

The complaint

Mr T complains about three guarantor loans provided to him by UK Credit Limited, (“UKC”), which he says were unaffordable. He also complains about the amount of interest payable on the loans and UKC’s collections process. Mr T’s complaint has been brought to this service on his behalf by a claims management company. But for ease, I shall refer below to all actions being taken by Mr T.

What happened

UKC agreed three guarantor loans for Mr T between July 2013 and August 2017. Loan 2 was used to repay Loan 1 and Loan 3 was used to repay Loan 2. According to the most recent information I’ve seen, Loan 3 hasn’t been repaid. Some of the information UKC provided about the loans is shown in the table below. UKC objected to Loan 1 being investigated due to the age of the loan and Mr T has withdrawn his complaint about this loan. But I shall take Loan 1 into account when assessing Loans 2 and 3.

Loan number	Start date	End date	Loan amount	Monthly repayments	Term (months)
1.	7/7/2013	11/11/2014	£3,000	£143.98	36
2.	11/11/2014	21/8/2017	£4,067	£165.85	48
3.	21/8/2017	Unpaid	£5,320	£185.58	60

Mr T says that UKC didn’t properly undertake affordability checks when granting him credit nor did it assess signs of his over indebtedness. He said that the unaffordable high cost loans worsened his financial situation which was already poor. He also complains that the loan interest is astronomical and that his loan balance never seems to go down. Mr T is also unhappy that when he tried to speak to UKC about the repayments, it said it would go to his guarantor for the money.

In its final response letter, UKC said that it conducted the necessary due diligence regarding the loans, with electronic checks, documents and a verbal discussion around Mr T’s financial commitments and his circumstances being an adequate way to assess the creditworthiness and affordability of the loans. It said that there was no regulatory requirement to request bank statements to evidence Mr T’s income or outgoings. Based upon the information available, UKC was satisfied that it had an understanding of Mr T’s circumstances, and that the loans were affordable. It also didn’t uphold Mr T’s complaint about the interest payable and the collections process.

Our investigator’s view

Our investigator assessed the complaint about Loans 2 and 3 and recommended that Mr T’s complaint about Loan 3 should be upheld. She thought UKC ought to have done more to verify what Mr T had told it about his financial situation. She said that Mr T hadn’t provided any evidence of his financial circumstances at the time, so she was unable to say what proportionate checks would’ve revealed. But she thought that UKC had enough information available to it to see that this loan was unsustainable or otherwise harmful. The investigator

noted that Loan 3 was being used for debt consolidation but only a very small proportion of Mr T's outstanding debt was going to be consolidated. Loan 3 would've extended Mr T's four year lending relationship with UKC for a further five years and increased his liability to creditors by a further £11,134.80. Because of this, she couldn't say that this loan improved Mr T's financial situation. She thought UKC could have realised that Loan 3 was likely to be increasing Mr T's indebtedness in a way that was unsustainable and potentially harmful. With regard to the other aspects of Mr T's complaint, the investigator didn't think that UKC had acted unfairly in any other way.

UKC disagreed with the investigator's view. It said that based on the information from Mr T's credit report and details around his financial situation, it was unnecessary to request further information to support Mr T's application for Loan 3. In addition, Mr T had never missed a payment on Loans 1 and 2. There were no potential signs of harming Mr T in any financial way by granting him Loan 3. So, UKC was of the view that it had made reasonable and proportionate checks when concluding that Loan 3 was affordable for Mr T. UKC also disagreed that Loan 3 was unsustainable or harmful. The lender said that there had only been two late payments over 43 contractual monthly repayments. One was six days late and the other was two days late. Mr T only made it apparent that he was struggling financially in June 2019, when he told UKC that his wife was off work and that he had to cover all of the costs. This was some 34 months after Loan 3 had been granted and it was not something that UKC could foresee happening.

