

The complaint

Mr W complains about a loan given to him by UK Credit Limited.

What happened

In June 2018, Mr W applied to UK Credit for a loan of £4,000. The loan was agreed and was to be repaid in 60 monthly instalments of £176.39. Mr W says that the loan was never affordable for him so UK Credit should have refused to lend. He also complains about his treatment after he told them he was having difficulty making the payments due to a change in his circumstances.

UK Credit looked into his complaint and sent its final response. It explained the checks it had carried out during the assessment of Mr W's application and felt that the loan was affordable based on the information it had. UK Credit accepted it could have done better in handling and made an offer to freeze interest on the loan going forward.

Mr W was unhappy with UK Credit's response, so he referred his complaint to us. One of our investigators looked into it. She felt that UK Credit should have identified Mr W's financial situation was worsening at the time of the application, and ought to have refused to lend to him. She was satisfied with UK Credit's handling of Mr W's situation once he had difficulty making the payments. She asked UK Credit to put things right on the basis that the loan shouldn't have been given.

Mr W accepted what our investigator said, but UK Credit didn't. As there was no agreement, the complaint has been passed to me for a 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.

We've set out our approach to complaints about high cost credit on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

UK Credit had to carry out reasonable and proportionate checks to satisfy itself that Mr W would be able to repay the loan sustainably. It's not about UK Credit assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on him. The fact that the loan was guaranteed by a third party and the potential for UK Credit to pursue the guarantor instead of Mr W doesn't alter or lessen the obligation.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and the overall circumstances of the borrower.

In this case, UK Credit checked Mr W's credit file, checked his stated income with a verification tool and spoke to him about his expenditure. So I can understand why UK Credit

felt it had carried out reasonable and proportionate checks on his application before agreeing to lend to Mr W.

But simply carrying out the checks doesn't go far enough – UK Credit had to carefully consider what it found out as a result of the checks in order to reach a fair decision to lend.

Mr W's credit file showed three defaulted accounts and a County Court Judgement (CCJ) from more than two years ago but nonetheless remain outstanding. But there was also a more recent payday loan default from March 2018 for £158 – just three months before this application. So, while it's evident Mr W had some financial difficulties a couple of years ago, his credit file also shows signs of problems more recently. Mr W told UK Credit this default was in his name but for a loan taken out by his girlfriend.

During the application process, UK Credit spoke with Mr W about the purpose of the loan, his employment, his income and expenditure. He said he was looking to borrow to refinance some other debts. He explained he'd been in his current role about five months, but that he'd previously been earning more, so he'd got into debt. Unfortunately it's evident from the call that the advisor didn't really listen to what he had to say here, as he spoke over Mr W and said *"I know what you mean, you think oh yeah that's great, I've got a little bit more disposable income now"*, but in fact, Mr W had said the opposite – he was earning *less* than before which had caused him to get into debt he wished to consolidate.

UK Credit went through his credit file to identify the debt he wished to consolidate. Mr W said he wanted to repay everything to have one payment going out. The debt on his credit file at the time totalled £2,365 – some of which Mr W said he was unaware of. He said he owes his father £2,000 and £500 to his girlfriend which he was looking to repay. So, the £4,000 Mr W was looking to borrow wasn't going to be sufficient to achieve his aim of repaying all his debts. Mr W did say however, that he felt his father wouldn't mind if he was a bit short.

Mr W quoted his 'new' income as £1,650 per month and UK Credit was able to verify that. When UK Credit asked about his expenditure, Mr W said he gave his dad about £100 a month for rent. The advisor then said he'd met the affordability criteria. So it appeared that Mr W had a large monthly disposable income so he ought reasonably have been able to afford the £176 monthly payments on the new loan.

As I've said, UK Credit didn't just have to carry out reasonable checks, but it had to think about the information it received in order to reach a fair decision. In this case, I don't think it did – let me explain why.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). At the time the loan was agreed, CONC 1.3 set out examples of which a lender may be aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties. These include:

- adverse accurate entries on a credit file, which are not in dispute;
- outstanding county court judgments for non-payment of debt;
- consecutively failing to meet repayments when due.

CONC 5.3.1 4(b) said *"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"*.

CONC 5.3.7 said *"a firm must not accept an application for credit...where the firm knows or ought reasonably to suspect that the customer has not been truthful...in the information supplied...relevant to the creditworthiness assessment"*.

Based on the figures Mr W had provided for his income and expenditure, it would appear that he had a disposable income in excess of £1,350 a month (after this new loan) which would lead me to question why someone with such a large surplus income would need a payday loan in the first place, let alone falling into default on it. His credit file shows a 'start balance' for the loan of just £80. While Mr W had said this was related to his girlfriend, if he'd had such a disposable income as this, I can't think of a reason he'd have allowed it to default.

Mr W didn't dispute most of the other defaults which show on his credit file, including the CCJ which remained outstanding. And his two current credit cards were at – or very close to – their limits.

I've already mentioned that the advisor didn't listen carefully when Mr W explained he was earning less than he had previously which had led him to fall into debt. The fact that he'd fallen into debt was evidenced by the circumstances I've just outlined.

Mr W was borrowing money with high annual percentage rate (59.9%) and over a five-year period. Around half the debt he was planning to repay was defaulted so would not have been attracting interest at all. I think he may have been best advised to make arrangements to speak to the creditors and arrange payment plans with them – especially if his disposable income was to be believed – he could have been debt free within a few months having paid little or no interest.

I can see why UK Credit felt it had carried out reasonable and proportionate checks. But if it had given proper thought to Mr W's circumstances rather than simply accepting what it was told, and had considered the terms of CONC I've outlined above, I think it ought to have refused to lend to Mr W. I don't think it reached a fair decision to lend so I uphold this aspect of Mr W's complaint.

I've thought about the treatment Mr W complains of since he fell into arrears on the loan. Like our investigator, I'm reasonably satisfied that UK Credit did what it could to assist him and provided explanations for next steps so, I don't uphold this part of his complaint. I'll not go into detail here as both parties are aware of our view of this part of the complaint already.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical.

In this case, that would mean putting Mr W in the position he would be in now if he hadn't been given the loan. Mr W was given the loan, used the money, so it's right that he should repay what he borrowed. I think UK Credit should:

- Calculate the total amount Mr W received from UK Credit and deduct from that figure the repayments he's made to the loan.
 - If this results in Mr W having repaid more than he received, any overpayments should be refunded to him. Interest at a rate of 8% simple per year should be added to any overpayments from the date they were made until the date of settlement*.
 - If the calculation means there's still a balance for Mr W to pay, UK Credit should let him know how much is outstanding and reach a suitable, affordable payment plan with him. I remind UK Credit of its obligation to treat customers

fairly.

- Remove any negative information recorded on Mr W's credit file regarding each loan.

*If UK Credit considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. UK Credit limited should put things right as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 April 2022.

Richard Hale

Ombudsman