DRN-3716606

The complaint

Mr T complains that Shawbrook Bank Limited irresponsibly lent him money that he couldn't afford to repay.

What happened

Shawbrook provided Mr T with a loan for £10,000 on 30 July 2018. The period of the loan was 60 months and the monthly repayment was £225.74. The loan was for part consolidation of his existing loans with other lenders. Mr T says that when he took out the loan he was in considerable debt and the loan only added to those debts. He could only sustain the payments by taking out new loans but has now fallen behind with the payments.

Shawbrook said that it carried out verification checks of his income and his existing credit. It took into account that Mr T was paying off one of his loans and part of other loans, and believes he kept information from it about his liabilities.

On referral to the Financial Ombudsman our adjudicator said that Shawbrook had failed to take into account Mr T's living expenses and hadn't accounted for two loans and an overdraft. He also noted that Shawbrook hadn't specified what loans were to be paid off. On that basis he said the loan was unaffordable.

Shawbrook said it was reasonable to accept Mr T's word that he would be paying off loans, and said that its checks followed industry standards and complied with the Consumer Credit (CONC) rules set out in the handbook of the FCA (Financial Conduct Authority). It said that although one account was overdrawn, this was more than balanced by other current accounts it had seen. It believed Mr T had kept the statements for the overdrawn account from it.

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 Shawbrook complete reasonable and proportionate checks to satisfy itself that Mr T would be able to repay the loan in a sustainable way?

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

The rules and regulations in place required Shawbrook to carry out a reasonable and proportionate assessment of Mr T'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 Shawbrook had to think about whether repaying the loan would be sustainable. In practice this meant that Shawbrook had to ensure that making the repayments on the loans wouldn't cause Mr T 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 Shawbrook to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr T. 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).

Mr T was borrowing a considerable sum, for an unsecured loan, over a long period. This represented a substantial commitment on his part. I think Shawbrook should have carried out a thorough assessment of Mr T's finances.

The first thing to note is that according to the credit report, two loans weren't accounted for. They weren't that recent that they wouldn't have appeared on the record. And they were from established lenders so it seems unlikely that they wouldn't have appeared in the report from the agency Shawbrook used. The total repayments from those loans added about £398 to his existing loan repayments.

Mr T had a £3,600 overdraft which did show on the record. Allowing a 5% monthly payment of the balance on his overdraft, this meant that Mr T's credit commitment were about £1,036, about 57% of his income of £1,812. This was before adding the cost of the new loan. Such a high commitment was unlikely to be affordable.

However Mr T did make it clear in his call with Shawbrook when applying for the loan that he intended to consolidate his existing loans. I've noted that the additional loans I've mentioned added up to about £10,000, so although I don't think he did pay them off, it might be reasonable for Shawbrook to have expected him to do this. But even taking £398 from his credit commitments the new loan repayment still has to be added back. This would bring the commitments to around £863, still about 48% of his income.

I have thought about, given that they didn't show in the credit report whether it would be reasonable to expect Shawbrook to know about the additional loans. The report clearly showed an overdraft of £3,600 on a current account. I note Shawbrook says it has a statement from another account which balances that out. It hasn't shown us that statement, but I think such a high figure for an overdraft should have alerted Shawbrook to look at the statements for that account. The loan repayments are clearly shown on that account. What is also shown is that Mr T spent substantial amounts of gambling on that account. I think if Shawbrook had looked at the statements for that account it would have been unlikely to have provided the loan.

Even if I'm wrong in that respect, which I don't think I am, without the two loans and reducing the other loans by £10,000 might have released about £240. This would have produced a figure, including the new loan arrangements of about 35% credit commitments against income, still high. But in that event Shawbrook should have ensured that Mr T paid off the loans which it could have done directly before releasing funds to Mr T.

In respect of his disposable income, apart from his mortgage (which he paid half of, with his partner), Shawbrook didn't appear to take any account of his living expenses, which were around £1,338 (including £360 towards his mortgage). Even using the £863 figure for credit commitments which allows for the loan repayment and paying off two loans, this still would have left him with a negative disposal income of about £389.

I think that Shawbrook did do proportionate checks to assess the affordability of the loan. In my view those checks should have alerted it to check the statements for Mr T's overdrawn account. Taking into account the proportion of credit against incomed and the disposable income I think the loan was unaffordable. And even if Shawbrook hadn't carried out that further check I still think the loan should have been assessed as unaffordable.

So I don't think that Shawbrook made a fair lending decision. It should refund all interest and charges, as set out below.

Putting things right

Mr T has had the capital payment in respect of the loan, so it's fair that he should repay this. So far as the loan is concerned, I think Shawbrook should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr T as payments towards the capital amount.
- If Mr T has paid more than the capital, refund any overpayments to him with 8% simple interest* from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, Shawbrook should come to a reasonable repayment plan with Mr T.
- Remove any adverse information about the loan from Mr T's credit file.

*HM Revenue & Customs requires Shawbrook to deduct tax from this interest. It should give Mr T a certificate showing how much tax it's deducted if he asks for one.

My final decision

I uphold the complaint and require Shawbrook Bank 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 Mr T to accept or reject my decision before 21 October 2022.

Ray Lawley
Ombudsman