DRN-3109924

The complaint

Mr R complains that UK Credit Limited (UKCL) shouldn't have allowed him to be a guarantor on a loan.

What happened

In January 2011, Mr R agreed to stand as a guarantor on a loan of £3,000 for Mr A, a relative. It was secured by way of a Guarantee and Indemnity agreement and was to be repaid in 36 monthly instalments of £151.15. Mr R said he hadn't wanted to be the guarantor and had hoped UKCL wouldn't accept him. But they did, and as his relative couldn't meet the payments he'd had to step in. Mr R said he'd used a credit card and a loan from another family member to settle the loan in February 2012.

Mr R after seeing a money advice programme complained to UKCL as he didn't think they'd done enough to check the loan was affordable.

UKCL said the complaint had been brought too late. Mr R referred his complaint to us. We decided that we could consider Mr R's complaint. UKCL said as the loan had been taken out in January 2011 and settled a year later, they no longer had any records about it.

Our investigator asked Mr R to provide details of his financial situation at the time of the loan. And after reviewing the evidence provided didn't think Mr R was suitable to be a guarantor for the loan. Mr R had shown he made payments of £1,980 and £968.56 towards the loan. Our investigator said these should be refunded plus 8% simple interest.

UKCL after reviewing Mr R's bank statement didn't agree. They said Mr R had enough disposable income to be able to step in to cover the loan repayment. They asked for an ombudsman 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.

Having done so I'm upholding this complaint. I'll explain why.

UKCL had responsibility for ensuring that the loan repayments would be affordable and sustainable for Mr R before agreeing that he could be the guarantor for it. This meant that UKCL needed to carry out proportionate checks to be able to understand whether the borrower and Mr R could afford to make all the loan payments.

I've considered the following questions:

- Did UKCL obtain Mr R's properly informed consent to become guarantor for the loan?

- Did UKCL carry out reasonable and proportionate checks to satisfy itself that Mr R was in a position to sustainably repay the loan, in the event that the borrower did not? If not, what would reasonable and proportionate checks have shown at the time? And
- did UKCL make a fair lending decision (as Mr R would be equally liable for this loan with the borrower).

The difficulty here is that because of the time that has elapsed the affordability assessment and any discussions UKCL had with Mr R about his being the guarantor are no longer available. So, I've considered the evidence provided by Mr R that would be a strong indication of whether the loan was affordable and sustainable. UKCL has been provided with the same information.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

But there are factors which could influence how detailed a proportionate check should be for a given loan application. Consideration should be given to the amount, type and cost of credit. For example:

- the consumer'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 amount from a particular level of income); and
- the longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the consumer is required to make payments for an extended period).

The financial information available to consider this complaint is limited as it's more than six years since the loan was taken out, it's not possible to consider the borrower and Mr R's credit file at the time the loan was agreed. But Mr R has given his bank statements prior to the loan being agreed and details of other loans he was guaranteeing for Mr A.

UKCL has carried out an income and expenditure from these bank statements that they say show Mr R after the loan payment was taken into account would have had a surplus income of around £270. I have also looked at Mr R's bank statements for the three months prior to the loan, I've calculated he'd an average surplus income of around £205. The bank statements don't show payments Mr R was at times making as a guarantor for another £3,000 loan Mr A had. Mr R said he was making the payments for these by credit card, his bank statements show fluctuating amounts being repaid to his credit card. UKCL has taken these to be £150 per month, but I think the monthly average should be £175.

Mr R has shown that the other guarantor loan was taken out in July 2010, again it was for £3,000 payable by 36 monthly instalments of £151.19. Mr R has shown that Mr A didn't make the first payment, and that he'd had to step in from the beginning and had to cover the payment on a number of occasions.

I would expect this other guarantor loan to have been evident on both Mr A and Mr R's credit files at the time of the loan application with UKCL. This I think should ask the question why Mr A would have needed another £3,000 loan as soon as January 2011, and the affordability of the January 2011 loan given he was already struggling to make the repayments on the July 2010 loan. I also think this showed Mr A had a reliance on this sort of expensive credit. And his level of indebtedness would have increased on taking out the new loan. So, I question whether UKCL made a fair lending decision when agreeing to the loan for Mr A.

But Mr R was in receipt of child tax credit and working tax credit, which shows he'd dependents. His bank statement had his average monthly spend on food as only £75 which I think is at a low level. And taking the July 2010 loan into account I think this would have reduced Mr R's average surplus income each month to around £54 only. So, I don't think Mr R could sustainably repay the loan in the event that Mr A didn't. It follows therefore that Mr R shouldn't have been accepted as a guarantor for this loan.

Mr R settled the loan in February 2012 and has showed that this was done by using his credit card and borrowing from other relatives. These payments were £1980 and £968.56 respectively.

My final decision

I uphold this complaint. And ask UK Credit Limited to refund Mr R £2948.56 plus †8% simple interest from the date of payment to the date of settlement.

†HM Revenue & Customs requires UK Credit Limited to take off tax from this interest. UK Credit Limited must give Mr R a certificate showing how much tax they've taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 April 2022.

Anne Scarr
Ombudsman