In addition, upon reviewing the items of credit that Mr T had said he wanted to consolidate with the proceeds of Loan 3 (these were a loan with a monthly repayment of £276, UKC's existing loan with a monthly repayment of £165 and a payment of £1,100 to reduce a credit card balance, taking the minimum payment down from £85.83 to £52.83) UKC calculated that Mr T would be saving £288.42 on average a month. From these calculations UKC had no doubt that UKC would be helping Mr T improve his financial situation if he'd carried out what he had said on the affordability assessment call with it.

Mr T acknowledged the investigator's view. He was provided with UKC's comments in response to the view. But he hasn't provided this Service with any comments in response to the view or UKC's response.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve. As mentioned above, I'd looked into Mr T's complaint about Loans 2 and 3 only.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr T and to UKC on 15 November 2021. I summarise my findings:

I'd said that where information was conflicting or incomplete, I'd needed to make my decision on the balance of probabilities, and had done this in relation to certain aspects of the complaint.

I'd dealt with each aspect of Mr T's complaint separately.

Irresponsible lending

I'd noted that when UKC lent to Mr T in 2014 and 2017, the regulator was the Financial Conduct Authority ("FCA") and relevant regulations and guidance included its Consumer Credit Sourcebook ("CONC"). Its rules and guidance obliged UKC to lend responsibly. As set

out in CONC, this meant that UKC needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreements.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet those repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an “affordability assessment” or “affordability check”. Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower’s financial situation, amongst other factors.

The checks had to be “borrower” focussed – so UKC had to think about whether Mr T could sustainably repay his loans. In practice, this meant that the lender had to ensure that making the payments to the loans wouldn’t cause Mr T undue difficulty or adverse consequences. In other words, it wasn’t enough for UKC to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mr T.

In general, I’d have expected a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I’d have expected a lender to seek more assurance, potentially by carrying out more detailed checks

- the lower a person’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 repayment from a particular level of income);
- the longer the term of the loan (reflecting the fact that the total cost of the credit was likely to be greater and the borrower was required to make payments for an extended period);
- the greater the number and frequency of loans, and the longer the period of time during which a person had been given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

Bearing all of this in mind, in coming to a decision on Mr T’s case, I’d considered the following questions:

- Did UKC complete reasonable and proportionate checks when assessing Mr T’s loan applications to satisfy itself that he would be able to repay the loans in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did UKC make fair lending decisions?

Did UKC complete reasonable and proportionate checks when assessing Mr T’s loan applications to satisfy itself that he would be able to repay the loans in a sustainable way?

UKC gathered some information from Mr T about his income and expenses before it agreed the loans. It had also carried out a credit check.

Loan 2

Mr T had already been making repayments to UKC on Loan 1 for 16 months when he'd applied for Loan 2. The loan amount was £4,067. So, it was more than £1,000 higher than Loan 1, but the total amount payable was nearly £2,800 more. Loan 2 was also to be repaid over a longer period and with higher monthly repayments than the previous loan. The interest rate on Loan 2 was 37.96%, (43.3% APR). The loan was to be repaid over 48 months with monthly repayments of around £165.85. If Mr T made each payment when it was due, he'd pay £7,960.80 in total. He'd told UKC that the loan was to fund Christmas. UKC repaid the balance of Loan 1 from the proceeds of Loan 2 and Mr T was left with around £2,000.

I'd listened to a recording of the call between UKC and Mr T in which Mr T had provided the lender with more information about his outgoings and credit commitments. UKC had calculated that Mr T would have a monthly disposable income of around £550 after making the loan repayment each month.

I'd also reviewed UKC's credit checks. It was likely aware that Mr T had borrowed another high cost guarantor loan the previous year for £5,000 repayable over five years which was still outstanding. He also had two credit card balances which were near their respective limits which I thought might have caused concern. There was also a utilities balance of £192 which UKC hadn't queried with Mr T on the call I'd listened to. Altogether, I'd thought the checks showed that Mr T's finances might have been strained, despite his relatively large declared disposable income.

