DRN-3139561

The complaint

Miss B complains about a personal loan she had with UK Credit Limited (UCL). She said UCL hadn't done enough to check whether she could afford the loan.

What happened

In August 2019, Miss B took out a personal loan with UCL for £12,000 over a period of 60 months, repayable at £373.70 a month. Miss B said she intended to use the loan to consolidate two loans and credit cards. Miss B said UCL didn't carry out enough checks to determine her financial position and hadn't asked to see her bank statements. She complained to UCL as she struggled to make the repayments.

UCL said they'd carried out proportionate and reasonable checks when assessing Miss B for the loan that showed Miss B had enough disposable income each month to cover the monthly payments including the repayment of the new loan. As part of their investigation into Miss B's complaint they also reviewed her bank statements prior to the loan being agreed and carried out an income and expenditure assessment from these. UCL said this showed Miss B had enough disposable income each month and so maintained the loan was affordable.

Miss B wasn't happy with UCL's response and referred her complaint to us.

Our investigator said Miss B was in a spiral of debt, and UCL had relied on Miss B's account of her expenditure without further verification. She said given the amount of the loan and Miss B's indebtedness she would have expected further checks to have been done. She said UCL hadn't done enough to establish Miss B's financial situation. To put things right she asked UCL to add up the total amount of money Miss B received as a result of having been given the loan and:

- the repayments Miss B made should be deducted from this amount, if this results in Miss B having paid more than she received, 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 UCL should attempt to arrange an affordable and suitable payment plan with Miss B;
- to remove any negative information recorded on Miss B's credit file relating to the loan; and
- remove the guarantor's obligation under the agreement and remove any trace of the loan from the guarantor's credit file.

UCL didn't agree with our investigator's finding as they reiterated that Miss B had disposable income and that the loan was affordable. UCL 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.

When someone complains about irresponsible and/or unaffordable lending, I need to consider whether the lender completed reasonable and proportionate checks to satisfy them the lending was affordable, and that the affordability was sustainable. Where reasonable and proportionate checks were carried out, I need to consider if the lending decision was fair.

And if reasonable and proportionate checks weren't carried out, I need to consider if the loan would have been approved if the checks had taken place. In reaching my decision I've considered the relevant rules, guidance and good industry practice.

There's no set list for what reasonable and proportionate checks are. But CONC 5.2A.20R provides guidance as to the extent and scope of a creditworthiness assessment and the steps needed to satisfy the requirement that the assessment is a reasonable one, based on enough information and proportionate to, the individual circumstances of each case.

The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation. This means UCL in lending to Miss B are required to carry out a reasonable assessment of whether she could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower-focused" – so UCL needed to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Miss B. This means it wasn't enough for them to only think about the likelihood that they would get their money back without considering the impact of repayment on Miss B.

Checks should be proportionate having consideration for the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the circumstances of the borrower, their 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 that's being applied for. 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).

This could mean a proportionate check could differ for the same borrower for different loan applications. So, I've considered whether UCL in lending to Miss B had been thorough in the checks they made. And whether they've taken all these factors into account in deciding to lend to her.

UCL has shown that they used the information provided by Miss B in the application and considered her credit history. Form her credit history they determined she'd:

- a loan with a monthly repayment of £321 over 48 months
- a loan with a monthly repayment of £142 over 36 months
- a credit card/ store card with a balance of £1,257 and a credit limit of £1,200, this item of credit was being reported and one payment in arrears
- a credit card/ store card with a balance of £1,019 and a credit limit of £1,200
- a credit card/ store card with a balance of £960 and a credit limit of £1,000
- a credit card/ store card with a balance of £884 and a credit limit of £1,050
- a credit card/ store card with a balance of £771 and a credit limit of £800
- a bank account with a balance of £288 and a credit limit of £850
- a mail order account with a balance of £228 and a credit limit of £600

I've listened to the security call made with Miss B when she applied for the loan with UCL. She confirmed she'd two loans, one taken out in January 2019 for £7,500 which had also been for consolidation, but she said she "*didn't get out enough*" and another consolidation loan in July 2018 for £4,041, Miss B wasn't asked anything further about this loan. She did say she intended to consolidate both. She also said she'd consolidate two of her credit cards and use the balance remaining form the loan to reduce or settle her mail order accounts. During the call Miss B said she lived with family and contributed £100 towards her accommodation. She said she didn't gamble and didn't have any child care costs.

UCL said they also verified Miss B had a monthly income of £1250. And from this information UCL assessed the loan as being affordable for Miss B.

But given the high value of the loan and indebtedness in comparison to Miss B's income I don't think these checks were enough especially as Miss B had taken two loans for the purpose of consolidation within the previous 14 months, yet she still had four active credit cards, that exceeded or were close to their limit and a mail order account.

As I outlined above there aren't any set lists for what would constitute proportionate checks, but I think Miss B's bank statements would have given a better understanding of her financial situation. And Miss B has since provided these to UCL. Immediately I can see that there are gambling transactions, albeit a few, but Miss B had said she didn't gamble. And her spending on non-essentials was far higher than she declared in the security call. I can also see she was consistently using her overdraft facility and was being charged a daily overdraft fee. From Miss B's credit history, it showed at the time of the loan that she was utilising £288 of her overdraft facility. But again, in reviewing her bank statements prior to the loan she was usually using well above this figure, and at times was very near the limit of her £850 overdraft facility and on occasion exceeding it. I think the bank statements show Miss B wasn't in control of her spending. And by lending further to her this continued her cycle of debt.

I know UCL since receiving Miss B's bank statements, has calculated Miss B's income and expenditure over the two months prior to the loan being agreed. And taking all of her outgoings into account calculated her to have an average of around £190 disposable income. So, I agree there is an appearance that the loan is affordable. But Miss B had a history of getting loans to consolidate her debt but didn't fully utilise them for this, a history I can see she repeated again with the UCL loan. I know UCL aren't responsible for Miss B not doing what she said she would, but I think UCL should have questioned why she needed a third consolidation loan within 14 months as I think this was a strong indicator of financial difficulty and a lack of financial management. And from looking at her credit history, information that was available to UCL and formed part of their assessment, there is little evidence she'd used the proceeding two consolidation loans for the purpose she said she took them out for.

So, while the loan may have looked affordable, by reviewing Miss B's financial situation, I don't think the loan was sustainable. I don't think UCL focussed on Miss B as a borrower and her specific circumstances. I don't think they carried out enough checks to determine whether Miss B could sustain the repayments. And I think if they had they should have seen the escalation of Miss B's indebtedness. So, I think they acted irresponsibly in providing Miss B with the loan.

Putting things right

Putting things right when it comes to complaints about irresponsible lending isn't straightforward. And Miss B has had the loan in question and used the funds. In these circumstances, I can't undo what's already been done. So, I ask UK Credit Limited to:

- remove any interest and charges applied to Miss B's loan account from when it was opened;

- treat any payments that Miss B has made as a reduction of the principle amount, if this results in Miss B having paid more than what they were initially lent, then any extra should be treated as an overpayment and refunded to Miss B plus †8% simple interest on this amount from date of payment to date of settlement;

- if any capital balance remains outstanding, then UK Credit Limited should attempt to arrange an affordable and suitable payment plan with Miss B;

- remove any adverse information on Miss B's credit file in relation to this loan; and

- remove the guarantor's obligation under the agreement and remove any trace of the loan from the guarantor's credit file.

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

My final decision

I uphold this complaint. And ask UK Credit Limited to put things right for Miss B as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss B to accept or reject my decision before 3 February 2022.

Anne Scarr
Ombudsman