DRN-3317187

The complaint

Mr B complains about a guarantor loan provided to him by UK Credit Limited, ("UKC"), which he says was unaffordable. Mr B'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 B.

What happened

UKC agreed a guarantor loan for Mr B on 11 August 2016. The loan was for £8,500 and was repayable by 60 monthly payments of £288.73. The interest rate was 32.6%, (37.9% APR). If Mr B made each repayment when it was due, the total amount payable would be £17,323.80. Mr B told UKC that the loan was for debt consolidation. According to the most recent information I've seen (February 2021), the loan hasn't yet been repaid.

Mr B 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 loan worsened his financial situation which was already poor.

In its final response letter, UKC said that it had conducted a creditworthiness and affordability assessment proportionate to the loan. And it established that Mr B could afford the loan, and that the loan would not have a negative impact on his indebtedness or ability to maintain any of his existing outgoings. It had carried out electronic checks, seen payslips and bank statements and had a verbal discussion with Mr B around his financial commitments and circumstances. UKC was satisfied that the loan was affordable and sustainable and that it had carried out all necessary due diligence in order to make sure that the loan wouldn't put Mr B in a worse financial position.

Our investigator's view

Our investigator recommended that Mr B's complaint should be upheld. He didn't think that UKC had carried out proportionate checks. He said that there were signs in UKC's credit checks that Mr B might not have been in a stable financial position and were suggestive of someone who might have been struggling financially. He thought these should have prompted UKC to complete more thorough checks including evidence. The investigator had reviewed Mr B's bank statements and noted that two of his current accounts were overdrawn and that Mr B was paying unauthorised borrowing fees each month on one of his accounts. He concluded that this showed that Mr B wasn't in a stable position and proportionate checks would've shown that this loan would be unsustainable.

UKC responded to the investigator's view by asking to see the bank statements for the two current accounts which the investigator had referred to in his view. It said that the bank statements provided to it by Mr B had evidenced very limited living costs. Mr B agreed to these being sent to UKC.

UKC reviewed the statements and disagreed with the investigator's view. It said that one of the accounts (Account A") wasn't used for income or expenditure purposes and only represented a third of how Mr B conducted his finances. The account was mainly used for transfers from one account to another, and no money transferred into this account actually remained in it. The account had an overdraft which Mr B said he would repay with the loan proceeds.

With regard to the second account which appeared to be Mr B's main current account ("Account B"), it noted that the unplanned overdraft charges the investigator referred to were in April 2016, July 2016 and August 2016 and the time Mr B was overdrawn was no more than one or two days, relatively infrequent and for a small sum. The overdraft would be rectified by either a cash payment or a transfer from another account. UKC also said that Mr B had very little in the way of regular costs on the account statements.

UKC could see that Mr B was meeting his monthly credit commitments and its credit checks showed no signs of financial difficulty. The lender also noted that without sight of the bank statements for another account ("Account C") from which incoming transfers were made, it didn't know the full extent of Mr B's financial circumstances. But it concluded that with Mr B's net income of £1,200, its loan repayment of £288.73, other costs totalling £218 and no rent or utility bills to pay for, there would have been sufficient disposable income to account for any additional non-essential spending and the option of whether to increase the amount Mr B paid towards his savings.

So, UKC disagreed with the investigator's view that proportionate checks would've shown that this loan would be unsustainable.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to UKC on 19 January 2022. I summarise my findings:

I said that where information was conflicting or incomplete, I needed to make my decision on the balance of probabilities, which was what I did here in relation to certain aspects of the complaint.

I noted that when UKC lent to Mr B, 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 agreement.

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 B could sustainably repay his loan. In practice, this meant that the lender had to ensure that making the payments to the loan wouldn't cause Mr B 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 B.

In general, I'd expect 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 expect 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);

I'd noted that UKC had spoken to Mr B on the phone and gathered some information from him about his income and expenses before it agreed the loan. Mr B had provided UKC with a payslip for June 2016 and bank statements from a current account for the period 12 May 2016 to 4 July 2016. It had also carried out a credit check.

Mr B was entering into a significant commitment with UKC. He would need to make monthly repayments of £288.73 for 60 months. So, I thought it was right that UKC wanted to gather, and independently check, some detailed information about Mr B's financial circumstances before it agreed to lend to him. I thought that the checks I'd described above allowed UKC to form a detailed view of Mr B's finances, and I thought that the checks UKC did were proportionate.

