

The complaint

Mr T says UK Credit Limited lent to him irresponsibly.

What happened

Mr T took out a guarantor loan from UK Credit on 15 August 2018. It was for £9000 over 60 months. The monthly repayment was £313.96 and the total repayable was £18837.60. I understand there remains an outstanding balance.

Mr T says UK Credit failed to carry out an effective affordability assessment.

Our investigator recommended the complaint should be upheld. He said UK Credit's checks were not proportionate, and proportionate checks would have shown the loan wasn't sustainably affordable for Mr T.

UK Credit disagreed and asked for copies of the bank statements the investigator had referred to in his view. It said Mr T had never missed a repayment and the more recent credit search it completed as part of its complaint review showed a reduction in Mr T's indebtedness. So it wasn't obvious that the loan was unaffordable or unsustainable for Mr T – but it accepted that the bank statements may show otherwise.

Our investigator explained that he didn't feel the lender needed the full statements as he had summarised the gambling transactions on the statements that show Mr T was having problems managing his money at the time of his loan application. As UK Credit were unhappy with this response and asked for an ombudsman to review the case it was passed to me to make a final 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when UK Credit lent to Mr T. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged UK Credit to lend responsibly. Amongst other things, UK Credit was required to carry out a reasonable and proportionate assessment of whether Mr T could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So UK Credit had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr T. 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 T.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (eg. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for.

In light of this, I think 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 repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments 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 the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether UK Credit did what it needed to before agreeing to lend to Mr T, and have considered the following questions:

- did UK Credit complete reasonable and proportionate checks when assessing Mr T'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 UK Credit make a fair lending decision?
- did UK Credit act unfairly or unreasonably in some other way?

UK Credit asked for some information from Mr T before it approved the loan. It asked for details of his income, his employment and his housing costs. It asked for a recent payslip to check his declared income. It checked his credit file to understand his credit history and his existing credit commitments. Using national statistics it made an assumption about his monthly living costs. It also asked about the purpose of the loan which was to buy a car. From these checks combined UK Credit concluded Mr T had sufficient monthly disposable income for the loan to be affordable.

But I don't agree that these checks were proportionate. Mr T was applying to borrow a significant amount of money from UK Credit. He was entering into a long-term commitment and would need to make monthly repayments for five years. So I would expect that UK Credit would want to gather, and independently check, more detailed information about Mr T's financial circumstances before it agreed to lend to him. It knew from the credit check it completed that he had financial difficulties historically. He had defaulted/delinquent debt of over £19,000 and outstanding unsecured debt of over £49,000. I have carefully considered UK Credit's comments on the steps it took to understand Mr T's financial history, but in these circumstances I disagree that it did enough. And I think it would have been proportionate for UK Credit to independently check the actual state of Mr T's finances before agreeing the loan.

This means I need to look at what proportionate checks would most likely have shown UK Credit and consider if it ought to have realised that there was a risk Mr T couldn't sustainably afford the repayments.

I have looked at Mr T's bank statements. I am not saying UK Credit had to do this as part of its checks but it's one way UK Credit could have gathered the information I think it needed on Mr T's financial situation – and a way for me to understand his actual expenditure at the time of this loan application.

I have considered UK Credit's request for copies of Mr T's bank statements. I note he declined to provide them to the lender directly. I am satisfied the investigator shared sufficient details of the transactions that are relevant in his view. He said *'The statements also show that Mr T was spending considerable amounts towards online gambling. In the month prior to taking this loan there were over 100 transactions totalling around £2,000 towards betting sites and in the month prior to this, the amount was around £5,892.'*

Where customers provide personal information such as bank statements in the course of making a complaint, we don't typically share the information in full. This is in line the provision set out in DISP 3.5.9 which states that the *Ombudsman* may "accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate".

Having reviewed the bank statements, I agree with the investigator that they evidence that Mr T was having problems managing his money when he applied for this loan. They show a high number of gambling transactions: equivalent to over half Mr T's income in the month before the loan, and substantially in excess of his income in the month before that. So I think it's clear that Mr T was struggling financially and there was a high risk he wouldn't be able to repay this loan sustainably - that is, without borrowing further or suffering other adverse financial impacts - and this was what UK Credit was obliged to check.

UK Credit argues its credit search showed Mr T had previously experienced financial difficulties but had turned this round and was broadly managing his credit well. But for the reason set out above I think had it completed proportionate checks it would have realised this was not the full picture and Mr T remained vulnerable to suffering severe financial difficulties. So it was wrong to lend to him. Its point in response to the investigator's view that he has not missed or made a late payment and that his overall indebtedness has reduced does not change my conclusion. It does not know how Mr T has managed to make payments or reduce his debt. And more critically these facts do not change my finding that it failed to meet its obligations as a responsible lender at the point it approved the loan.

I have found no evidence that UK Credit acted unfairly or unreasonably in some other way towards Mr T.

Putting things right

It's reasonable for Mr T to have repaid the capital amount that he borrowed as he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been given to him. So he has lost out and UK Credit needs to put things right.

It should:

- Remove all interest, fees and charges on the loan and treat all the payments Mr T made as payments towards the capital.
- If reworking Mr T's loan account results in him having effectively made payments above the original capital borrowed, then UK Credit should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.

- If reworking Mr T's loan account results in an outstanding capital balance, UK Credit should try to agree an affordable repayment plan with Mr T.
- Remove any adverse information recorded on Mr T's credit file in relation to the loan once he has repaid the capital.

*HM Revenue & Customs requires UK Credit to deduct tax from this interest. UK Credit should give Mr T a certificate showing how much tax it's deducted, if he asks for one.

My final decision

I am upholding Mr T's complaint. UK Credit Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 September 2021.

Rebecca Connelley
Ombudsman