I was also aware that a lender's credit checks might not reveal the full extent of a borrower's credit commitments.

I'd thought about UKC's checks. I was concerned that UKC appeared to have mostly relied on Mr T's statement of his expenses without verifying them. CONC 5.3.1(4) said:

If a firm takes income or expenditure into account in its creditworthiness assessment required under CONC 5.2.2R (1):

(a) The firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it would differ from actual current income or expenditure over the anticipated repayment period of the agreement;

(b) 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;

So, in Mr T's circumstances, I didn't think it was reasonable for UKC to base its assessment on the financial information Mr T had provided about his expenses. Mr T was entering into a significant commitment with UKC. He would need to make monthly repayments of around £166 for 48 months. So, I would have expected that UKC would want to gather, and independently check, some detailed information about Mr T's financial circumstances before it agreed to lend to him. I didn't think that UKC's checks went far enough. I thought it would have been proportionate for UKC to independently check the true state of Mr T's finances before agreeing the loan.

UKC was required to establish whether Mr T could make his loan repayments without experiencing adverse consequences and not just to ascertain whether the loan repayments

were technically affordable on a strict pounds and pence calculation. It could have done this by, for example, requesting bank statements from Mr T, asking for copies of payslips, bills and/or receipts for his expenses and by asking him for more information about his existing credit commitments. UKC didn't say that it took steps to do this. So overall, I didn't think the checks UKC had carried out on this occasion were reasonable and proportionate.

But although I couldn't say that the checks UKC had made before agreeing the loan were sufficient, that in itself didn't mean that Mr T's complaint should succeed. I also needed to be persuaded that what I considered to be proportionate checks would have shown UKC that Mr T couldn't sustainably afford the repayments.

Loan 3

Mr T had been indebted to UKC for almost four years when he'd applied for Loan 3. The loan amount of £5,320 was around £1,250 higher than Mr T's previous loan and his monthly repayments had increased by around £20. The monthly repayments were to be made over 60 months. UKC used the Loan 3 proceeds to repay the balance on Loan 2, leaving Mr T with £3,012.44 which he'd told UKC would be used to repay one of his existing loans, his overdraft and £1,100 from a credit card balance. UKC told Mr T that if he didn't repay these items, it wouldn't give him another loan.

I'd noted that the interest rate on Loan 3 was 34.05%, (39.9% APR). And if Mr T made each payment when it was due, he'd pay £11,134.80 in total.

I'd reviewed UKC's credit checks. UKC was aware from these that Mr T had taken out a £7,000 loan in February 2015 (which I'd noted was a high cost credit loan and to be repaid from the proceeds of Loan 3), another loan in July 2016 with a current balance of £4,523 and a five year term, and a third credit card in December 2016. He'd also taken out a hire purchase loan of more than £30,000 in November 2016 to acquire a car for his wife. Although the credit checks didn't show that Mr T had an overdraft, he'd told UKC that he was using part of Loan 3 to repay his overdraft which had arisen in the past six to seven months.

Mr T told UKC that his monthly income was £2,333 and his regular expenses were around £180. He'd said that his wife paid for the majority of the household expenses. I'd thought UKC ought again to have been concerned about Mr T's increasing need to borrow high cost credit despite his apparently low living costs and his relatively high disposable income. And whilst he was consolidating some of his debt, he was substantially increasing his overall indebtedness by taking out Loan 3.

Bearing in mind that this loan was to be repaid over five years I'd again thought UKC ought to have done more to verify what Mr T had told it about his finances in order to reasonably check that he would be able to meet his repayments without being caused undue difficulty or adverse consequences.

So, I didn't think that the checks that UKC carried out before agreeing to the loan were reasonable and proportionate.

What would reasonable and proportionate checks have shown? And did UKC make a fair lending decision?