But simply performing proportionate checks isn't always enough. A lender also needed to react appropriately to the information shown by those checks. Those results might sometimes lead a lender to undertake further enquiries into a consumer's financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. So, I'd looked at the results of UKC's checks to see whether it had made a fair lending decision.

I'd noted that UKC had seen Mr B's payslip for June 2016.This showed a net pay of £1,205.29. But I could see that Mr B's overtime and holiday pay amounted to around £200. So, it was possible that his net monthly pay might be substantially less in other months. So, I didn't think UKC could rely on the net salary amount shown in the payslip as being guaranteed income going forward. In view of this, I thought it might have been reasonable for UKC to have gathered more information about Mr B's most recent pay for the purposes of its affordability calculations.

I'd listened to a recording of the call between UKC and Mr B in which Mr B provided the lender with more information about his employment, outgoings, and credit commitments. He said he wasn't paying rent, council tax or gas and electricity. But he was paying for water, an internet package, and mobile costs as well as food, travel, clothes and going out. His living costs were relatively low. UKC asked Mr B about certain transactions on the bank statements it had seen. It noted that Mr B was making transfers to another bank account and that he was saving on average around £250 each month. UKC calculated that Mr B would have a monthly disposable income of around £208 (after normal living costs, UKC's loan repayment, other credit commitments, and saving £250), although I'd noted that this was reduced to £174.23 in UKC's final response letter.

I'd also reviewed UKC's credit checks. I noted that these showed five credit cards and four current accounts. One of the credit cards was £59 over its credit limit of £2,400 and the balances on four of the credit cards were approaching their respective credit limits. One of the current accounts had an overdrawn balance of £915 which was near the overdraft limit of £950, but the other current accounts didn't have an overdraft facility. But I could see that there appeared to be no signs of missed payments on any of the accounts, nor were there any defaults. There were no payday loans or other loans. As Mr B told UKC he was using the loan proceeds to pay his overdraft and the three highest credit card balances, I could see that his remaining credit card balances totalled around £1,100. Altogether, I didn't think the results of its credit checks were enough to raise any significant concerns for UKC especially as the three highest credit card balances and Mr B's overdraft were being consolidated by its loan.

I'd also reviewed the bank statement UKC received from Mr B. It covered the period 12 May 2016 to 4 July 2016. Whilst, I could see that the account was briefly overdrawn for a total of eight days during this period, it was for a small amount. In itself, I didn't think this was enough to raise any particular concerns. The statement showed no apparent issues such as gambling or returned payments. There was nothing on it to suggest to me that Mr B was at that stage dependent on credit or that he was having problems managing his finances. There was very little spending on essential living costs, although I couldn't see on the statement all the living costs provided by Mr B in his call with UKC. But I'd also noted from the bank statement that there were several transfers to two of Mr B's other current accounts. I thought UKC ought to have been concerned that it hadn't seen statements for all of Mr B's current accounts. So, I didn't think it could have had a complete picture of Mr B's financial situation from what it had seen. I couldn't see that UKC had asked for copies of these statements.

Altogether, I didn't think UKC's checks went far enough. UKC didn't have a complete picture of Mr B's financial situation because it didn't have monthly statements for all four of his current accounts and it couldn't be sure of Mr B's income going forward. I thought it needed further evidence of Mr B's financial circumstances. This was so UKC could assure itself of Mr B's true financial position and that he could make the loan repayments in a sustainable way. As I couldn't see that it did this, I said I would need to consider what UKC would have seen if it had carried out further checks.

What would further checks have shown?

I'd reviewed Mr B's bank statements for two of his accounts and asked the investigator to ask Mr B for some more information about his situation to see what better checks would have shown UKC.

I'd noted that after the investigator had issued his view, Mr B sent UKC copies of the bank statements provided to this Service by Mr B. These included the statements for Mr B's overdrawn account ("Account A") which was mainly used for account transfers, and also statements for Mr B's main current account for which UKC had received statements covering a limited period at the time of the loan application ("Account B").

I didn't share the same concerns as the investigator about Account A. I could see that it was used mainly for transfers between accounts and wasn't the account Mr B was using for paying his living costs and credit commitments. I could also see that there was an overdraft limit of £950 and that Mr B stayed within the overdraft limit. I'd also noted that Mr B intended to pay the overdraft on this account with the loan proceeds.

