

## **Complaint**

Mr V has complained about a guarantor loan UK Credit Limited ("UK Credit") provided to him. He says his credit report would have shown he had recent payday loans and his bank statements would have shown he had a gambling problem. So UK Credit shouldn't have lent to him.

## **Background to the complaint and my provisional decision of 3 February 2021**

UK Credit provided Mr V with a guarantor loan of £6,000.00 in March 2016. The purpose recorded for the loan was debt consolidation. This loan had an APR of 37.9% and a 36-month term. This all meant the total amount repayable of £9,479.88 was due to be repaid in 36 monthly instalments of around £265. As I understand it, an outstanding balance remained at the time of Mr V's complaint.

Mr V's complaint was initially reviewed by one of our adjudicators. He thought that proportionate checks wouldn't have shown UK Credit that it shouldn't have provided this loan to Mr V. So he didn't recommend Mr V's complaint be upheld. Mr V disagreed and asked for an ombudsman to look at this complaint.

One of our ombudsmen then reviewed Mr V's complaint and issued a provisional decision, which upheld the complaint and allowed the parties to provide further submissions. This time UK Credit disagreed with the proposed resolution. As the ombudsman who issued the provisional decision is no longer available to consider Mr V's complaint, the case has been passed to me to decide.

On 3 February 2021, I issued a provisional decision setting out my initial findings on Mr V's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice – is set out on our website. And I referred to this when deciding Mr V's complaint.

Having carefully thought about everything, I thought that there were two overarching questions that I needed to answer in order to fairly and reasonably decide Mr V's complaint. These two questions were:

1. Did UK Credit complete reasonable and proportionate checks to satisfy itself that Mr V would be able to repay his loan in a sustainable way?
  - o If so, did it make a fair lending decision?
  - o If not, would those checks have shown that Mr V would've been able to do so?
2. Did UK Credit act unfairly or unreasonably in some other way?

I started by considering the first of the questions.

My consideration of this matter started by explaining UK Credit provided this loan while it was authorised and regulated by the Financial Conduct Authority (“FCA”). The rules and regulations in place required UK Credit to carry out a reasonable and proportionate assessment of Mr V’s ability to make the repayments under this agreement. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so UK Credit had to think about whether repaying the loan would cause significant adverse consequences *for Mr V*. In practice this meant that UK Credit had to ensure that making the payments to the loan wouldn’t cause Mr V undue difficulty or adverse consequences.

In other words, it wasn’t enough for UK Credit to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr V. The existence of a guarantee and the potential for UK Credit to pursue the guarantor instead of Mr V, for the loan payments doesn’t alter, lessen, or somehow dilute this obligation.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I thought that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’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 term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I explained that there might also be other factors which could influence how detailed a proportionate check should’ve be for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I carefully thought about all of the relevant factors in this case.

*Were UK Credit’s checks reasonable and proportionate?*

UK Credit said that it carried out an income and expenditure assessment with Mr V prior to providing him with this loan. It said it also carried out a credit check. Mr V confirmed that he was earning around £1,900.00 a month. He confirmed that he was living with his parents, paying £50 a week to them for board and had other commitments to childcare costs, a mobile phone bill, car costs, entertainment and clothing.

The credit check UK Credit carried out also showed that Mr V had outstanding balances on existing credit. UK Credit says the proceeds of this loan were primarily going to be used to clear Mr V's overdraft and credit card balance. It also says Mr V had more than enough left over to make the required monthly loan payments, when his living costs and the monthly payments needed to meet the credit commitments shown on the credit search, which weren't being consolidated by this loan, were deducted from Mr V's monthly income.

I thought about what UK Credit had said. My response to this matter started by saying that simply requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan. The credit check UK Credit carried out indicated that Mr V had a significant amount of outstanding credit and that he also had four outstanding payday loans. UK Credit says its underwriter was aware of these and deducted them from Mr V's disposable income. While I agreed it was sensible to account for these payments, the number of outstanding payday loans did cast doubt on the accuracy of the income and expenditure information provided.

Bearing in mind the regulatory rules place an obligation to carry out a borrower focused check and Mr V's previous difficulties were apparent, I would have expected UK Credit to have taken additional steps to verify that Mr V could take on this additional commitment before providing it. So, in this case, bearing in mind the outstanding balances and Mr V's previous payday borrowing, I thought that UK Credit needed to take steps to verify Mr V's income and expenditure instead of relying on a calculation of his monthly disposable income which appeared over optimistic.

I've saw that UK Credit said it had relied on information from Mr V's bank and a credit reference agency to electronic verify his income. But I couldn't see that UK Credit had any contact with Mr V's bank. And I also couldn't see how a credit reference agency would have had information from Mr V's employer regarding his income.

Equally I couldn't see anything to suggest that UK Credit took any steps to verify Mr V's living expenses. As I couldn't see that UK Credit did this, or in fact took any other steps to address the apparent mismatch between the disposable income calculated and the information on the credit file, I didn't think that the checks carried out before Mr V was provided with his loan were reasonable and proportionate.