Loan 2

I'd seen a list of Mr T's banking transactions from around the time of Loan 2. I'd reviewed these to give me the best picture of what the lender should have seen, although I wasn't suggesting that these were the checks that UKC should have done.

The transactions didn't show all the payees for Mr T's spending, but it was clear that his expenditure exceeded his monthly income and that he'd received six payments totalling £740 to supplement his income. He was also repaying two payday loans. I'd asked the investigator to ask Mr T for more information about some of his larger payments and the £740 he'd received. Mr T said that his large payments were for childcare and the six payments totalling £740 were loans from his family to help with bills. On balance, I thought that if UKC had made additional checks, I didn't think it could be certain that Mr T would be able to meet his repayments sustainably over four years in view of his expenditure exceeding his income and his need to borrow from family to meet bills.

Loan 3

I'd seen a list of Mr T's banking transactions from around the time of Loan 3. There was more information around the payees in this list. I could see that Mr T's spending on regular living costs and credit commitments (excluding the monthly repayment for Loan 2) exceeded his monthly income. This would have still been the case taking into account the debts to be consolidated by Loan 3.

So, if UKC had carried out the independent view of Mr T's circumstances that I'd thought was needed for this loan, I'd thought UKC ought reasonably to have realised that it was unlikely that Mr T would have been able to sustainably repay his loan.

In addition, I'd thought by the time of Loan 3, UKC ought reasonably to have realised it was increasing Mr T's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans. I said this because:

- Mr T wasn't making any inroads to the amount he owed UKC. By Loan 3 the total amount to be repaid was over double the total amount to be repaid for Loan 1;
- Mr T had paid large amounts of interest to, in effect, service a debt to UKC over an extended period. And by taking out Loan 3, Mr T would be indebted for a further five years to UKC;
- By Loan 3, Mr T had been borrowing from UKC for over four years without a break. He'd not yet managed to repay any of the loans without borrowing further from UKC and increasing his debt. It didn't seem to me that Mr T had managed to free himself of a need for credit
- As Loan 3 was for 60 months, Mr T would be required to make even higher repayments for this period and would continue to be reliant on this expensive credit for an extended period, potentially keeping him in the market for higher cost loans.

So, for the reasons set out above I didn't think UKC had acted fairly when it provided Loans 2 and 3 to Mr T and subject to any further representations by Mr T or UKC, I intended to uphold this aspect of Mr T's complaint and say that UKC should put things right as shown below.

High interest

Mr T had complained about the astronomical interest payable on the loans and that his loan balance didn't go down.

I'd noted that in its final response letter, UKC had said that Mr T confirmed during each loan application that he had signed the credit agreement himself, and that he'd understood that the terms and conditions formed part of the agreement. UKC said that each credit agreement clearly outlined the interest charges and the total amount repayable.

UKC also said that where there was an arrears balance, interest accrued daily and was applied monthly to the loan account. If payments were not made when they fell contractually due, the balance of the loan remained higher which would result in an increase to the total amount repayable.

I'd looked at the loan agreements and could see in each of them that there was wording in the signature box which said that the agreement should only be signed if Mr T wanted to be legally bound by the agreement's terms. I'd also noted that the agreements showed the interest rate, the APR, the total charge for credit, the monthly repayments and the total amount repayable. These were all shown on the same page as the signature box. The agreement form also said that interest charges were calculated daily on the outstanding balance of the account and that interest would continue to be charged on overdue amounts at the contractual rate.

As Mr T had agreed to be bound by the agreements' terms when borrowing the loans, including the interest rates and other financial information, I wasn't persuaded that UKC had acted unfairly in charging the interest rate shown on the loan agreements

Mr T had also said that his loan balance hadn't gone down. I'd asked the investigator to ask UKC for the loan account statements for Loans 2 and 3 which it provided. The loan statements for Loan 2 showed that Mr T had repaid £7,614.76, although the loan agreement showed a total of £7,960.80 to be repaid. So, I couldn't see that UKC had asked Mr T to repay an amount greater than the total amount to be paid under his loan agreement.

