

## **The complaint**

Mr C complains that UK Credit Limited irresponsibly lent to him when he took out a guarantor loan with it.

## **What happened**

Mr C borrowed £5000 with UK Credit Limited in 2016 with a guarantor loan. He complained in 2019 that the loan had been irresponsibly lent to him as it was unaffordable and had Credit Limited completed sufficient checks, it would have been aware of this when it made the decision to lend.

UK Credit Limited looked at Mr C's complaint and reviewed the information it assessed at the time. It also considered whether, had more information been requested from Mr C to verify his income and expenditure discussed, whether it would have made a different lending decision. It said even if it had reviewed Mr C's bank statements at the time – which it didn't think it needed to based on the checks ahead of this – it would still have felt the borrowing was affordable on a sustainable basis. It said this because Mr C's income on his bank statements was higher than had been given on the application and although there was a number of transactions it couldn't identify and cash withdrawals each month, it believed the borrowing was affordable. So even if further checks had been carried out, it doesn't think it would have made a different lending decision.

Our investigator looked at Mr C's complaint and said that they felt more should have been done. And had further checks been completed when the loan was taken out, UK Credit Limited would have realised the loan was unaffordable.

He felt that Mr C's previous credit history should have been enough to prompt UK Credit Limited to undertake more checks to understand his financial situation and relying on what was said only in response to this information wasn't reasonable and proportionate.

He said had further checks been requested like asking to see Mr C's bank statements, questions should have been asked to identify the spending that wasn't clearly identifiable from these. Had this been questioned it might have highlighted what Mr C told us, a significant amount of his monthly spending related to gambling transactions. And every month Mr C was spending all of his income with little disposable left after these transactions. He felt this demonstrated that it was unlikely that Mr C would have been able to repay his loan in a sustainable way for the duration of the borrowing. He recommended that it refund the interest and charges paid in relation to the loan and remove any negative information from Mr C's credit file.

UK Credit Limited disagreed. It said that it had explained what outcome it would have reached had it carried out further checks such as requesting to see Mr C's bank statements. They felt it was unfair to rely on what was being explained now as the reasonings for the spending on the account previously. The statement information gave no clear information that Mr C had been gambling. And even when allowing for its loan repayment, Mr C would have been left with disposable income after all his essential spending had been met.

Overall it felt the checks carried out were reasonable and proportionate for the size and duration of the loan and there was nothing from the checks it did carry out which gave justification for any further checks.

Because UK Credit Limited disagreed with our investigator, the complaint has been passed to me for 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.

I've decided to uphold this complaint for much the same reasons as our investigator and will explain why.

This services approach to unaffordable/irresponsible lending is detailed on our website and I've followed this approach when considering Mr C's complaint.

The FCA's relevant regulatory framework for lending is set out in the Consumer Sourcebook (CONC). This places an obligation on UK Credit Limited to lend responsibly and complete a credit worthiness assessment, giving consideration to whether the lending is likely to adversely impact the consumer and their situation.

UK Credit Limited has explained in some detail the checks it carried out to assess Mr C's credit worthiness and why it feels these checks were reasonable and proportionate in relation to the size and duration of the loan.

There are no set checks that need to be completed, although CONC does give examples of the common things it expects to be considered. The checks should take account of the consumers individual circumstances and so it follows that what might be deemed reasonable and proportionate for one person might not be for another. I've considered first of all whether I think the checks carried out by UK Credit Limited were reasonable and proportionate to determine whether it was likely Mr C was able to afford his loan repayments in a sustainable way.

When the loan was taken out, UK Credit Limited spoke to Mr C about his credit history and the information from his credit report. It highlighted two negative entries on the report, one default from five years earlier and a more recent CCJ entry in May 2015. Mr C explained that although he was the named borrower for these transactions, the loans were for his son and he hadn't been told payments had been missed and that they had defaulted until it was too late. UK Credit Limited accepted the rationale provided by Mr C for the negative information being applied and reviewed his affordability with Mr C confirming his contribution to household bills as well as his regular expenses.

Mr C was looking to borrow £5000 and when the application was made he already had lending of over £30,000. But his declared income and expenditure showed a healthy disposable income each month. I think this should have prompted UK Credit Limited to go further with its checks. And I don't think it was reasonable and proportionate to rely on Mr C's declaration without questioning why he'd allowed a CCJ to be registered for a relatively small amount compared to his income and why he regularly was at the limit on his overdraft or in excess of this. So I think it would have been reasonable to request more information from Mr C like his bank statements to verify his income and expenditure.

UK Credit Limited has said that even if it had requested the bank statements from Mr C at the time, it's likely it would have deemed the borrowing to be affordable for him. It's based

this on the fact that it feels the statements show he was managing his finances well and always meeting his regular direct debits.

I don't agree that Mr C's bank statements give a positive picture on how Mr C was managing his finances.

The bank statements showed his income to be higher than previously disclosed, but his account also had a large number of regular transfers and cash withdrawals – and it never had a positive balance for the months prior to the lending. This meant that even with his higher income, Mr C's account was still regularly heavily overdrawn. Although the account information showed he hadn't had direct debits returned, there had been occasions when these were paid with the overdraft limit being exceeded. And there was a clear reliance on the overdraft facility.

Based on this, I think a reasonable question would be, what commitments or spending meant Mr C was unable to reduce this reliance on his overdraft based on his level of income. And did this mean it was likely he was able to afford to repay the loan in a sustainable way.

Mr C might not have disclosed to UK Credit Limited the reasons behind his spending. CONC explains that relying on self-declaration won't always be sufficient and so even if asked, further checks might have been needed. But I think the account usage demonstrated there was a risk of vulnerability with either compulsive spending or gambling – due to the volume of transactions and the amount of these each month when compared to the income. And the question should have been asked to determine the cause of this and to ensure there was no vulnerability which meant it was less likely Mr C was able to afford the loan repayments in a sustainable way.

In the absence of this and combined with the negative information on Mr C's credit file and his reliance on an overdraft facility to meet his financial commitments each month, I think it was unlikely that Mr C would be able to repay the loan in a sustainable way. And I agree with our investigator that the lending was irresponsible.

UK Credit Limited asked about statements from a second bank account Mr C held and questioned what this showed. Mr C hasn't been able provide any other statements and doesn't believe he has another account. He thinks the separation of his bank from one to another might have shown two accounts when there's only one. In the absence of anything else, I've relied on the information that has been provide by both sides when deciding this complaint.

### **Putting things right**

UK Credit Limited need to do the following to put things right with Mr C's account and complaint.

1. It should refund all interest and charges Mr C has paid to date.
2. If the borrowing is still in place, it should reduce the outstanding capital balance by the amount calculated in step 1.
3. If, after step 2 a capital balance remains, UK Credit Limited should ensure Mr C isn't subjected to any historic or future interest and/or charges. But if after step 2 a positive balance remains, this should be returned to Mr C with 8% simple interest\* added.
4. UK Credit Limited should also remove any adverse information recorded on Mr C's credit file as a result of the interest and charges.

\*HM Revenue and Customs requires business to take off tax from interest. If this is the case, Credit Limited must provide Mr C with a statement of any tax paid upon request.

### **My final decision**

For the reasons I've explained above, I uphold Mr C's complaint against UK Credit Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 March 2022.

Thomas Brissenden  
**Ombudsman**