DRN-2931306

The complaint

Mr R, through a representative, says UK Credit Limited lent to him irresponsibly.

What happened

Mr R took out a guarantor loan from UK Credit on 29 December 2015. This means it was given on the basis that he had a guarantor who would be responsible for making the repayments if Mr R failed to. The loan was for £1,000 over 12 months. The monthly repayment was £100.58 and the total repayable was £1,206.96.

Mr R says the lender's checks were not adequate, had they been it would not have lent to him.

Our investigator recommended the complaint should be upheld. He said UK Credit's checks were proportionate, but it did not respond fairly to the information in the credit check when it decided to give the loan.

UK Credit disagreed saying, in summary, it was unfair to conclude Mr R was struggling financially solely based on the results of his credit check.

As no agreement was reached the complaint was 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.

Where the evidence is incomplete or inconclusive I have reached my decision based on the balance of probabilities – in other words, based on what I think is most likely given the available evidence and the wider circumstances.

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 Mr R. 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 Mr R could afford to repay what he 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 Mr R. 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 R. 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 Mr R, and have considered the following questions:

- did UK Credit complete reasonable and proportionate checks when assessing Mr R's loan application to satisfy itself that he 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 Mr R before it approved the loan. It asked for details of his income, his monthly living costs and his existing credit commitments. It used an income verification tool to check his declared income. It checked his credit file to understand his credit history and existing debts. It also asked about the purpose of the loan which was for car repairs. From these checks combined UK Credit concluded Mr R had a monthly disposable income of around £450 and so the loan repayment of £100.58 would be affordable.

Given the term and value of the loan, and the size of the monthly repayment, I think UK Credit's checks were reasonable and proportionate. But I don't think it reacted appropriately to the information it gathered when making its lending decision. I'll explain why.

The credit check the lender completed showed Mr R had a relatively low level of debt (£1,087) and there was no adverse information recorded. However, I think closer scrutiny shows there were signs Mr R had likely started to struggle financially. This was the fifth line of credit he had taken out in the last six months (two payday loans, a credit card and a line of high-cost revolving credit). He had quickly spent close to his limits on the latter two products. And he seemed to have needed to set up a revised repayment plan on the second payday loan. The report shows it had been due to be repaid in one payment of £367. UK Credit points out that the payment history was showing as 'unreported' so we can't know the accurate position. But Mr R had told UK Credit on the application call that he was repaying £50 a month.

UK Credit then argues that we don't know why this was – it may have been at the lender's request not Mr R's. On balance, I think it's more likely the latter and UK Credit hasn't supplied any information to support its suggestion. But anyway UK Credit ought to have investigated this further to get the assurances it needed that Mr R's finances were not under pressure before agreeing to lend.

There was already evidence he might be borrowing to repay, as this active payday loan had been taken out a week after he repaid his previous payday loan, suggesting the repayment had caused a hole in his finances. I think this use of payday loans should also have suggested to UK Credit it was unlikely Mr R had the disposable income it had calculated. It accepted his explanation that he'd needed the second payday loan to cover seasonal costs without considering the previous, settled payday loan.

In the round, I think the recent borrowing pattern that Mr R's credit check showed ought to have indicated to UK Credit that he was likely having problems managing his money and there was a risk this loan would not be sustainably affordable for Mr R. And it needed to consider this to meet its obligations, not just the pounds and pence affordability.

UK Credit points out that Mr R was comfortably repaying a hire purchase agreement that was due to end shortly, increasing his disposable income by £95 a month. But I am not persuaded that is a fair observation. I agree he had met all his contractual repayments but, as I've set out above, in parallel to this he had taken out two payday loans, two lines of revolving credit that he was almost at his limit on, and he was now applying for a third loan. So I don't think UK Credit can fairly conclude that he was 'comfortably repaying' that credit.

UK Credit also argues that Mr R's good payment history on this loan shows it was affordable, but it does not know how Mr R funded his repayments and whether it contributed to the financial harm I can see he has gone on to suffer.

It follows I think UK Credit was wrong to give the loan to Mr R.

I have not found any evidence that UK Credit acted unfairly or unreasonably in some other way towards Mr R.

Putting things right

I think it's fair and reasonable for Mr R to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

So UK Credit should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr R made as payments towards the capital.
- If reworking Mr R's loan account results in him 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 Mr R's loan account leaves a capital balance outstanding UK Credit should try to agree an affordable repayment plan with Mr R.
- Remove any adverse information recorded on Mr R's credit file in relation to the loan.

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

My final decision

I am upholding Mr R'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 Mr R to accept or reject my decision before 5 April 2022.

Rebecca Connelley
Ombudsman