DRN-2880365

The complaint

Miss S, through a representative, says UK Credit Limited lent to her irresponsibly.

What happened

Miss S took out a 60-month guarantor loan for £5,000 from UK Credit on 29 July 2014. The monthly repayments were £184.67 and the total repayable was £11,044.20. It was given on the basis that Miss B had a guarantor who would be responsible for repaying the loan if she failed to.

Miss S says the loan was not affordable and an effective assessment of her circumstances must not have been carried out. She adds that she wasn't given advice about alternative solutions and the lender's final response letter was outside the time limits set by the regulator.

The investigator said Miss S's complaint should be upheld. She found that UK Credit did not react appropriately to what it saw in the checks it carried out. There were signs that Miss S's financial situation wasn't stable and there was a risk she would struggle to repay the loan, as she had with other debts previously.

UK Credit disagreed. In summary, it said it took into account the payments Miss S was making to her defaulted debts and it maybe she hadn't lost her job, but instead been unable to work at some stage. Miss S only had problems making her repayments 16 months into the loan term and this doesn't indicate it was unaffordable at the point of sale. There is no hard evidence this was the case and it seems Miss S's circumstances changed during the life of the loan.

UK Credit asked for an ombudsman's review, so the complaint was passed to me.

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 Miss S. 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 Miss S could afford to repay what she 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 Miss S. 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 Miss S.

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 Miss S, and have considered the following questions:

- did UK Credit complete reasonable and proportionate checks when assessing Miss S's loan application to satisfy itself that she 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 Miss S before it approved the loan. It asked for details of her income and her monthly living costs. It checked her declared income against a recent payslip. It checked her credit file to understand her credit history and existing debts. It also asked about the purpose of the loan, which was to buy a car and home furnishings, and to pay off a loan. From these checks combined UK Credit concluded Miss S had sufficient monthly disposable income for the loan to be affordable and that she would be left with £194.26 each month.

I am not wholly persuaded that the checks were proportionate give the five-year term of the loan and Miss S's income level. I think UK Credit should have looked at her actual expenditure rather than relying solely on her declarations. Some of her costs seem very low – such as £50 a month on food. However, I won't comment further on this as even based on the information it gathered I don't think UK Credit made a fair lending decision. I'll explain why.

Miss S had defaulted on two accounts in the previous seven months, one as recently as May 2014. She explained that this was because she'd lost her job, but this conflicts with her statement that she'd been with her current employer for four years. UK Credit has offered a view as to why this might be, but I don't need to make a finding on this point as it doesn't change my view that the recency of Miss S defaults ought to have concerned UK Credit – particularly given that it seems it didn't fully understand what had caused these financial problems. It hasn't evidenced it got the assurances I think it needed to conclude Miss S's finances were now stable.

It says it took the repayments Miss S was making towards these defaulted debts into account and the loan was still affordable. But I am not satisfied this was a fair overall conclusion. Miss S was on a relatively low income. UK Credit concluded she would have almost £200 of disposable income after taking on this loan. I can't see it planned for any unexpected or seasonal costs in its assessment. And it could see from the credit check it completed that Miss S was using £824 of her £850 overdraft facility, suggesting she was already having problems managing her money and had no surplus income. So I think there were signs that Miss S most likely didn't have the disposable income UK Credit had calculated. This loan increased Miss S's outgoings (both through its repayments and by introducing new monthly costs related to the car purchase). So I don't think UK Credit can reasonably argue there were no indicators the loan might not be sustainably affordable for Miss S.

It argues there is no hard evidence to support this view, and also Miss S's initial payment history contradicts this view. I acknowledge this is a finely balanced case. I have made my decision on the basis of the available information and on the balance of probabilities, in other words on what I consider *most* likely. UK Credit doesn't know how Miss S funded her repayments so I don't find its point about her payment history negates my finding that at the point of sale there were signs that there was a risk the loan might not be affordable. It seems most likely she would remain reliant on her overdraft as this was not a debt she was looking to settle with this loan, so UK Credit approved this loan knowing she would most likely be borrowing (via her overdraft) to repay it.

It follows I think UK Credit was wrong to lend to Miss S. To be clear this is my conclusion based on the combination of these factors, not on any one of them in isolation.

Did UK Credit act unfairly or unreasonably in some other way?

Miss S says that she wasn't given advice about alternative solutions and the final response letter was outside the time limits set by the regulator. UK Credit has said that Miss S did not raise the first point with it so asks that she does so to give it chance to respond. I find this to be fair. And I can see the final response letter was sent within the regulator's eight-week time limit on 31 July 2020 (Miss S complained to the lender on 8 June 2020), so I don't find that point to be accurate.

Putting things right

It's reasonable for Miss S to have repaid the capital amount that she borrowed as she had the benefit of that money. But she has paid interest and charges on a loan that shouldn't have been given to her. So she 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 Miss S made as payments towards the capital.
- If reworking Miss S's loan account results in her 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 the account results in there being an outstanding capital balance UK Credit should try to agree an affordable payment plan with Miss S.
- Remove any adverse information recorded on Miss S's credit file in relation to the loan.

*HM Revenue & Customs requires UK Credit to deduct tax from this interest. UK Credit should give Miss S a certificate showing how much tax it's deducted, if she asks for one.

My final decision

I am upholding Miss S'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 Miss S to accept or reject my decision before 15 March 2022.

Rebecca Connelley
Ombudsman