DRN-2712851

The complaint

Mr B has complained that UK Credit Limited ("UK Credit") provided him with an unaffordable loan.

What happened

UK Credit provided Mr B with a guarantor loan of £4,000.00 in May 2018. This loan had a 36-month term with a monthly repayment amount of £211.18. This all meant the total amount repayable of £7602.48 was due to be repaid.

One of our investigators looked at this complaint and thought that UK Credit hadn't carried out proportionate checks. He concluded that if it had done so, it would have seen that the loan was unaffordable and the repayments not sustainable. UK Credit disagreed with our investigator and asked for an ombudsman to review the complaint.

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 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 B's complaint.

Having carefully thought about everything, I think that there are overarching questions that I need to answer in order to fairly and reasonably decide Mr B's complaint. These questions are:

- Did UK Credit complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay his loan in a sustainable way?
- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr B would've been able to do so?

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 B'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 B*. In practice this meant that UK Credit had to ensure that making the payments to the loan wouldn't cause Mr B 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 B. 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 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 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).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

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

Were UK Credit's checks reasonable and proportionate?

UK Credit says that it carried out an income and expenditure assessment with Mr B prior to providing him with this loan and discussed this with him on the phone. It says it also carried out a credit check. UK Credit verified Mr B's income by asking for and checking two payslips. It says it worked out an average amount of £3980. UK Credit then worked out Mr B's expenditure would be around £3248. It arrived at this figure by asking Mr B about his expenditure on the phone. It then says it cross checked his credit report. It also used figures provided by The Office of National Statistics. It provides an average expenditure figure for someone living in a similar situation and location. UK Credit took Mr B's declaration about his proportion of the rent of £900, then added ONS data for regular expenditure of £1237.18 and then added an amount for credit commitments of £899 (minus loan repayments that Mr B said he was looking to consolidate) and then the monthly loan amount for this loan. UK Credit say it would have left Mr B with disposable income of £731.93. It says its assessment showed that the loan was affordable for Mr B.

I have looked through the credit search results UK Credit had in front of it when it agreed to lend and have also read its final response to Mr B. It has said within its final response that Mr B had six outstanding short-term loans at the time. I have checked what it has said against the credit search results it had in front of it and can see the 6 short term loans that it is referring to. These six open short-term loans taken out, on their own should have given UK Credit concerns that he had become reliant on this type of credit. I note that it says it had a conversation with Mr B about this and that he had given it a plausible reason why he had taken these loans out. But as a responsible lender I don't think it should have just taken what Mr B had said about this at face value on this occasion, due to the amount of loans in question on the credit report and due to the amount and length of the loan he was asking UK Credit for. I think it should have carried out further checks to verify Mr B's expenditure and to verify what he was saying in order to make sure that he could sustainably repay the loan repayments over the term of the loan.

I would also agree with our investigator, that UK Credit should have done more rather than rely on ONS data to estimate Mr B's living expenses. The FCA permits the use of statistical data to estimate a prospective borrower's non-discretionary expenditure. I accept that this is the case but it's also fair to say it also states that it is unfair to rely on such data where it is unlikely to be reasonably representative of the prospective borrower's situation.

UK Credit used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Mr B's living expenses. But UK Credit knew, when it lent to Mr B, that it was providing a loan to someone whose credit file suggested they fell outside this average portfolio. I don't think that using ONS data – which was unlikely to reflect the existing commitments in Mr B's position is fair, reasonable and proportionate. And so, I conclude using ONS data here was not proportionate and further checks were required to find out what his actual spend was.

In conclusion and for the reasons given above, I don't think that the checks UK Credit carried out before providing Mr B with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to UK Credit that Mr B would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So, I need to decide whether it is more likely than not that a proportionate check would have told UK Credit that Mr B would have been unable to sustainably repay this loan.

UK Credit was required to establish whether Mr B could make his loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Mr B has provided our service with bank statements from the period of time before this loan was granted. I've carefully considered the information provided within these statements. Having done so, it's clear Mr B was gambling significant amounts of money at the time he asked for this loan. He also had other short-term loans active at this time that did not appear on its credit search. In these circumstances, it is apparent to me that further checks would have shown UK Credit that Mr B was unlikely to have been able to repay this loan without borrowing further or experiencing financial difficulty.

UK Credit has told our service it provided a loan at a lower rate of interest, so that Mr B could consolidate his debts and pay less on his credit commitments each month. I acknowledge what it has said here. But as I have just concluded, it if had carried out further checks it would have seen that Mr B had other loans that it hadn't accounted for and also significant spend on gambling transactions that would have shown it that he was having problems managing his finances that a partial consolidation wouldn't have solved.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would have shown UK Credit that Mr B would not have been able to sustainably repay this loan. So, I'm satisfied that UK Credit's failure to carry out proportionate checks resulted in it unfairly providing this loan to Mr B.

So, it follows that I currently think that UK Credit needs to put things right.

Putting things right

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Mr B's complaint for UK Credit to put things right by:

- Removing all interest, fees and charges applied to the loan from the outset. The payments Mr B made, direct to UK Credit, should be deducted from the new starting balance – the £4,000.00 originally lent.

- If Mr B has already repaid more than £4,000.00 then UK Credit should treat any extra as overpayments. And any overpayments should be refunded to Mr B;
  adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr B to the date of settlement†

- If the amount repaid is less than £4000.00 then both parties should look to agree a payment plan. I would like to remind UK Credit of its obligation to exercise forbearance when it does this.

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

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint about UK Credit Limited and it now needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 July 2021.

Mark Richardson
Ombudsman