

The complaint

Miss L complains that the loan she had from UK Credit Limited was unaffordable to her and that it should have carried out better checks.

What happened

Miss L took out a guarantor loan with UK Credit on 2 January 2018. She borrowed £6,000 and was due to repay £264.58 monthly for 60 months. The last payment is due in January 2023.

Miss L says that UK Credit didn't carry out enough affordability checks when she applied for the loan. She says had it done so it would have been evident to UK Credit that it should not have approved the lending.

UK Credit says it asked Miss L about her income and living arrangements and verified her salary with a payslip. It says Miss L said the loan was for the purchase of a car and that her housing costs and other bills were taken out of her salary each month. UK Credit says that Miss L's credit file showed one loan and that its affordability calculation showed the new loan was affordable, even though it accepted it could have carried out a more thorough review of Miss L's expenditure.

UK Credit also clarifies that it did not take into account Miss L's income from additional part-time employment, nor the fact that she said the existing loan repayments were split with her partner. It adds that the loan account was up to date at the time of its response and there had been no evidence that she was struggling to make the repayments.

Our investigator recommended the complaint should be upheld. She wasn't satisfied UK Credit's checks went far enough and considered that proportionate checks would have shown further lending was irresponsible. She recommended that UK Credit should deduct any payments Miss L made from the principal and refund any overpayments with 8% simple interest added. She also said it should ensure that any associated negative information is removed from Miss L's credit file.

UK Credit responded to the investigator's recommendations to say, in summary:

- That it was unfair to assume, as the investigator had done, that Miss L needed a second job to supplement her income;
- That it could see Miss L was a frequent user of short-term loans but there was no evidence she was struggling to repay them or that they were outstanding at the time of her loan application;

- The information about current short-term lending was not available to UK Credit at the time and Miss L did not disclose it;
- It had requested further information about Miss L's expenditure when she complained, but she did not provide anything;
- Although it appeared Miss L had taken out further credit after the UK Credit loan, Miss L was still able to maintain her loan repayments;
- Without bank statements, there is no evidence to show Miss L was a lending risk.

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 need to take into account the relevant rules, guidance and good industry practice.

The Financial Conduct Authority (FCA) was the regulator when UK Credit lent to Miss L. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that UK Credit needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet their loan repayments in a sustainable manner over the lifetime of the agreement.

At the time of the lending CONC 5.3.1G stated that:

1. *In making the creditworthiness assessment or the assessment required ... a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required ... should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G - 6) or without incurring or increasing problem indebtedness (ILG 4.3).

(The Office of Fair Trading was the previous regulator and it produced a document entitled 'Irresponsible Lending Guidance' which the FCA referenced in its consumer handbook. CONC 5.3.1G – 6 specifically referenced ILG 4.3.)

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks:

- the *lower* a person'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 borrower is required to make payments for an extended period).

In addition, as per CONC 5.3.1G – 4b: it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer.

Bearing all of this in mind, in coming to a decision on Miss L's case, I have considered the following questions:

- Did UK Credit complete reasonable and proportionate checks when assessing Miss L'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?

I've seen evidence to show UK Credit asked about Miss L's financial circumstances, checked her credit file and verified her income. However, based on the information it received I'm not satisfied that the checks carried out by UK Credit went far enough. I say that because:

- The loan was over a term of 60 months and UK Credit needed to ensure the repayments were sustainable over that period;
- Miss L said the loan was for a car purchase, but there were no costs factored in for insurance or fuel;
- Although Miss L said her rent and bills were already deducted from her income, I can't see any evidence that UK Credit asked her about her other expenditure.

I accept that UK Credit took into account one existing loan which Miss L was repaying at £487 per month, but Miss L has also sent in a credit report from September 2020 which shows she was actually committed to making combined monthly repayments of over £1,000, including one short-term loan.

Although UK Credit's credit search did not show this level of debt, I still find proportionate checks should have included getting a full understanding of Miss L's financial situation. I say that because of the term of the loan and the fact she would be committing over 35% of her income to credit repayments (based only on the credit UK Credit knew about at the time).

Miss L has now provided bank statements from the time which I've used as a reasonable proxy for what proportionate checks would have shown:

- Aside from the £487 monthly loan repayment which UK Credit took into account, Miss L also had regular monthly expenditure of around £300 on items including another loan, insurance and phone charges;
- Miss L also had two outstanding short-term loans when she applied for the UK Credit loan, with a combined balance of over £3,000;
- There were bank charges and numerous returned direct debits on Miss L's statements, and she became overdrawn a day after being paid;
- Her average monthly spend on gambling was almost £900 in the two months before she applied for the loan;

If UK Credit had carried out proportionate checks, I consider it would have seen that Miss L was already struggling to manage her money when she applied for the loan. Indeed, I note Miss L spent almost £8,000 on gambling transactions in the two weeks following the receipt of the loan money.

In summary, I find it was irresponsible to lend to Miss L and UK Credit did not make a fair lending decision, although I cannot conclude that it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint. UK Credit Limited should:

- Add up the total amount of money Miss L received as a result of having been given the loan. The repayments Miss L made should be deducted from this amount;
 - If this results in Miss L having paid more than she received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement*);
 - If any capital balance remains outstanding, then UK Credit should attempt to arrange an affordable/suitable payment plan with Miss L.
- Remove any negative information about the loan from Miss L's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 6 July 2022.

Amanda Williams
Ombudsman