I also didn't share the same concerns as the investigator about Account B. I could see that it was overdrawn briefly for four days between 14 July 2016 and the loan application in mid-August 2016. But I didn't think the account was showing significant signs of financial distress. The statements also didn't show any apparent issues such as gambling or returned payments. In general, the account appeared to be well managed.

I was more concerned that I couldn't see a total cash payment of around £1,200 in respect of Mr B's July 2016 salary payment. I could see several cash deposits totalling around £870 paid into the account over a period of two weeks around the end of July 2016. So, I asked the investigator to ask Mr B more about his pay in July 2016. Mr B said that he was paid in cash, but he didn't always bank all his pay and used some cash for spending. On balance, I didn't think this ought to have caused UKC significant concerns if it had asked more about this.

I'd also asked the investigator to ask Mr B for the bank statements for the accounts we hadn't yet seen ("Accounts C and D"). Mr B sent us the statements for Accounts C and D which I'd reviewed. I could see that they were mostly used for transfers between Mr B's various accounts, and I didn't think they would have caused UKC significant concerns if the lender had seen them.

So, from the information I'd seen, I didn't think better checks by UKC would have uncovered anything that would have shown that Mr B might have difficulty repaying his loan sustainably. Looking at the statements for all four of Mr B's current accounts, there was nothing to suggest to me that Mr B was at this stage dependent on credit or that he was having problems managing his finances. In particular, I'd noted that Mr B appeared to be able to save amounts from £300 to £730 nearly every month. I'd noted he'd told UKC that he made transfers to a friend who put these amounts into a joint savings account.

Looking at everything in the round, I hadn't seen enough to find that UKC ought to have declined to lend to Mr B. So, I didn't think UKC had acted unfairly when it provided the loan to Mr B and subject to any further representations by Mr B or UKC , I didn't intend to uphold Mr B's complaint.

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

Mr B responded to my provisional decision to say, in summary, that:-

- If further checks were done at the appropriate time, there could have been a different outcome on the loan being approved.
- At the time, he was using all of his lenders' credit, transferring from one to another to avoid being overdrawn for long periods of time. There was no sign of the situation getting better as all credit cards were near maximum and he was barely able to meet the minimum payment each month. His financial situation was getting worse every month.
- He said that it shouldn't be assumed that he wasn't in financial hardship or that he didn't have hidden costs. He was severally depressed and drinking and owed money to friends.
- He was significantly dependent on his overdraft being available.
- For someone with his disposable income and savings, UKC should have queried why he was continuing to use high volumes of credit where the balances were not reducing.
- With regard to the money which I'd said he appeared to be saving, he needed to access that money to meet his expenses. He provided a bank statement to show this.

- Some of the cash withdrawals and spending would have been used for gambling and drinking when he was unwell, and wouldn't have been used for savings. Proof should have been requested of his savings.
- This has caused much anxiety and distress. He is working with a debt charity to help with his financial matters.

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.

I'm sorry to hear about Mr B's health and financial problems.

Mr B has provided some further comments in response to my provisional decision. Although I have only summarised above what Mr B said, I can reassure him that I have read each of his responses carefully.

Mr B also provided some information about events after taking out the loan. But my decision is based on what happened at the time the loan was agreed, and not what happened afterwards. So, I haven't considered these comments further.

I would like to respond to some of the matters that Mr B has raised in response to my provisional decision. I have put summaries of some of Mr B's comments in italics below, followed by my response to those comments.

Mr B said that if further checks were done at the appropriate time, there could have been a different outcome on the loan being approved.

As I've said above, CONC didn't specify what level of checks was needed. But it did say that a lender 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 agreement. And 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.

I said above that UKC had spoken to Mr B about his income and expenditure, it had seen a payslip, obtained bank statements, and carried out a credit check. I thought these were reasonable and proportionate checks in Mr B's circumstances and allowed UKC to form a relatively detailed view of Mr B's finances, although I didn't think UKC's checks went far enough. I'd thought that UKC didn't have a complete picture of Mr B's financial situation because it didn't have monthly statements for all four of his current accounts and it couldn't be sure of Mr B's income going forward.

However, the investigator obtained copies of Mr B's bank statements for his other accounts and, having reviewed those statements, I didn't think better checks by UKC would have uncovered anything that would have shown that Mr B might have difficulty repaying his loan sustainably.

