Financial Ombudsman Service

The complaint

Mr M says Chetwood Financial Limited, trading as BetterBorrow, irresponsibly lent to him.

What happened

Mr M took out a 60-month instalment loan for £5,000 on 31 January 2023. The monthly repayments were £172.78 and the total repayable was £10,367.06.

Mr M says it was clear he was not managing his finances well, he was a compulsive gambler taking out payday loans to fund this and to repay other loans, so he should not have been given this loan. It has left him heavily in debt and suffering with mental health issues. He asks for all interest to be cancelled and for reduced loan repayments.

Our investigator did not uphold Mr M's complaint. She said BetterBorrow's proportionate checks did not show any signs the loan might not be affordable.

Mr M disagreed and asked for an ombudsman's review so the complaint was passed to me. I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision.

Extract from my provisional decision

I have reviewed the checks that BetterBorrow carried out prior to lending to Mr M. It asked about his income and employment status. It checked his declared income using an external verification tool. It asked about his residential status and housing cost. It used national statistics to estimate Mr M's living costs. It calculated his monthly credit commitments from its credit check. From these checks combined, it concluded Mr M could afford this loan and would have £549 of monthly disposable income.

I don't think these checks were proportionate, I'll explain why. Mr M was taking on a relatively high value loan over five years so BetterBorrow needed to be sure he would be able to sustainably repay it over that time period. I think there were some indications in the results of the initial checks it completed that this might not be the case. So it ought to have completed a fuller financial review to get the assurances it needed: it was not enough to focus solely on the pounds and pence affordability, it had to be sure Mr M could repay its loan without needing to borrow, or suffering some other financial detriment.

Taking on this loan would mean Mr M would be spending almost 35% of his net income each month on his unsecured credit commitments. This is a significant amount and such a level can be an indicator of future financial difficulties. Plus, Mr M already had an overdraft of £1,245 and the above assessment does not provide for any repayment of this debt as it ought to.

In circumstances such as these we look at bank statements from the three months prior to the loan application. I am not saying BetterBorrow had to do this, but it is a way for me to understand what better checks would most likely have shown BetterBorrow.

Mr M's statements evidence financial instability and pressure - he was persistently reliant on his overdraft facility, using at least four payday lenders and spending thousands via a crypto payments gateway. This supports Mr M's testimony he was in a cycle of borrowing to repay and gambling compulsively. So had BetterBorrow completed better checks it would have realised there was a clear risk Mr M would not be able to repay its loan sustainably and, as a responsible lender, it would have made a different lending decision.

It follows I think BetterBorrow was wrong to lend to Mr M. I have no seen evidence it acted unfairly towards Mr M in some other way.

I then set out what BetterBorrow would need to do to put things right.

BetterBorrow disagreed with my provisional decision. It said, in summary:

- the loan was not relatively high value and Mr M's had above-average net income;
- it does not review bank statements as part of its lending strategy;
- repayment of Mr M's overdraft was taken into account;
- its affordability assessment showed Mr M would have substantial disposable income of £549 after taking on this loan; and
- there was nothing in its initial checks that suggested the lending would be irresponsible.

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.

I have considered BetterBorrow's response to the provisional decision carefully. But it does not change my conclusion. I will explain why.

The level of income Mr M was already spending on unsecured consumer credit ought to have been a red flag for BetterBorrow. I am not saying it should have been a reason to decline the application, but that it definitely ought to have triggered further checks. Mr M was applying for a loan that he would need to be able to sustainably repay over a five-year period. And based on the data it had gathered I don't think BetterBorrow had the assurances it needed to know this would be the case.

It has focused predominantly on the level of disposable income it understood Mr M had, noting it was substantial. But I think that in itself could be seen as another red flag. It could be seen as incongruous that if he had such a level of disposable income each month, he was also overdrawn and so indebted. Again, to be clear, I am not saying this meant the lender ought to have declined his application at this stage – rather that it ought to have completed further checks. It was obliged to consider more than just the pounds and pence affordability of the loan, it needed to check Mr M could repay the debt without borrowing to repay or suffering some other adverse financial consequence.

BetterBorrow has explained it does not review bank statements, but I am not saying it had to, only that looking at Mr M's statements from around the time he applied is a way for me to recreate what better checks would most likely have shown. And from that I can work out the lending decision that BetterBorrow, as a responsible lender, would most likely have made.

In this case better checks would most likely have disclosed Mr M's financial instability - he was persistently reliant on his overdraft facility, using at least four payday lenders and spending thousands each month via a crypto payments gateway. And so had it known this, I think BetterBorrow would not have lent to him.

I note its comments that it disagrees the loan was relatively high value and that it had taken into account the repayment of the overdraft (the business file did not break down in full the assumptions behind the cost of Mr M's monthly credit commitments), but for the reasons set out above these points do not change my conclusion.

It follows I think BetterBorrow was wrong to lend to Mr M.

Putting things right

Mr M should repay only the capital portion of the loan. He has paid interest and charges on a loan that should not have been given to him and this is unfair. So BetterBorrow should:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr M as payments towards the capital amount.
- If Mr M 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, BetterBorrow should agree an affordable repayment plan with Mr M, treating him fairly and with forbearance if appropriate.
- Remove any adverse information about the loan from Mr M's credit file once any outstanding capital balance has been repaid.

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

My final decision

I am upholding Mr M's complaint. Chetwood Financial Limited, trading as BetterBorrow, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 August 2023.

Rebecca Connelley
Ombudsman