

The complaint

Mr S complains about a loan granted to him by Bank of Ireland (UK) Plc ("BOI"). He says that BOI shouldn't have agreed to the loan because it was unaffordable for him.

Mr S has brought his complaint to us via a representative but for simplicity I will refer to him throughout.

What happened

BOI agreed a loan for Mr S in July 2020. The loan was for £25,000 to be repaid in monthly instalments of £525 over five years, and the total amount owed was £38,416 (figures rounded).

Mr S said that BOI didn't carry out sufficient checks before lending to him. He said that he was in debt with a mortgage and several overdrafts and the loan was unaffordable for him. Mr S also said that he's taken out several loans since to keep up to date with the monthly repayments, that he has difficulty with his mental health and he gambles.

BOI said that it approved Mr S's loan application based on information he'd provided and what it could see on his credit file. It used national statistical datasets to estimate his living costs. BOI concluded it hadn't lent irresponsibly and didn't uphold Mr S's complaint.

Mr S brought his complaint to us. One of our investigators looked into what happened when Mr S's loans was agreed. They found that it would have been reasonable and proportionate of BOI to have looked further into Mr S's circumstances before lending to him because of the amount involved. They found that BOI would likely have learnt that Mr S didn't have enough money to cover the loan repayments, and that he was spending a significant proportion of his income on gambling. Our investigator concluded that Mr S's complaint should be upheld and recommended that he shouldn't pay and interest or charges for his loan.

BOI didn't agree with this recommendation and asked for the complaint to be reviewed by an ombudsman and it's come to me.

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.

BOI will be familiar with the regulations in place at the time so I won't set them out in detail but will summarise them and refer to them where appropriate. BOI needed to check that Mr S could afford to meet his repayments without difficulty before agreeing the loan. In other words, it needed to check that he could meet his repayments out of his usual means without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to take into account both the nature of the credit (the amount offered or the loan term, for example) and Mr S's particular circumstances. The overarching requirement was that BOI needed to pay due regard to Mr S's interests and treat him fairly.

With this in mind, my main considerations are did BOI complete reasonable and proportionate checks when assessing Mr S's application to satisfy itself that he would be able to make his repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did BOI make a fair lending decision?

Having considered everything carefully, I am upholding Mr S's complaint. I appreciate that this will be very disappointing for BOI and I hope the following clearly explains my reasons for doing so.

BOI carried out an income and expenditure assessment when Mr S applied for his loan. Mr S said in his application that his net monthly income was £2,500, his mortgage repayments were £650 and his council tax payments were £220. BOI noted that Mr S's mortgage repayment was £697, as per his credit file record, and that he had no loans or credit card balances.

I haven't seen a copy of the credit file report BOI relied on but Mr S provided us with a recent copy. I've assumed BOI would have seen that Mr S took out his mortgage about a year earlier in July 2019 and repaid several existing large loans around that time, including an earlier loan from BOI. I've also assumed BOI would have seen that Mr S had several bank accounts – at least two sole accounts and one joint. All have overdrafts – his joint account overdraft limit was £2,000, his sole accounts had limits of £750 and £5,000. Mr S had taken out the former (sole) account in late 2019 and had already reached his overdraft limit and the latter seems to have had a long standing overdraft balance of close to £5,000.

BOI used national statistical datasets to estimate Mr S's other outgoings (excluding his mortgage but including his council tax) which yielded a total estimate of £603. This would leave Mr S with £1,200 a month to meet his loan repayment of £525 and any other unaccounted for or unexpected spend.

Mr S had stated in his application form that the household income was £3,000, meaning he was the main source of income for his household, and I haven't seen any evidence of income other than Mr S's on the bank statements he provided to us. BOI said that it used an online credit reference agency tool to check transactions on Mr S's bank account and so had some confidence in what he'd said about his level of income. I haven't seen the results of this check, so I don't know what information BOI relied on or which bank account it looked at.

The regulations in place at the time said that the level of assessment required depended on the affordability risk. They stated that if the repayments and the total charge for the credit were low (relative to the borrower's financial circumstances) then the amount of information sufficient to support a reasonable assessment may be less than required than in the case of higher amounts of credit or when it is known that the credit might have a more significant impact.

Given the amount Mr S wanted to borrow and the size of the loan repayments relative to his income, and that Mr S appeared to be the main income provider for his household, I think BOI should have done more here to check that Mr S would be able to meet his repayments without difficulty over the lifetime of the agreement. For example, on this occasion I think it would have been reasonable to have asked Mr S for proof of his income and some evidence of his main outgoings.

Mr S's income was paid into his joint account and, as mentioned, I haven't seen evidence of any other household income. I can see that Mr S's income deposits varied in the three months prior to the lending with the lowest amount being £2,252. Mr S has also provided his

payslips from the time which show that his income comprised a basic wage plus overtime, which accounts for the variations in his monthly deposits. His basic salary equated to a monthly take-home pay of about £2,040, or £1,950 taking his pension contributions into account.

Mr S's usual outgoings (excluding mortgage and council tax) came to about £750, as seen on his bank statements. This includes easily identifiable costs such as household bills and media payments, insurances, car and bank costs, along with monthly school fees as Mr S has children. The regulations stated that "non-discretionary expenditure includes expenditure for other persons whose financial obligations the customer meets wholly or in part" so I think it is reasonable to include these payments in an assessment. Even without considering the variable food and petrol costs shown on the statements, it's clear to me that Mr S wouldn't be able to afford to meet his payments for this loan without difficulty, considering these outgoings alongside his mortgage, council tax and the loan payments.

Altogether, I've concluded that a proportionate check would have shown that it was unlikely Mr S would be able to afford the repayments for this loan without experiencing financial difficulty, and I think BOI would have declined to lend to him under these circumstances.

Furthermore, Mr S's sole accounts show that he was spending considerable sums on gambling. I don't know what the BOI funds were spent on, but I do know that Mr S went on to borrow more over the following years. By the end of 2021 Mr S was repaying over £50,000 of other unsecured debt. Mr S said that he has never been able to afford to pay back what he owes and gambled further and borrowed more money to try to meet the monthly payments. It seems to me that BOI's loan adversely impacted on Mr S and it now needs to put things right for him.

Putting things right

I think it's fair that Mr S repays the capital he borrowed as he's had the use of this but I don't think he should pay any interest or charges on this loan, which I've found to have been irresponsible given. In summary BOI should:

- Cap the amount Mr S needs to repay at £25,000; and
- Consider all payments Mr S made as payments towards this capital amount; and
- If Mr S had paid more than this (which I don't think is the case) then BOI needs to refund these overpayments to him along with 8% simple interest per annum* from the date of payment to the date of settlement of this complaint; or
- If Mr S has not yet repaid the capital, then BOI needs to treat Mr S fairly and with forbearance and due consideration regarding his outstanding balance. This may mean coming to an affordable repayment plan with him.
- Remove any negative information about this loan from Mr S's credit file up to the point of settlement of the complaint.

* HMRC requires BOI to take off tax from this interest. BOI must give Mr S a certificate showing how much tax it's taken off if he asks for one.

My final decision

I am upholding Mr S's complaint about Bank of Ireland (UK) Plc for the reasons I've explained and it needs to take the above steps to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 November 2022.

Michelle Boundy
Ombudsman