DRN-2973546

The complaint

Mrs N complained that UK Credit Limited lent to her irresponsibly when it ought to have known that she couldn't reasonably afford the loan and she would need to borrow further to repay it.

What happened

Mrs N was given a single loan by UK Credit. Mrs N told UK Credit that she would use the loan for debt consolidation – in other words, to repay other debt.

The main loan details were as follows:

Date of Loan	Loan Amount	Loan Term (months)	Monthly Repayment	Total amount repayable
January 2018	£3,500	60	£122.10	£7,326

When Mrs N complained to UK Credit it didn't uphold the complaint so Mrs N brought her complaint to us. One of our investigators looked into what happened and he felt that this was a complaint we should uphold.

UK Credit disagreed with our investigator's view. It mainly said Mrs N had taken the loan to end the cycle of borrowing she was in by consolidating all outstanding loans and that she was adamant she wouldn't be using any more of this type of borrowing. So UK Credit was satisfied its loan would put Mrs N in a better financial situation. It also said it didn't consider our investigator was able to make a fair assessment without seeing further bank statements for Mrs N's other accounts to understand the transfers she was making between accounts.

As the complaint hasn't been settled, it comes to me to decide.

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 unaffordable/irresponsible lending complaints on our website and I have also taken into consideration regulatory rules and good industry practice at the time. Having done so, I am upholding Mrs N's complaint for broadly the same reasons as our investigator. I'll explain my reasons.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

UK Credit gathered some information from Mrs N before it agreed the loan. It did electronic checks to verify her pay and recorded Mrs N's monthly income as £1,750. When assessing affordability, UK Credit allowed for Mrs N's monthly payment of £80 for her share of rent. It also relied on statistical information and factored into its calculations an amount that reflected the typical monthly expenditure someone in Mrs N's position might reasonably expect to pay according to national UK averages worked out by the Office for National Statistics – plus an extra £100 to allow for unexpected costs or variation in income.

After asking Mrs N about information shown on the credit checks it had carried out, UK Credit worked out that Mrs N owed around £264 to other creditors each month and that this left her with a surplus of around £433 *after* paying for its loan. So UK Credit concluded that the monthly repayment of £122.10 on this loan should've been affordable for her and that it was fair to lend to her.

I've taken into account what UK Credit has said about how it calculated the affordability of this loan before it agreed to lend to Mrs N. But, I don't think UK Credit made a fair lending decision when it lent to Mrs N based on the information it had gathered because I don't think its checks were proportionate.

I say this because Mrs N had some indications of money problems apparent in the credit report UK Credit obtained including an active default (which she could easily have cleared using the disposable income UK Credit's affordability calculations suggested she had available). And she had recently fallen behind on another account.

I don't think that this information showed that Mrs N's financial situation was stable as UK Credit has suggested.

For someone with Mrs N's earnings I also think the term and the cost of the loan were relatively high – bearing in mind that Mrs N was signing up to repay the loan over the next five years, the monthly cost presented a high risk of becoming unaffordable or unsustainable over the term of the loan.

I don't think anything Mrs N said was enough to explain the contradictions between what she told UK Credit and what it saw in its credit checks.

Keeping in mind that UK Credit's checks needed to be borrower focused, I think it needed to do more to obtain a thorough understanding of Mrs N's overall financial situation to be satisfied she could afford the loan, particularly bearing in mind that UK Credit had mainly relied on third party data to establish Mrs N's income and expenditure.

I think reasonable and proportionate checks would've involved UK Credit obtaining a thorough knowledge of Mrs N's financial circumstances, including evidence.

So, I’ve looked at what I think proportionate checks would likely have shown.

I've looked at bank statements provided by Mrs N which I think provide a useful insight into her financial situation at the time. These show she was using an unplanned/unarranged overdraft facility, several returned direct debits are apparent and I can see that Mrs N was making payments to a couple of debt collection companies as well.

All of this suggests to me that Mrs N’s use of credit and her spending on debt had got beyond her control. This bears out my concern that the disposable income figure UK Credit worked on wasn’t, in reality, dependable. All the signs were that she couldn’t afford the debt she was already responsible for paying – so I think UK Credit should have realised that Mrs N wouldn’t be able to sustainably afford its loan.

I've taken into account that UK Credit understood that the loan was intended for debt consolidation. But UK Credit didn’t have control over how Mrs N used the loan as it paid the loan balance to her. And it was aware from its own credit checks of her long history of taking out expensive credit. So I think UK Credit should have recognised that it couldn’t safely depend on Mrs N using the loan for the purpose she had declared. Instead, there was a real risk that the loan would simply add to her total indebtedness and so she would remain in serious financial trouble – regardless of what she told UK Credit. For all these reasons, I don’t think UK Credit should’ve provided this loan.

In coming to my decision I’ve thought carefully about the fact that Mrs N was making substantial transfers out of the account and it’s unclear what happened to that money. But this doesn’t affect my view overall. I say this because UK Credit’s own affordability calculations show she didn’t have disposable income to support these transfers without relying on borrowed money and I've seen enough to be satisfied that Mrs N was clearly in financial difficulty as a result of problems managing her money – so this makes no difference.

Our investigator didn’t recommend that UK Credit should pay any additional redress. Mrs N hasn’t commented on that and I haven’t seen anything which makes me think UK Credit acted unfairly towards Mrs N in any other way. So I’m not awarding any additional redress.

But I don’t think UK Credit should have agreed to provide the loan to Mrs N. And as she has been further indebted with expensive lending that she shouldn’t have been provided with, I’m satisfied that she has lost out as a result of what UK Credit did wrong. So, I think UK Credit needs to put things right.

Putting things right

I think it is fair and reasonable for Mrs N to repay the capital amount that she borrowed, because she had the benefit of that lending. But she has paid extra for lending that should not have been provided to her. In line with this Service’s approach, Mrs N shouldn’t repay more than the capital amount she borrowed.

UK Credit should do the following:

- add up the total amount of money Mrs N received as a result of having been given the loan. The repayments Mrs N made should be deducted from this amount.
- If this results in Mrs N 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 Mrs N.
- Whilst it's fair that Mrs N's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So UK Credit should remove any negative information recorded on Mrs N's credit file regarding the loan.

*HM Revenue & Customs requires UK Credit to deduct tax from this interest. UK Credit should give Mrs N a certificate showing how much tax has been deducted if she asks for one.

My final decision

I uphold this complaint and direct UK Credit Limited to take the steps I've set out above to put things right for Mrs N.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 22 March 2022.

Susan Webb
Ombudsman