

The complaint

Mr C complains that R. Raphael & Sons Limited (RRS) acted irresponsibly when providing him a loan that he believed was unaffordable.

What happened

In September 2015, Mr C took out a loan with RRS for £4500. The loan was to be repaid over a period of 48 months with a monthly repayment of £192.52.

Our investigator looked at Mr C's complaint and said that she felt RRS hadn't carried out reasonable and proportionate checks when it made the lending decision. And she felt had it gone further with its checks at the time, it would have become apparent that it was unlikely Mr C was able to repay his loan in a sustainable way.

She said the credit file information at the time of the loan showed a number of payday loans had been taken out by Mr C. Often these loans were for amounts lower than the disposable income disclosed on the income expenditure assessment completed by RRS. With this in mind, she felt it would have been reasonable to go further with the checks and understand why this was the case. Had this happened and Mr C's bank statements been reviewed, she felt it would have been clear the loan was unaffordable as his income was often less than his outgoings with a number of gambling transactions.

Because of this she felt RRS had made an irresponsible lending decision and recommended it do the following to put this right:

1. Refund all the interest and charges Mr C has paid to date;
2. If the borrowing is still in place it should reduce the balance of the outstanding capital balance of the loan by the amount calculated in step 1;
3. If after step 2, there remained an outstanding capital balance, RRS should ensure this isn't subject to historic or future interest and or charges. But if step 2 resulted in a positive balance, the amount outstanding should be given back to Mr C with 8% simple interest added.
4. RRS should remove any adverse negative information recorded on Mr C's credit file as a result of the interest and charges.

RRS disagreed with our assessment. It remained of the opinion that its review of Mr C's income and expenditure at the time of the application was sufficient to demonstrate if it was likely the loan was affordable and could be repaid in a sustainable way. With the purpose of the loan being for debt consolidation it also thought Mr C's disposable income would increase as his other lending obligations were condensed with this new loan. The credit file gave no indications of any previous issues with credit and Mr C did not give any information about the gambling transactions on his account. So it didn't think it was reasonable and proportionate to go further with its checks as it felt it had been demonstrated the loan was affordable.

RRS also felt that any information purposefully withheld could mean the application should be considered fraudulent as information wasn't disclosed that could have impacted the decision.

Because RRS didn't agree, the complaint has been passed to me for 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.

I've decided to uphold this complaint for much the same reasons as our investigator and will explain why.

Our approach to unaffordable/irresponsible lending can be found on our website and I've followed this approach when considering Mr C's complaint.

The rules and regulations relevant at the time when RRS provided Mr C the loan are set by the FCA in the Consumer Credit Sourcebook (CONC) rules. These required RRS to carry out an assessment of Mr C's credit worthiness with reasonable and proportionate checks to determine whether he could afford to repay the credit in a sustainable way. These needed to be borrower focused, meaning consideration should be given to whether repaying the debt in a sustainable way could result in difficulties for Mr C.

There is no set list of checks defined as reasonable and proportionate and as these checks need to be borrower focused, it follows that this could be different from one person to the next.

RRS completed an income and expenditure assessment as well as a credit check on Mr C when his application was assessed. It felt this demonstrated Mr C was able to repay the loan in a sustainable way and it doesn't think it needed to go further.

Mr C was applying for a relatively large loan bearing in mind that at the time he was a student with his pay from work being supplemented by his student loan payments. The length of time he was taking the money over and the cost of this ongoing commitment each month was also significant with a 48-month repayment term and a monthly repayment of nearly £200 a month.

Although the credit file checks didn't indicate that Mr C had previously had an issue with meeting his financial commitments, it did show he'd recently taken a number of payday loans out. And as our investigator pointed out, these were for relatively small amounts and lower than what Mr C's indicated disposable income was from the information supplied on the income expenditure form. Indicating that Mr C was spending more than his income each month, with this needing to be topped up with the payday loans. With this in mind, I think it would have been reasonable and proportionate for RRS to go further with its checks to determine whether it was likely Mr C would have been able to afford to repay the loan in a sustainable way.

With the payday loans indicating Mr C was spending more than his income each month, I think it would have been reasonable to ask for his bank statement information to verify his income and expenditure. And had these been requested and reviewed, I think it's likely RRS would have realised that it was unlikely that Mr C was able to repay the borrowing in a sustainable way.

The bank statements showed that Mr C often spent more than he was earning each month and there was a large number of gambling transactions on his account. These transactions made up the bulk of this additional spending and demonstrated that Mr C may struggle to meet the loan repayments in a sustainable way.

RRS said that they feel Mr C could be considered to be making a fraudulent application when he failed to disclose the information about his gambling transactions. Fraud is a very serious allegation and while he did not tell RRS about his gambling, he wasn't asked and it didn't request confirmation of his bank statements to understand why he needed the payday loans he'd taken out ahead of the loan with it. CONC makes it clear that it isn't usually sufficient to rely on the self-declared income and expenditure of a consumer and I think on this case it would have been reasonable and proportionate for RRS to go further with its checks. And had it done, it would have been clear that it was unlikely that Mr C would be able to repay the loan in a sustainable way. And so it follows the decision to lend to him was irresponsible.

Putting things right

As recommended by our investigator, RRS must do the following to put things right on this complaint.

1. Refund all the interest and charges Mr C has paid to date;
2. If the borrowing is still in place it should reduce the balance of the outstanding capital balance of the loan by the amount calculated in step 1;
3. If after step 2, there remained an outstanding capital balance, RRS should ensure this isn't subject to historic or future interest and or charges. But if step 2 resulted in a positive balance, the amount outstanding should be given back to Mr C with 8% simple interest added*.
4. RRS should remove any adverse negative information recorded on Mr C's credit file as a result of the interest and charges.

*HMRC may require RRS to deduct tax from the interest payment at the standard rate. If RRS deducts tax from this payment it should, upon request of Mr C provide a statement to confirm the tax paid.

My final decision

For the reasons I've explained above, I uphold Mr C's complaint against R. & Sons Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 March 2022.

Thomas Brissenden
Ombudsman