DRN-3604121

The complaint

Mr K complained that UK Credit Limited lent to him irresponsibly and provided him with an unaffordable loan.

What happened

Mr K was given a loan by UK Credit as follows:

Date taken	Loan amount	Number of monthly instalments	Monthly repayment*	Total payable
June 2019	£10,000	60	£330.14	£19,808.40

Mr K told UK Credit the loan was mainly for debt consolidation – in other words, he would use the loan to repay other debt.

One of our investigators reviewed Mr K's complaint. In summary, he felt that UK Credit hadn't done a proportionate check before lending. He said bank statements Mr K had sent us showed he was heavily dependent on borrowing to maintain his finances and supplement his income, including using payday loans and regularly drawing down on a running credit facility. Our investigator thought that it wasn't responsible to provide further credit to Mr K. And he didn't feel that Mr K could benefit from debt consolidation given the overall cost of this loan and the five year term. So, he didn't think that UK Credit should've provided the loan and he recommended upholding the complaint.

UK Credit disagreed with our investigator's view. In brief summary, it said that debt consolidation meant Mr K was immediately better off month to month and using its loan for this purpose put him in a position where he could afford his monthly repayments rather than relying on his overdraft and being in a cycle of borrowing payday loans.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower already struggling with debt that can't be repaid in a sustainable way.

In this case, UK Credit asked Mr K about his income and looked at a payslip to verify his pay. It asked him about his housing costs and it also carried out its own credit checks. And, during a phone call with Mr K (which I've listened to) UK Credit asked about his expenses and questioned him about the results of its credit checks to understand his existing credit commitments and his credit history.

UK Credit recorded a figure of around £2,627 net salary per month. After doing its own background checks and carrying out its affordability assessment, UK Credit worked out that using the loan to consolidate the four loans that were reporting on his credit file (and so clearing two of the defaults) meant Mr K should have been left with around £1,278 spare cash.

So this led UK Credit to conclude that the loan monthly repayments should be comfortably affordable for Mr K.

I've taken carefully into account everything UK Credit has said in response to our investigator's view about the way it assessed affordability. And I've thought carefully about what I think a responsible lender should have made of all the information it had gathered and in particular whether it was enough for UK Credit to make a fair decision to lend.

Our investigator thought UK Credit needed to do further checks before agreeing this loan. I think he overlooked the fact that UK Credit saw the same bank statements that Mr K also sent to us during its loan application process. But I don't think I need to make a finding on whether its checks were proportionate or not because I think UK Credit saw enough detail in the information it had gathered to realise that Mr K was already in serious financial difficulty and that further lending was unlikely to be sustainable.

I say this because it was aware that Mr K had a history of reliance on expensive high cost credit and there were clear signs that he was over-stretched financially.

Two of Mr K's three outstanding payday loans had defaulted within the last year. Within the last month, after first falling behind with the contractual payments owing some five months earlier, a credit card had defaulted - Mr K told UK Credit he had agreed an arrangement to pay on that account.

The bank statements UK Credit saw during the loan application process showed that, in the months running up to him applying for this loan, Mr K was borrowing from at least five other providers of short-term credit and unsecured instalment loans.

He was regularly drawing down on a running credit facility – amongst other withdrawals, it was apparent that he had used this account to borrow £860 on 2 May and again on 3 June 2019. To my mind, this pointed to him borrowing from one lender to meet regular repayments owing elsewhere which was also borne out by looking at his wider credit history. The bank statements UK Credit saw showed that Mr K was making full use of his £2,000 overdraft facility, typically ending each month just inside his overdraft limit. Sometimes he exceeded this limit and he incurred substantial monthly interest, arranged and unarranged overdraft fees and unpaid transaction fees – often around £70 or so.

I think it was clear to see that Mr K's use of credit had escalated beyond manageable limits and the overall picture was of someone persistently reliant on expensive credit and unable to afford the cost of his debt.

UK Credit has argued that using its loan for debt consolidation helped Mr K to improve his financial situation by paying off all his loans. It worked out he should save around £390 per month and said, "*the purpose of the consolidation loan was to pay off his live debts and to be in a position where he can afford monthly repayments rather than relying on his overdraft and in a cycle of borrowing payday loans*."

But I see things differently. One of the payday loans UK Credit expected him to clear had a balance of just £119, the payments were up to date and it was due to be cleared with the next payment in a month or so. The defaulted loans already had the interest on those accounts effectively frozen and these debts were fixed. The other large loan that UK Credit allowed for had been taken out around 7 months earlier – Mr K had borrowed £5,000 and he currently owed £4,713. Those payments were up to date and that loan was due to be cleared in two and a half years.