I'd also seen a loan statement for Loan 3 dated 30 September 2021. I'd noted that this showed that Mr T had repaid £9,093.91 and there was a balance of £1,796.36 to pay. The loan agreement for Loan 3 showed a total amount of £11,134.80 to be paid on the loan. But I could see that the balance left to pay would mean a lower amount than this being paid on the loan. So, I couldn't see that UKC had asked Mr T to pay an amount greater than the total amount to pay under his loan agreement. In addition, I'd noted the loan statement showed that his loan balance was going down.

So, I didn't propose to uphold this aspect of Mr T's complaint.

Collections process

Mr T complained that when he'd tried to speak to UKC about his financial difficulties, it said it would go to his guarantor for the money, which caused him distress. He had told it that he was suicidal, and because of the way it responded, he'd continued to have mental health issues.

I'd noted that in its final response letter, UKC had said that it had a duty to ensure Mr T's guarantor was aware of the loan account status and that it needed to make sure the guarantor was aware that they would be able to make a payment towards the account at any time to reduce the impact of the accrued interest. UKC also said that the guarantor wouldn't formally be asked for a payment until a final demand was served, which was when the account fell three contractual payments in arrears. Until this point, any payments a guarantor had made would be on a voluntary basis.

I'd also noted that UKC had said in its final response letter that on 28 June 2019 Mr T had spoken to UKC and said he was seeking financial advice from a debt management company. Mr T had explained that due to a change in his circumstances (his wife being out of work), he was financially struggling. During this conversation UKC told Mr T that his guarantor would be looked upon to cover any shortfall seen in the monthly contractual payment. UKC also said that it had told Mr T that there would be forbearance options also

available to the guarantor if their circumstances had changed since the loan was drawn down.

I'd listened to a recording of the call between UKC and Mr T on 28 June 2019. I'd noted that Mr T's repayment was due on that day, so his payments weren't yet in arrears. Mr T had explained to UKC that his wife wasn't working due to ill health, and that he'd spoken to a debt management company about a token payment plan for six months until his wife was able to work again. Mr T also said that he wouldn't be able to afford to pay UKC very much through the payment plan in view of his situation. He had to support his wife and two children. UKC said it would need to speak to Mr T's guarantor about the payment of the shortfall. Mr T said he was surprised about this as his debt management company had said that this wouldn't happen. Mr T said that his guarantor (his mother) wouldn't be able to pay and that UKC shouldn't put pressure on her as she wasn't "in great nick". Mr T said that he was also in a poor mental state. UKC told Mr T it could apply a thirty days' breathing space so that he wouldn't be contacted during this period, although interest would accrue. UKC said it could still contact Mr T's guarantor during this period to inform her about the situation. Mr T said that he didn't want UKC to contact the guarantor as that would cause more trouble. He'd then said he'd had enough and threatened to take his life. UKC suggested that he speak to someone if Mr T was feeling like he was feeling. But the lender then went on to say what it would say to the guarantor when it spoke to her, including seeking evidence of her circumstances. Mr T said that if UKC contacted the guarantor, he'd had enough. UKC continued to say what it would say to the guarantor and Mr T put the phone down.

I was concerned that Mr T had made it clear during the call with UKC that contacting the guarantor would cause him distress, including a threat to take his own life. Nevertheless, UKC continued the call by saying what it would say to the guarantor when it contacted her and what it would ask her to do. I'd thought this worsened Mr T's distress and led to him putting the phone down.

I'd asked the investigator to obtain UKC's Vulnerability Policy and to ask it for information about the steps it had taken following the phone conversation in June 2019.

