

## **The complaint**

Miss M complains that a loan given to her by UK Credit Limited was unaffordable.

## **What happened**

In November 2018, Miss M applied for – and was given – a loan of £7,500. It was to be repaid in 36 monthly instalments of £325.91. She was to use around £5,800 of the loan to repay other debts and told UK Credit the remainder was for cash and some small home improvements. Miss M says UK Credit failed to carry out sufficient checks to ensure she could afford the loan. She says if it had, it would have refused to lend.

UK Credit looked into her complaint. In its response it agreed it should have carried out more checks. But it felt despite that, the loan was affordable for Miss M, and rejected her complaint.

Miss M didn't agree with UK Credit, so referred her complaint to our service and one of our investigators looked into it. Our investigator agreed that UK Credit didn't do sufficient checks. He asked Miss M for bank statements for the period leading up to her application for the loan. Having reviewed those and the rest of the evidence on file, he felt that if UK Credit had done more, it ought to have refused to lend. He explained this to Miss M and UK Credit.

Miss M accepted what our investigator said, but UK Credit didn't. It asked to see the bank statements our investigator relied on when reaching his opinion. After reviewing them, it said in summary, that it didn't agree the loan was unaffordable or that the checks were not proportionate or sufficient at the point of sale.

As there was no agreement, 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.

We've set out our approach to complaints about high cost credit on our website. I've considered this approach when deciding this complaint.

UK Credit needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Miss M irresponsibly. There are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did UK Credit carry out reasonable and proportionate checks to satisfy itself that Miss M was in a position to sustainably repay the loan?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did UK Credit make a fair lending decision?
- Did UK Credit act unfairly or unreasonably towards Miss M in some other way?

It's not about UK Credit assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on her. The fact that the loan was guaranteed by a third party and the potential for UK Credit to pursue the guarantor instead doesn't alter its obligation.

UK Credit said repeatedly in its final response to Miss M's complaint that its checks hadn't been thorough enough. I note however that after receiving our investigator's opinion and reviewing the bank statements, it now feels they were. UK Credit has provided no evidence to explain why it's changed its view on this point.

I've looked carefully at the evidence provided by both sides including UK Credit's response to our investigator. I find myself agreeing with UK Credit's first assessment of the checks – that they were not sufficient for the reasons it set out in its final response to the complaint. I'll not repeat those reasons here as the parties to the complaint each have a copy.

I've gone on to consider what it might have found had it carried out sufficient checks. I think it would have been reasonable for UK Credit to get a detailed understanding of Miss M's expenditure, for example by asking to see several months of her bank statements. It had noted that her credit file showed she had defaulted on two credit agreements in the last month and was looking to increase her indebtedness by borrowing more than she already owed.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 1.3 gives examples which may indicate a consumer is in financial difficulties. These include:

- adverse entries on the consumer's credit file which are not in dispute
- an inability to meet repayments out of disposable income, for example, where there is evidence of non-payment of essential bills or the customer having to borrow further to repay existing debts.

Looking at Miss M's bank statements I think they show signs that she was in financial difficulties. I say this because there are numerous important unpaid direct debits to items such as car insurance, road tax, HMRC and television licencing among others. There were also first payments to other loan providers and television packages. This isn't indicative of someone in control of their finances.

As mentioned above, Miss M's credit file showed two accounts had defaulted within a month prior to her application for the loan. UK Credit asked her why these accounts had defaulted and she said, "*I missed a payment*". The advisor prompted her further saying there were four payments missed and asked why – could she not afford the payments? She said she couldn't afford the payments and the reason for that was "*just a lack of judgement*." The advisor asked a bit more about that and Miss M responded she "*just overspent trying to do everything*". Again, this doesn't show someone in control of their finances.

So it's clear that Miss M was unable to meet her existing commitments to essential bills and also had adverse entries on her credit file so was likely to be experiencing financial difficulty. UK Credit would have seen this had it carried out sufficient and proportionate checks.

With that in mind, I need to consider whether UK Credit reached a fair decision to lend to Miss M. In this instance, Miss M was repaying a significant amount of the credit she had outstanding which UK Credit argues would have helped her situation. But she was also borrowing a significant amount more than she needed for that purpose – around £1,700. This increased her indebtedness over a prolonged period at a high rate of interest when she was already showing signs of financial difficulty. I don't think UK Credit reached a fair decision when it agreed to lend to Miss M.

I've seen nothing to suggest that UK Credit has treated Miss M unfairly or unreasonably in any other way.

### **Putting things right**

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical. In this case, that would mean putting Miss M in the position she would be in now if she hadn't been given the loan. But Miss M was given the loan, used the money, so it's right she should pay it back. So, I think UK Credit should:

- Remove all interest, fees and charges applied to the loan from the outset. The payments Miss M made should then be deducted from the new starting balance.
  - If the payments Miss M has made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her with interest at a rate of 8% simple per year from the date they were made until the date of settlement\*.
  - If the calculation means there's still a balance for Miss M to pay, UK Credit should let her know how much is outstanding and reach a suitable, affordable payment plan with her. I remind UK Credit of its obligation to treat customers fairly.
- Remove any negative information recorded on Miss M's credit file regarding the loan.

\*If UK Credit considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss M how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons I've explained, I'm upholding Miss M's complaint. UK Credit Limited should put things right for Miss M in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 September 2022.

Richard Hale

**Ombudsman**