So I think it's hard to see how using this expensive loan to pay these loans was helpful when Mr K was signing up to pay £9,808 in interest over the term – bearing in mind that he was effectively paying interest on interest and that the cost of the loan was almost as much again as the loan amount itself. Also, he was extending the period he would be indebted for a further five years – beyond the dates the consolidated live loans were expected to run.

I think the costs of consolidating this debt using this loan and the disadvantages of prolonging the time Mr K would likely be indebted significantly outweighed any perceived benefit.

And, despite what UK Credit has said, I don't think I can fairly say that later evidence shows that the loan benefitted Mr K. UK Credit has acknowledged that in the following months Mr K continued to take out payday borrowing – it said this stopped by the end of 2019. And it said Mr K did consolidate "the two loans he said he would and that his remaining defaulted credit card had a reducing balance and he was shown to be managing his existing credit well."

But its updated checks show that just two months after taking its loan, in August 2019, Mr K took out another substantial instalment loan (£4,250) which he signed up to pay back over three years. Effectively, he replaced the large loan he repaid with UK Credit's loan by taking out an amount broadly similar to the amount he had just repaid. And whilst he repaid this loan in December 2020, I haven't seen enough to be able to say that he did this without needing to borrow elsewhere in order to do so – which seems likely to me looking at the available information. Around the same time, an updated credit report from Mr K shows, for instance, that he was still reliant on his overdraft, he had gone over his credit limit on a mail order account and he was in arrangements to pay on several other accounts – so it seems clear he was still struggling to manage his debt.

The fact Mr K successfully made the loan repayments until his work situation changed doesn't mean that he was able to do so sustainably. And even if Mr K's financial situation were to have improved in any real sense since then as UK Credit suggests (which I haven't seen) it doesn't automatically follow that this must mean the impact of UK Credit's loan wasn't detrimental to him.

So I can't reasonably conclude that UK Credit's loan enabled Mr K to move away from his dependency on high cost borrowing. Rather, as I think was reasonably foreseeable, it added significantly to his overall debt, would potentially cost him a lot more in the long run and tied him into an expensive credit arrangement that he faced paying for the next five years and left him still needing to keep borrowing in order to finance his debt repayments.

For all these reasons, I can't reasonably say that UK Credit made a fair lending decision based on the information in front of it and I don't think it should have agreed to provide this loan to Mr K.

In coming to my decision I've thought carefully about everything UK Credit has said, including its detailed responses to our investigator's view. I have concentrated on what I consider to be the main points that affect the outcome of this complaint. I hope that setting things out as I've done helps to explain how I've reached my conclusions.

As Mr K has been further indebted with a high amount of interest and charges on a loan that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what UK Credit did wrong.

So, I think UK Credit needs to put things right.

Our investigator didn't recommend that UK Credit should pay any additional redress. Mr K hasn't commented on that and I haven't seen anything which makes me think UK Credit acted unfairly towards Mr K in any other way. So I'm not planning on awarding any additional redress.

And I think it is fair and reasonable for Mr K to repay the capital amount that he borrowed, because he had the benefit of that lending. But he has been charged extra for a loan that should not have been provided to him. In line with this Service's approach, Mr K shouldn't repay more than the capital amount he borrowed. So I've set out below the steps UK Credit needs to take to put things right."

What the parties said in response to my provisional decision

Both Mr K and UK Credit have acknowledeged my provisional decision and confirmed they have nothing further to add. So I think it's reasonable for me to proceed with my review of this complaint.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint.

I'd like to thank both parties for all the information that has been provided about this matter and for responding so promptly to my provisional decision. Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

Putting things right

UK Credit should do the following:

- add up the total amount of money Mr K received as a result of having been given this loan. The repayments Mr K made should be deducted from this amount.
- If this results in Mr K having paid more than he received, then 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 UK Credit should attempt to arrange an affordable/suitable payment plan with Mr K.
- Whilst it's fair that Mr K's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So UK Credit should remove any negative information recorded on Mr K's credit file regarding the loan.

*HM Revenue & Customs requires UK Credit to deduct tax from this interest. UK Credit should give Mr K a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold Mr K's complaint and direct UK Credit Limited to put things right as set out above.

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

Susan Webb
Ombudsman