DRN-3130369

The complaint

Mr R complains that UK Credit Limited ("UK Credit"), lent to him irresponsibly and without carrying out proper affordability checks. He would like all the fees and charges associated with the loan refunded, and any negative information on his credit file removed.

What happened

In September 2018 UK Credit approved a loan of £6,000 for Mr R, which was scheduled to be repaid at approximately £265 per month over a term of 60 months. The loan was intended to fund some home improvements; wedding expenses; and Mr R described himself as *"covering* [his] *back"* following a period of unemployment. Mr R's friend was approved by UK Credit to act as a guarantor. When assessing the application, UK Credit took steps to verify Mr R's income; completed an income and expenditure assessment ("I&E") over the phone; viewed a bank statement; and carried out a credit check before approving the lending.

It seems that Mr R encountered some difficulties in repaying the loan, and it remains live.

After UK Credit rejected his complaint, Mr R's representatives brought the case to our service. One of our investigators looked at the evidence and thought that UK Credit should not have granted the loan. For various reasons, UK Credit didn't accept that and asked that the case be passed to an Ombudsman for review.

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 going to uphold this complaint and I'll explain why.

UK Credit is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Mr R would be able to repay the borrowing applied for in a sustainable way. As set out in CONC 5.3.1G(2) that means that he could manage the repayments,

> "…*without…incurring financial difficulties or experiencing significant adverse consequences"*

Essentially, Mr R needed to be able to meet his financial commitments and not have to borrow elsewhere to repay UK Credit for the loan to be considered affordable and sustainable.

Did UK Credit carry out proportionate checks before granting this loan?

In its final response letter (FRL) to Mr R's representatives, UK Credit acknowledged some shortcomings in its checks. As a result of the credit search evidencing that Mr R's

"…financial position experienced some difficulties…", UK Credit accepts that its underwriter should have explored things *"…in greater detail and perhaps requested more bank statements…"*

I agree. Its checks should have gone further in order to be proportionate. As noted by UK Credit, the credit search it undertook showed that Mr R was in an arrangement on his current account, as a result of the sizeable overdraft, and had been for the previous nine months. Mr R had been out of work for a few months and had just started a new job when he applied, so his employment position wasn't especially stable. And from what it could see, UK Credit was aware that he was permanently overdrawn on his current account – usually by an amount approaching what he was expecting to earn per month in his new job. Finally, I also note Mr R's description in the I&E call of him wanting the loan as a way of him *"covering* [his] *back"*. By that, I take it to potentially mean that he needed the loan just to exist. Which would obviously be a significant concern when considering the sustainability of the borrowing. So, at the very least, all of these flags together ought to have led UK Credit to carry out further checks.

To be clear, I have placed far less weight than the investigator on Mr R's employment stability and him being in a probation period with his new job – it is only one flag which should have led UK Credit to carry out more in-depth checks.

What would UK Credit have found had it done proportionate checks?

When considering this second question, our service has had the benefit of several months of bank statements, as opposed to the sole one obtained by UK Credit at the time. There is no requirement on a lender to obtain any particular type of information: they are permitted to source and rely on a range of evidence when assessing affordability, and so UK Credit could have opted to gather more information about Mr R's financial position in a range of ways. However, UK Credit itself has set out how it would have expected the underwriter to have potentially asked for more bank statements and, in the absence of anything else provided, I'm happy to rely on them.

The statements from June to September 2018 show that Mr R was essentially reliant on his overdraft to live. This was acknowledged by UK Credit on the final page of its FRL. I can also see that his overdraft limit was reducing by £100 per month, presumably as a result of the bank's concerns about the extent of his borrowing via that facility. Although I can't know that for sure. UK Credit highlights that Mr R was *"…not close to the limit…"* on that overdraft. I disagree. Just on the bank statement that UK Credit saw, it is clear that Mr R's average balance was about 93% of his limit. I would describe that as close.

The statements also show £10,000 coming into his account from another high cost guarantor lender, £9,000 of which he then transferred out to an individual who may well be his partner. So it seems likely that he may have been acting as guarantor on that loan, meaning he would have been liable for repayments had the borrower not been able to make them.

UK Credit also highlights that his use of his overdraft, and seeming reliance on it, is to be expected given his employment situation and low salary he was receiving. I accept that to some extent. However, it is also important to remember that the size of his overdraft was only slightly smaller than his expected net income at the time of the application. So, at best, he would only have been left a small amount in credit when he got paid. I can also see that at the end of July Mr R received an amount, which appears to be earnings from an organisation in his industry of work, broadly the same as the income he was expecting from his new job. And that had not improved his financial position as he seems to have needed to use it to immediately pay family and friends – likely for sums he'd borrowed previously.

UK Credit underlines that much of Mr R's outgoings related to items *"…that were not a necessity for the normal standard of living but classed more as a luxury."* Therefore, it posits that:

> *"With a few changes to [Mr R's] lifestyle choices, I have no reason to believe this loan was unaffordable."*

However, the regulations require lenders to make a determination about affordability based on the realities of borrowers' circumstances. Not idealised potential changes. So this point is not relevant.

UK Credit has also mentioned that Mr R cleared his overdraft in 2019, seemingly showing that he was able to move beyond relying on it. However, I can draw no conclusions from something that happened after the sale of this loan, especially as there is a very clear possibility that he borrowed elsewhere in order to be able to do this. (I also note that the month after he repaid his overdraft, and the facility was removed, he continued to be overdrawn and to have direct debits returned due to a lack of funds.)

At best, what the statements I've seen show is an individual who was moving money around to stay within his overdraft limit and who was borrowing elsewhere to stay afloat. On this basis, I cannot see how UK Credit could have concluded that Mr R's situation was about to improve so significantly and so quickly that he would be able to meet all his financial commitments and repay this loan without borrowing.

As I've explained, needing to borrow to meet repayments means that the lending is not sustainable for the customer. It therefore follows that I uphold this complaint.

Putting things right

In order to put things right for Mr R, UK Credit must do the following:

A) UK Credit must remove all interest, fees and charges from the balance on the loan, and treat any repayments made by Mr R as though they had been repayments of the principal on the loan.

B) If this results in Mr R having made overpayments then it must refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the payments were made, to the date the complaint is settled.

C) It must remove any adverse information recorded on Mr R's credit file in relation to this loan.

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

My final decision

For the reasons I've explained, I uphold this complaint and direct UK Credit Limited to 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 21 December 2021

Siobhan McBride
Ombudsman