be able to repay his loan in a sustainable way?
2) If not, what would reasonable and proportionate checks have shown at the time?
3) Ultimately, did NR make a fair lending decision?
4) Did NR act unfairly or unreasonably in some other way?

Did NR complete reasonable and proportionate checks to satisfy itself that Mr F would be able to repay his loan in a sustainable way?

The rules that NR had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr F could afford to repay the loan he was wanting to take out. This is often referred to as an "*affordability assessment*".

The rules don't set out what specific checks it needed to carry out, but it did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of NR's checks needed to reflect the nature of the loan, bearing in mind things such as the amount of credit, the interest rate, the duration of the loan, the monthly and total amounts repayable, and any indications of customer vulnerability.

The checks NR needed to carry as part of its affordability assessment, needed to be "borrower focussed". What I mean by this is that the checks needed to consider whether paying the loan back would cause Mr F any difficulties or have any adverse consequences for him. It would also need to take into account factors such as the amount of money being lent, the term of the loan and the monthly repayments, total charge for the credit and the interest rate being charged. This isn't an exhaustive list.

And as a result of the above I think a reasonable and proportionate check needed to be more thorough if Mr F had a low income. This would reflect that it could be more difficult for him to make the loan repayments with a low income.

It would also need to be more thorough the higher the amounts he had to repay, as it would be more difficult to make higher loan repayments on a given income.

The length of the loan term would also be relevant, partly because where the loan duration is longer, the total cost of credit was likely to be higher. It would also be relevant because there is greater risk of a negative change in circumstances affecting Mr F's ability to repay, where repayments need to be sustained over a longer period.

With these principles in mind I've thought about whether NR completed reasonable and proportionate checks to satisfy itself that Mr F would be able to repay his loan in a sustainable way.

Unfortunately, NR hasn't provided any information about what checks it carried out when it provided Mr F with the loan. So, I can't safely say that it carried out reasonable and proportionate checks to ascertain whether the loan was sustainably affordable for Mr F.

What would reasonable and proportionate checks have shown at the time?

Mr F has provided additional information about his finances to enable us to better understand his circumstances and the potential impact on him of taking out this loan.

He has provided us with copies of his bank statements for August, June and July 2009, the three months prior to him taking out the loan. These statements show significant payments to pay day lenders. And there is also evidence of significant amounts of gambling transactions. And his account appears to have been heavily overdrawn at the end of August 2009.

So, if NR had carried out these checks on Mr F's finances in this way, it would have seen that Mr F appeared to have been in a cycle of taking out pay day loans and spending significant amounts of money on gambling; which should have alerted NR to question whether the loan was affordable for him. And I think this information should have led it to conclude that Mr F was unlikely to have been able to sustainably make the loan repayments, and that it shouldn't have provided him with the loan.

Putting things right

I think it is fair and reasonable for Mr F to repay the principal amount that he borrowed, because he had the benefit of that lending. But he has paid interest and charges on a loan that shouldn't have been provided to him. So, I think Mr F has lost out and Nine Regions Limited should put things right for him. It should:

a) Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Mr F should then be applied to the capital balance. If the payments Mr F has made total more than the £1,000, he was lent, then any surplus should be treated as overpayments and refunded to him with 8% simple interest* calculated on any overpayments made, from the date they were paid by Mr F to the date the complaint is settled.

b) Remove any adverse information recorded on Mr F's credit file as a result of this loan. *HM Revenue & Customs requires Nine Regions Limited to deduct tax from this interest. Nine Regions Limited should give Mr F a certificate showing how much tax it's deducted, if he asks for one.

I understand that the outstanding debt has been sold on to a third party. If that is the case, then Nine Regions Limited has a number of options. It can:

1) Buy back the debt so that it can make the appropriate adjustments* or
2) Pay the third-party owner an appropriate amount to compensate it for any adjustments required since it took over the debt, or
3) Pay Mr F an appropriate amount to compensate him for any required adjustments

*I'd also remind Nine Regions of its obligation to exercise forbearance and due consideration should it choose to buyback Mr F's account and retain it.

My final decision

For the reasons I've set out above, my decision is to uphold Mr F's complaint about Nine Regions Limited. If Mr F accepts my decision, Nine Regions Limited needs to calculate and pay any Mr F compensation due to Mr F, using the methodology above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 April 2021.

Simon Dibble
Ombudsman