DRN-3564744

The complaint

Mr F has complained that Chetwood Financial Limited trading as Live Lend (Live Lend) gave him a loan that he couldn't afford to repay.

What happened

Mr F had a loan from Live Lend and a brief summary of the lending can be found in the table below.

loan number	loan amount	agreement date	repayment date	term (month)	monthly repayment
1	£6,000	31/08/2018	outstanding	36	£197.76

Mr F had some problems repaying the loan and it appears, from the statement of account that Live Lend took the decision to sell the outstanding in March 2021.

Live Lend issued its final response letter about Mr F's complaint and concluded it hadn't made an error when it approved the loan.

Live Lend concluded, having asked Mr F about his income and expenditure as well as carrying out a credit check that he had around £459 per month in disposable income. Which, in Live Lend's view was sufficient to be able to afford the monthly repayment of around £198.

Unhappy with this response, Mr F referred the complaint to the Financial Ombudsman Service.

Mr F's complaint was considered by one of our adjudicators and she upheld it. She concluded that given the monthly commitment, capital borrowed and the term in which Mr F was due to make payments that Live Lend's checks needed to go further than just relying on the credit file and income and expenditure information. It ought to have had a complete understanding of his financial circumstances.

Using Mr F's bank statements, the adjudicator could see that Mr F had around 15 high cost credit loans in the month before this loan was approved. And knowing this, ought to have led Live Lend to decide not to lend.

Mr F appears to have accepted the adjudicator's recommendation.

Live Lend didn't agree with the outcome. In response it said (in summary):

- Live Lend provides loans to customers who may not be approved by high street lenders.
- Full creditworthiness and affordability checks were completed and it then provided a summary of the checks that it carried out.
- Based on the checks that Live Lend carried out the loan looked affordable for Mr F.
- Live Lend says it would've been disproportionate to have requested further information such as bank statements from Mr F.

- Live Lend explained bank statements are prepared to a schedule (which could be quarterly) and could already be out-of-time by the time a customer receives them.
- Given the information it had available at the time, Live Lend considers a fair lending decision was made.

As no agreement could be reached, the complaint has been passed to me to resolve.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

The rules and regulations in place required Live Lend to carry out a reasonable and proportionate assessment of Mr F's ability to make the repayments under the loan agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Live Lend had to think about whether repaying the loans would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr F undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Live Lend to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr F. Checks also had to be "proportionate" to the specific circumstances of the loan applications.

In general, what constitutes 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/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a 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 repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr F's complaint.

For this loan, Live Lend asked Mr F for his monthly income, which he declared it as being £1,824 and Live Lend says this monthly income was verified through a system offered by a credit reference agency.

Live Lend also says that Mr F declared total monthly living costs of £650 and it knew from a credit reference check that Mr F already had monthly credit commitments of £325 – which was owed to five credit cards and two fixed term loans (excluding a mortgage / secured lending). So Live Lend believed (when considering its loan repayment) after all of his commitments had been deducted Mr F had £459 disposable income each month.

It was therefore reasonable for Live Lend, based on the information that it gathered from the credit search as well as what Mr F had declared to reasonably conclude that he could afford his loan repayments.

However, Mr F was making a commitment to Live Lend to make monthly repayments for three years – which isn't an insignificant period of time. So, the period of time along with the amount that he borrowed, I think ought to have led Live Lend to have carried out further checks rather than relying on the information Mr F had provided an the credit check results.

I think, for the reasons outlined above, Live Lend needed to have a complete understanding of Mr F's financial situation which in this case ought to have included verifying the information he had provided about his income and expenditure as well as his credit commitments.

Live Lend could've gone about checking Mr F's financial position in a number of ways - it could've asked to see copies of say his payslip and copies / invoices for bills and commitments that he had.

Or, it could've asked to see his bank statements. Mr F has provided his bank statements from around the time this loan was approved so I don't think it's unreasonable to view these to see what Live Lend may have seen, had it carried out what I consider to be proportionate checks.

I appreciate that Live Lend says the bank statements may only be produced at certain points say once a quarter, and even when received the information would've been out of date. While, this may be correct, the bank statements would've given Live Lend an insight in to Mr F's spending habits and how he was managing his finances.

I accept the summary of the credit check results don't indicate that Mr F was a regular user of or had any outstanding short term loans outstanding at the point this loan was approved, but a view of his bank statement would've shown Live Lend a very different picture.

A picture Live Lend would've likely had, had it out a proportionate check. Mr F's bank statements would've shown that in the month leading up to the loan being granted the following transactions;

- drawdowns on a revolving credit facility of £1,605 with repayment throughout the month of August of £1,269.
- Mr T drew down eight high cost short term credit / instalment loans totalling over £6,925
- He did make repayments to some of these loans (as well as other outstanding payday loans) and these payments came to £4,892.

Overall, given the number of transactions to both high cost short term lenders as well as the revolving credit facility has led me to conclude that Mr F couldn't sustainably make his loan repayments to Live Lend.

Afterall, there is evidence to show that he had a number of outstanding payday loans when the loan was granted and spending significantly more each month servicing such debt than his salary of £1,845. The way Mr F had managed his account would suggest that he was having to borrow and take expensive credit in order to repay other high cost credit. He was, in effect, stuck in a cycle of borrowing high cost short term loans and wasn't in any position to take on further credit.

So, for the reasons set out above, I don't think Live Lend should have provided Mr F with this loan because a proportionate check would've shown it that he was spending significant amounts each month servicing existing high cost short term loans and this loan repayment wasn't sustainable for him, given what Live Lend would've likely discovered.

I therefore uphold Mr F's complaint and I've set out below what it needs to do in order to put things right.

Putting things right

I think it is fair and reasonable for Mr F to repay the principal amount that he borrowed in respect of loan one, because he's had the benefit of that lending. But as I have concluded Live Lend shouldn't have provided this loan, it should look to remove the interest and fees from the amounts due under the loan agreement.

If Live Lend has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If Live Lend is not able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

Live Lend should:

- remove all interest, fees and charges applied to the loan;
- treat any payments made by Mr F as payments towards the capital amount;
- If and when Mr F has paid more than the capital that she borrowed then any overpayments should be refunded to him with 8%* simple interest from the date the overpayments arose to the date of settlement;
- However, if an outstanding balance remains after carrying out the above, than Live Lend and Mr F should try and come to a mutually affordable repayment plan for the balance. But I would remind Live Lend of its obligation to treat Mr F fairly and with forbearance and
- remove any negative information about this loan from Mr F's credit file.

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

My final decision

For the reasons I've explained above, I'm upholding Mr F's complaint.

Chetwood Financial Limited trading as Live Lend should put things right for Mr F as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 12 August 2022.

Robert Walker
Ombudsman