As reasonable and proportionate checks weren't carried out before this loan was provided, I couldn't say for sure what proportionate checks would most likely have shown. This meant I needed to decide whether it was more likely than not that a reasonable and proportionate affordability check would've told UK Credit that Mr V would've been unable to sustainably repay this loan.

Mr V provided us with evidence of his financial circumstances from around the time he applied for this loan. He provided us with copies of bank statements from the months leading up to his application. I accepted different checks might show different things. And just because something showed up in the information Mr V provided at this stage, it didn't mean it would've shown up in any checks UK Credit might've carried out at the time.

But in the absence of anything else from UK Credit showing what this information would have shown, I thought it was perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr V's financial circumstances were more likely than not to have been at the time.

I was clear in saying that I wasn't looking at Mr V's bank statements because I thought that UK Credit ought to have obtained them before lending to him. I consulted Mr V's bank statements because they were readily available at this stage and they contained the information I now needed to take the steps, which I thought that UK Credit ought reasonably to have taken, to verify the income and expenditure information Mr V provided.

I carefully considered the information Mr V had provided in light of all of this.

Looking at Mr V's bank statement in the month prior to loan application I could see that his income declaration was broadly correct. And there was nothing on the statement to suggest that his declared living costs were inaccurate either. So I was satisfied that a look at Mr V's bank statement would have validated what he declared in his call with UK Credit's agent during the application process.

I appreciated that Mr V's account was overdrawn and that he'd taken payday loans. But this loan was provided to clear Mr V's overdraft and he gave an undertaking that his payday loans would be settled out of his income, which his disposable income and the information on his bank statement suggested he would be able to do. As this was Mr V's first loan with UK Credit, these outstanding balances were factored into UK Credit's assessment of whether Mr V would be able to make his guarantor loan repayments and the indications were that he could do so, I didn't think it was unfair or unreasonable to continue with the application.

In reaching this conclusion, I kept in mind what Mr V had said about his gambling. I accepted that Mr V's earlier bank statements – certainly around the turn of the year and the early part of 2016 – did show large payments to gambling companies. But this drastically reduced in the period leading up to this application.

Mr V said he used other credit for his gambling during this period and I agreed this may well have been the case. I didn't know why Mr V did this - although I accepted it was possible Mr V stopped using his bank account for larger payments to gambling providers because he was at the limit of his overdraft, or possibly because he anticipated that he could be asked for a bank statement in the event he wished to apply for a loan or any other credit. I thought that ultimately only Mr V actually knew the reason why these payments stopped being made from his bank account at that stage.

That said, Mr V's reasons for not using his bank account to make his gambling transactions in the lead up to this application didn't matter too much here. I said this because, what I was required to decide here was whether UK Credit ought reasonably to have foreseen that Mr V may have used the proceeds of this loan for gambling (or some other unsustainable purpose). I was satisfied that Mr V's April bank statement, which didn't show large amounts of gambling, would have addressed the questions I think UK Credit's initial checks left unanswered – namely was Mr V's income and living expenses (his credit commitments were already validated by the credit search) broadly in line with what he declared? – bearing in mind this was a first loan Mr V was taking out.

As this was the case and also bearing in mind checking bank statements wasn't the only way for UK Credit to have found this out – it could have obtained payslips, copies of bills etc – I was satisfied that proportionate checks wouldn't have extended into obtaining the bank statements from earlier in 2016, which would have outlined the true extent of Mr V's gambling. I didn't think that proportionate checks would have extended into requesting the

earlier bank statements. Equally there wasn't anything else in the information UK Credit gathered – including the phone call Mr V had with UK Credit's agent during the application process – to suggest that UK Credit ought to have been aware of Mr V's gambling.

So having considered all of this, I was satisfied that it wasn't the case UK Credit ought reasonably to have foreseen that Mr V may have used the proceeds of this loan for gambling (or some other unsustainable purpose).

Bearing all of this in mind, I was satisfied that reasonable and proportionate checks would not have prevented UK Credit from providing Mr B with this guarantor loan. As this was the case, I was minded to find that UK Credit didn't unfairly enter into this guarantor loan with Mr V.

Finally, I then went on to consider the second of the overarching questions that I thought was relevant to my determination of Mr V's complaint. I carefully thought about everything provided. Having done so, I hadn't seen anything that led me to conclude UK Credit acted unfairly or unreasonably towards Mr V in some other way.

So I found that UK Credit didn't act unfairly or unreasonably towards Mr V in some other way.

All of this led to me issuing a provisional decision which found that:

- UK Credit *didn't* complete reasonable and proportionate checks on Mr V to satisfy itself that he was able to repay his loan;
- reasonable and proportionate checks *would* more likely than not have shown Mr V was likely to be able to sustainably repay this loan and so are unlikely to have changed UK Credit's decision to provide it;
- UK Credit didn't act unfairly or unreasonably towards Mr V in some other way.

