DRN-3208265

Financial Ombudsman Service

The complaint

Mr J says The Five Lamps Organisation lent to him irresponsibly.

What happened

Mr J took out a loan for £300, repayable over 24 weeks, on 7 December 2018. The weekly repayment was £14.70 and the total repayable was £352.80.

Mr J says the loan was issued without accurate affordability checks.

Our investigator said Mr J's complaint should be upheld. She found Five Lamps' checks showed Mr J was already struggling with his finances and would be unlikely to be able to sustainably repay this loan.

Five Lamps disagreed. It said Mr J's financial issues were historic and its credit check showed he was maintaining his current credit accounts with barely any issues.

Five Lamps asked for an ombudsman to review the complaint, so it was passed to me.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when Five Lamps lent to Mr J required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So Five Lamps had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr J. In other words, it wasn't enough for Five Lamps to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr J.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for.
In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the lower a customer's income (reflecting that it could be more difficult to make

any repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Five Lamps did what it needed to before agreeing to lend to Mr J. So to reach my conclusion I have considered the following questions:

- did Five Lamps complete reasonable and proportionate checks when assessing Mr J's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did Five Lamps make a fair lending decision?
- did Five Lamps act unfairly or unreasonably in some other way?

I can see Five Lamps asked for some information from Mr J to understand his disposable income before it approved the loan. It asked for his monthly income and for a payslip to verify it. It asked about his living costs and checked Mr J's credit file to understand his existing monthly credit commitments and credit history. From these checks combined Five Lamps concluded that Mr J had sufficient disposable income to afford the loan.

I think the checks were proportionate in the circumstances of this case, but I am not persuaded Five Lamps reacted appropriately to the information it gathered to make its lending decision. I'll explain why.

The credit check Five Lamps completed showed Mr J had three unsettled defaults from 2016. Whilst these could be seen as historic I think the entries are relevant to Mr J's recent financial situation as he was only making nominal payments to reduce the balances on these accounts and the debts remained. He then had a more recent satisfied default from May 2018, a loan and a mail order account that had been in arrears for several months and a mail order account with a recent missed payment – in addition to a loan account that was in arrears but in dispute. So it seems Mr J was not managing to meet all his existing credit commitments.

The report shows Mr J had £8,186 of unsecured debt. He had opened eight new accounts in the last six months and had fallen delinquent on six accounts in the last 12 months. I note he had used and settled two payday loans in September 2018. So I disagree with Five Lamps' analysis that Mr J was managing his finances with no significant issues. I think there were indicators that his finances were under pressure and that he was struggling to manage his money. So Five Lamps ought to have realised there was a high risk this loan would not be sustainably affordable for Mr J.
To meet its regulatory obligations it had to consider this, not just the monthly pounds and pence affordability. This is set out in the regulator's Consumer Credit sourcebook, CONC in section 5.2A.12(R):

The firm must consider the customer's ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;
(2) out of, or using, one or more of the following:

(a) the customer's income;
(b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement; and/or
(c) savings or other assets where the customer has indicated clearly an intention to repay (wholly or partly) using them;
(3) without the customer having to borrow to meet the repayments;
(4) without failing to make any other payment the customer has a contractual or statutory obligation to make; and
(5) without the repayments having a significant adverse impact on the customer's financial situation.

It follows I think Five Lamps was wrong to lend to Mr J.

I haven't found any evidence Five Lamps acted unfairly or unreasonably towards Mr J in any other way. I am aware Mr J was unhappy with how the lender managed his complaint. As this is not a regulated activity that falls under our jurisdiction, and as he was satisfied with the facts used in the investigator's assessment, I have not looked into this further.

Putting things right

I think it's fair and reasonable for Mr J to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

Five Lamps should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr J made as payments towards the capital.
- If reworking Mr J's loan account results in him having effectively made payments above the original capital borrowed, then Five Lamps should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking the account leaves an amount of capital still to be paid, then Five Lamps should work to agree an affordable repayment plan with Mr J.
- Remove any adverse information recorded on Mr J's credit file in relation to the loan.

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

My final decision

I am upholding Mr J's complaint. The Five Lamps Organisation must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 March 2022.

Rebecca Connelley
Ombudsman