DRN-3604241

The complaint

Mrs H complains that Chetwood Financial Limited trading as BetterBorrow (BetterBorrow) irresponsibly lent her money on a high cost loan which she couldn't afford to repay.

What happened

BetterBorrow provided Mrs H with a loan of £4,500 on 28 September 2021 repayable over 48 months in monthly instalments of around £140. Mrs H says she got into difficulty with the repayments. She had only recently taken out a large debt consolidation loan, and had a number of short term loans. She says she can't afford the repayments without using credit to pay household bills.

BetterBorrow said it carried out verification checks of Mrs H's income and carried out a credit check. It assessed her living expenses using ONS (Office for National Statistics) data. It believed she was able to afford the loan and had a fair amount of disposable income (about £465) left at the end of each month after taking into account the new loan instalment.

Mrs H has supplied bank statements for July August and September 2021, and an up to date credit report.

On referral to the Financial Ombudsman Service our adjudicator said that BetterBorrow hadn't carried out proportionate checks, which should have included getting a thorough knowledge of Mrs H's financial circumstances. From reviewing Mrs H's bank statements he said that Mrs H was using a significant amount of her income to repay her debt. He thought there was a significant risk Mrs H would've been unable to sustainably meet her repayments for the loan.

BetterBorrow disagreed, pointing out that it had done relevant checks and that the regulations don't require it to obtain bank statements.

The matter has been passed to me for further consideration.

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 the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did BetterBorrow complete reasonable and proportionate checks to satisfy itself that Mrs H would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Mrs H would have been able to do so?

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

The checks had to be "borrower-focused" – so BetterBorrow had to think about whether repaying the loan would be sustainable. In practice this meant that BetterBorrow had to ensure that making the repayments on the loan wouldn't cause Mrs H undue difficulty or significant adverse consequences. That means she 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 she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her financial situation.

In other words, it wasn't enough for BetterBorrow to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mrs H**.** Checks also had to be "proportionate" to the specific circumstances of the loan application.

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. I think that such a 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 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).

Mrs H's income was assessed at around £1,946 a month. Though her actual salary payments were less than this she did receive regular payments of child benefit and child maintenance. So I think that was a fair assessment of her regular income.

Mrs H has supplied an up to date credit report and BetterBorrow has given us details of Mrs H's credit commitments that it obtained. From this it appears that Mrs H had loans totalling nearly £14,000 (including an HP loan of £8,900). Total payment for those loans amounted to around £594 a month. She had a current account with a £400 overdraft and credit card with a £750 balance on it. I think, for the credit card and the bank account it is fair to allow a payment of 5% of the (then) current balance. This means monthly credit commitments of around £642. Adding the loan payment to that she would have been spending around 40% of her income on credit commitments, quite a high figure and a strong indication that the loan may not have been affordable.

Mrs H has supplied a calculation drawn up by the Citizens Advice Bureau (CAB). setting out that she is spending more than she is earning each month. I appreciate that BetterBorrow obtained some of her living expenses from Mrs H's application. However, as it showed that Mrs H was overdrawn (and had been for several months) and had a high credit to income ratio, I think those checks should have alerted BetterBorrow to carry out further more detailed checks. And although the regulations don’t specify that businesses should review bank statements, I do think the information revealed by those statements could have been obtained by BetterBorrow, had it carried out further checks.

In considering those statements, I think it is clear that Mrs H had been obtaining further loans up until the September 2021 statement. These don’t show the debt consolidation loan she had taken out, though they do show smaller loans and various direct debits to loan companies. But as BetterBorrow has pointed out, that loan would presumably have paid off the earlier loans. I think though from the other information show on those statements Mrs H couldn’t afford the loan, because her living expenses were higher than previously revealed. For example she was paying £445 a month in rent rather than the £235 taken into account. Also, while BetterBorrow says it used ONS data to assess her living expenses, I can’t see that it added any extra liability for dependents, as would be normal.

So I think that while BetterBorrow did carry out proportionate checks, the checks it did should have alerted it to carry out further investigations of Mrs H’s finances. And in turn that would have shown the loan to be unaffordable. So I don’t think BetterBorrow made a fair lending decision.

Putting things right

Mrs H has had the capital payment in respect of the loan, so it’s fair that she should repay this. So far as the loan is concerned, I think BetterBorrow should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mrs H as payments towards the capital amount.
- If Mrs H has paid more than the capital, refund any overpayments to her with 8% simple interest* from the date they were paid to the date of settlement.
- But if there’s still an outstanding balance, BetterBorrow should come to a reasonable repayment plan with Mrs H
- Remove any adverse information where appropriate about the loan from Mrs H’s credit file.

*HM Revenue & Customs requires BetterBorrow to deduct tax from this interest. It should give Mrs H a certificate showing how much tax it’s deducted if she asks for one.

My final decision

I uphold the complaint and require BetterBorrow Limited to provide the remedy set out under “Putting things right” above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 24 August 2022.

Ray Lawley
Ombudsman