These findings left me intending to issue a final decision concluding that UK Credit didn't act unfairly or unreasonably towards Mr V when providing him with his loan. So I was not intending to uphold Mr V's complaint.

### **UK Credit's response to my provisional decision**

UK Credit responded to my provisional decision. Its response said it didn't disagree with the conclusion I reached, but it wished to clarify that it verified a minimum amount of £1,900.00 had been credited into Mr V's bank account each month. And it relied on this as confirmation of Mr V's income and provided evidence of this check.

### **Mr V's response to my provisional decision**

Mr V responded to my provisional decision confirming that he didn't agree with my provisional decision. In summary, he said this was because:

- He was gambling up until March where he took out a credit card and maxed out a limit of £3,100.00. He then gambled a further £90+ plus in the lead up to the loan.
- He had taken a large number of payday loans in the months leading up to this application. This together with the new credit card he was provided with and the limit

increase he had on another meant that it was irresponsible for UK Credit to take his word for it that he'd consolidate his debts given his history of gambling.

## **My findings**

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 general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr V's complaint.

Having carefully thought about everything, I remain of the view that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr V's complaint. These two questions are:

1. Did UK Credit complete reasonable and proportionate checks to satisfy itself that Mr V would be able to repay his loan in a sustainable way?
  - o If so, did it make a fair lending decision?
  - o If not, would those checks have shown that Mr V would've been able to do so?
2. Did UK Credit act unfairly or unreasonably in some other way?

I've thought about what UK Credit has said about its check on Mr V's income. It may have asked Mr V's bank to verify that a certain amount of funds went into his account each month. But this to me suggests that all credits including deposits from loans or other unsustainable sources could be classed as income. So while I accept that UK Credit might have checked whether Mr V's account was in receipt of a certain amount of funds, as there was no verification of where these funds came from, I'm not necessarily persuaded that this went as far as verifying Mr V's income and employment.

I now turn to Mr V's comments. I want to be clear in saying that I don't doubt Mr V was gambling. And if UK Credit had obtained a few months' worth of bank statements from Mr V, as he now says it should have done, it might have discovered this. But it doesn't automatically follow that UK Credit unfairly provided this loan because it didn't obtain the level of information Mr V now says it should or that the complaint should be upheld because of this.

I say this because what I need to decide here is whether reasonable and proportionate checks would have led to UK Credit discovering the extent of Mr V's gambling and so it ought reasonably to have foreseen that Mr V may have used the proceeds of this loan to gamble. And the key thing here is that I think reasonable and proportionate checks only required UK Credit to go as far verifying that Mr V's normal monthly outgoings were what he said they were. Crucially I don't think this required asking Mr V's bank statements at all. It could have asked for bill payments, rent agreements or other evidence of Mr V's living costs.

But even if UK Credit had decided to verify Mr V's normal monthly outgoings with bank statements, I think a single months' worth of bank statements would have confirmed Mr V didn't have much in the way of outgoings and so could quite easily afford to consolidate his existing debts with this loan and his salary for the month. And as I explained in my provisional decision, it wouldn't have shown the true extent of Mr V's gambling.

In these circumstances, and bearing in mind this was a first loan, it wouldn't be fair, reasonable or proportionate to expect UK Credit to have done even more than this – a single bank statement, which UK Credit wasn't even required to ask for, would in any event have shown Mr V had the means to settle all of the debts he's referred to (which I was fully aware of when I issued my final decision) like he said he would. And I don't think that further information – and more bank statements – would have been necessary.

So even if UK Credit had done more to verify Mr V's expenditure, like I think it ought to have done, I don't think it would have been proportionate for it to have gone into the depth of check Mr V is now saying it should have, in order to discover his gambling. In these circumstances, and while I've carefully thought about the further points Mr V has made, I've not been persuaded to alter the conclusions I reached in my provisional decision of 3 February 2021.

Having carefully considered everything provided and the two overarching questions set out earlier in this decision, I find that:

- UK Credit *didn't* complete reasonable and proportionate checks on Mr V to satisfy itself that he was able to repay his loan;
- reasonable and proportionate checks *would* more likely than not have shown Mr V was likely to be able to sustainably repay this loan and so are unlikely to have changed UK Credit's decision to provide it;
- UK Credit didn't act unfairly or unreasonably towards Mr V in some other way.

These findings leave me concluding that UK Credit didn't act unfairly or unreasonably towards Mr V when providing him with his loan. So I'm not upholding Mr V's complaint.

Although I'm not upholding Mr V's complaint, I'd like to remind UK Credit of its ongoing obligation to exercise forbearance in light of Mr V's apparent difficulty repaying this loan, should it choose to collect payments from him and it be the case he's experiencing financial difficulty.

### **My final decision**

For the reasons given above, and in my provisional decision of 3 February 2021, I'm not upholding Mr V's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 19 March 2021.

Jeshen Narayanan  
**Ombudsman**