In addition, although UKC couldn't be certain of Mr B's income going forward, I could see that his basic salary of around £1,211 (without holiday pay and overtime) would leave him with disposable income of around £225 each month after payment of his normal living costs, credit commitments (after consolidation of his debts) and the loan repayment. I can also see on the payslip Mr B gave UKC that his average monthly gross salary since April 2016 had been around £1,440. So, his monthly disposable income was likely to be over £400, if £1,440 was around the typical amount he'd receive going forward.

Mr B said that proof should have been requested of his savings.

I don't think it would have been reasonable nor proportionate for UKC to have requested proof of savings in addition to the other checks it had carried out.

Mr B said that he was using all of his lenders' credit and transferring from one to another to avoid being overdrawn for long periods of time. There was no sign of the situation getting better as all credit cards were near maximum and he was barely able to meet the minimum payment each month. His financial situation was getting worse every month. UKC should have queried why he was continuing to use high volumes of credit where the balances were not reducing.

I can see that UKC's credit checks showed that Mr B had a credit card account that was over its credit limit and three accounts approaching their respective credit limits. But they also showed that Mr B was meeting all his monthly payments and there were no signs of missed payments, defaults, or short term loans. I can also see that Mr B hadn't taken out any new credit in the eleven months prior to the loan application. So, the checks didn't show a recent need for new credit. The credit checks information I'd seen wasn't detailed enough to show the monthly changes in Mr B's credit balances. But I can see that Mr B would have been spending a considerable proportion of his normal income servicing his credit commitments.

Whilst the credit check results did show some concerning information, UKC's loan was intended to refinance his three largest credit card accounts and his overdraft. So, after the loan had been taken, Mr B would be left with just two credit card balances (with a total balance of around £1,100) to repay each month. So, using the loan in that way was likely to place Mr B's finances onto a far more stable footing, and would have been likely to reduce a significant proportion of Mr B's credit expenditure.

I note that UKC seems to have used minimum repayment amounts for the two card accounts which weren't intended to be consolidated to calculate Mr B's disposable income. Whilst this wouldn't enable the card accounts to be paid within a reasonable period, I can see that UKC's calculations suggested that Mr B would have enough disposable income to make higher payments to his card accounts.

Mr B said that it shouldn't be assumed that he wasn't in financial hardship or that he didn't have hidden costs. He was severally depressed and drinking and owed money to friends. He also spent money on gambling.

I appreciate that Mr B says his financial situation was far worse than my above assessment might suggest. But that wasn't something he told UKC about when he applied for the loan. Nor was it something that I think should have been identified from the results of the proportionate checks.

With regard to the money which I'd said he appeared to be saving, he needed to access that money to meet his expenses. He provided a bank statement to show this.

I note that Mr B said he was using his savings for expenses and provided a bank statement to show this. Mr B hadn't told UKC that he was using his savings for expenses and I don't think it was unreasonable for UKC to rely on what Mr B had told it about his savings.

Mr B had previously provided the statement he supplied with his comments to this Service. I'd reviewed it and referred to it in my provisional decision.

Mr B said he was dependent on his overdraft.

As I'd said above, I can see that Mr B's current account was overdrawn briefly for four days between 14 July 2016 and the loan application in mid- August 2016. But overall, I didn't think the account was showing significant signs of financial distress and was generally relatively well managed with transfers being made from other accounts or cash deposited to prevent the account going into overdraft. I also think in Mr B's circumstances it might not have been unreasonable for UKC to think that some of Mr B's discretionary expenditure might cease when his finances had been stabilised by taking the consolidation loan.

He is working with a debt charity to help with his financial matters.

I can see that Mr B appears to be facing problems repaying his debt and he is working with a debt charity. If appropriate, I would encourage him to discuss his circumstances with UKC to find a mutually agreeable and affordable repayment arrangement. And I would remind UKC of its responsibility to treat Mr B positively and sympathetically in those discussions.

After carefully considering what Mr B has said, I don't consider that the information Mr B has provided should lead me to depart from the conclusions I reached in my provisional decision. It follows that I'm not upholding his complaint.

I appreciate this is a disappointing outcome for Mr B but hope setting out the reasons as I've done will help explain how I've reached my conclusions.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 March 2022.
Roslyn Rawson
Ombudsman