I'd noted that UKC's Vulnerability Policy said that in situations involving threats of suicide, the emergency services should be contacted and that UKC should reassure the customer that its primary concern was their safety, and that any financial difficulty could be dealt with later. Attempts should also be made to explain to the customer that UKC were there to help. Appendix 7 of UKC's Vulnerability Policy set out five main steps to follow in such situations. It suggested actions such as asking questions to understand the consumer's current situation. Other than calling an ambulance after the call, I couldn't see that UKC's representative took the steps suggested by Appendix 7 of UKC's Vulnerability Policy during the call and I thought the lender handled the situation poorly.

I could see that Mr T was caused significant distress, upset and worry by UKC's actions and this had continued after the call. He'd told this Service *"I was suicidal after this with UK Credit, I told them this but they didn't care, all they wanted was their money and that's that. I continue to have depression and I feel like I have PTSD after this continued ordeal with UK Credit."* He'd also told this Service *"I didn't seek advice about my depression as I didn't want to have this on my medical record. I continue to have bouts of depression which I manage by speaking to friends and my wife"*.

I'd noted that around five hours after the call, Mr T phoned UKC and paid that month's instalment. So, there was no longer the concern for him that the guarantor

would be contacted that month.

Altogether, I intended to say that I didn't think that UKC had acted appropriately during the call in June 2019 and I'd thought that it should pay Mr T £300 compensation for the distress caused to him. I didn't think I'd seen enough evidence about Mr T's ongoing mental health to award more. His depression was undiagnosed, and it also sounded like this loan was part of a wider issue with his finances. It was difficult to separate out the direct impact of UKC's actions in amongst all the other things that were having an impact.

I couldn't see in UKC's contact notes any further contact from Mr T about financial difficulties or any other request for forbearance. I could see that he'd made his July 2019 payment a couple of days late, but it appeared that all further payments were made on time. So, I'd not seen any further evidence that UKC had acted inappropriately after June 2019 with regard to Mr T's financial difficulties.

Subject to any further representations by Mr T or UKC my provisional decision was that I intended to uphold this complaint in part. I intended to order UKC to put things right as follows.

Putting things right – what UKC needs to do

1. Pay Mr T £300 compensation for distress;

2. I understand that Loan 2 was repaid from the proceeds of Loan 3 and that Loan 3 hasn't been fully repaid. In order to put Mr T back into the position he would have been had Loans 2 and 3 not been agreed for him, UKC needs to ensure that Mr T only repays the principal borrowed on these loans. In other words, Mr T shouldn't repay more than the combined capital amount of £9,387 he borrowed on these loans. So, UKC needs to:

- a) treat all payments that Mr T has made towards Loans 2 and 3 as payments towards the principal amounts borrowed;
- b) if Mr T has made payments above the combined capital amount of £9,387, then these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*;
- c) If Mr T hasn't made payments above the capital amount of £9,387, and there is still an outstanding capital balance, then UKC needs to treat Mr T fairly and sympathetically in this matter. This might mean agreeing a mutually agreeable repayment plan with him.
- d) remove any adverse information about Loan 2 from Mr T's credit file; and
- e) remove all information about Loan 3 from Mr T's credit file once it had been settled.

If UKC has sold the outstanding debt on Loan 3 to a third party, it should buy it back if it is able to do so or chooses to do so and then take the steps listed above. If UKC isn't able to buy the debt back or chooses not to, then it should liaise with the third party to bring about steps 2a) to 2c) and 2e) above.

*HM Revenue & Customs requires UKC to take off tax from this interest. UKC must give Mr T a certificate showing how much tax it has taken off if he asks for one. If UKC intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Mr T responded to my provisional decision to say that he was happy with it.

UKC responded to my provisional decision to say that it had no further comments to add.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Given that Mr T and UKC have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require UKC to take the steps set out above under the heading "Putting things right - what UKC needs to do".

My final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order UK Credit Limited to put things right as I've set out above under the heading "Putting things right – what UKC needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 January 2022.

Roslyn Rawson

Ombudsman