DRN-4275746

Financial Ombudsman Service

Complaint

Mr J has complained that Chetwood Financial Limited (trading as "Live Lend") provided him with an unaffordable loan.

He says he doesn't believe that adequate affordability checks were carried out, as this loan was unaffordable.

Background

Live Lend provided Mr J with a loan of £10,000.00 in September 2021. This loan had an APR of 16.3% and a 60-month term. This all meant the total amount repayable of £14,262.25, including interest, fees and charges of £4,262.25, was due to be repaid in 59 monthly instalments of £237.70 followed by a final instalment of £237.95.

One of our investigators looked at this complaint and thought that Live Lend unfairly provided this loan to Mr J as proportionate checks would have shown it was unaffordable.

Live Lend disagreed with our investigator and asked for an ombudsman to review the complaint.

My findings

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 the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr J's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr J's complaint. These two questions are:

1. Did Live Lend complete reasonable and proportionate checks to satisfy itself that Mr J would be able to repay his loan in a sustainable way?

    o If so, did it make a fair lending decision?
    o If not, would those checks have shown that Mr J would've been able to do so?

2. Did Live Lend act unfairly or unreasonably in some other way?

Did Live Lend complete reasonable and proportionate checks to satisfy itself that Mr J would be able to repay his loan in a sustainable way?

Live Lend provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required Live Lend to carry out a reasonable and proportionate assessment of Mr J's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Live Lend had to think about whether repaying the loan would cause significant adverse consequences *for Mr J*. In practice this meant that Live Lend had to ensure that making the payments to the loan wouldn't cause Mr J undue difficulty or adverse consequences.

In other words, it wasn't enough for Live Lend to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr J. 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.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer'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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time 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).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Live Lend's checks reasonable and proportionate?

Live Lend says that it asked Mr J for some information on his income and expenditure prior to providing him with this loan. It says also carried out a credit check which validated some of what Mr J had declared.

Mr J declared that he was self-employed with monthly earnings of just under £3,600.00. This declaration was electronically cross-checked against information showing how much Mr J's bank account received each month. And Live Lend also took account of Mr J's existing credit commitments, asked him about his housing costs and using all of this information determined that Mr J would end up having in excess of £2,200.00 in disposable income left over each month.

I’ve carefully considered what Live Lend has said. And I know it disagreed with our investigator’s view that it ought to have known about Mr J’s indebtedness given its credit searches as, for whatever reason, the credit search didn’t link accounts registered to a previous address.

Nonetheless, Live Lend was providing Mr J with £10,000.00 and this was to be repaid over five years. I note that Mr J had said that he was self employed with declared earnings of £3,600.00 a month. But given the amount borrowed, the term of the loan and most importantly the income of the self-employed can vary, I think that Live Lend needed to take steps to verify that Mr J did receive £3,600.00.

I know Live Lend considered that it did verify Mr J’s income. But I don’t think that cross checking Mr J’s bank account received this much each month – which would include all credits going in – is the same as actually verifying his monthly income.

I’m also concerned that Live Lend appears to have accepted at face value that Mr J had no existing credit commitments and a monthly disposable income of £2,200.00, even though he had an apparent want or need to borrow on such disadvantageous terms.

To be clear it’s not the plausibility of the disposable income on its own that leads me to think Live Lend needed to do more. It’s the combination of this together with the figure arrived at being based on an unverified declaration of self-employed income that persuades me it was incumbent on Live Lend to carry out further income checks in this particular instance.

As I can’t see that this Live Lend did take further steps to verify Mr J’s income, I don’t think that the checks it carried out before providing Mr J with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Live Lend that Mr J would have been unable to repay this loan?

As reasonable and proportionate checks weren’t carried out before this loan was provided, I can’t say for sure what they would’ve shown. So I need to decide whether it is more likely than not that a proportionate check would have told Live Lend that Mr J would have been unable to sustainably repay this loan.

Live Lend was required to establish whether Mr J could make his loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I’ve carefully considered what information Mr J could have been asked for in order to support his income declaration – after all he is unlikely to have been able to provide payslips in the same way that an employed person might. As Live Lend relied on the amounts going into Mr J’s bank account as being his income, I don’t think it is unreasonable to look at the bank account transactions to see what was going in and where these funds were coming from.

I’ve therefore considered all of the information provided with a view to establishing what the credit into Mr J’s account were made up of. Having done so, it’s clear that Mr J’s earnings were being supplemented by loans from unsustainable sources and gambling winnings. And this is the reason why Live Lend’s information showed the credits it did.

So, notwithstanding the fact that Live Lend might not have been aware of the full extent of Mr J's indebtedness, I think that proportionate checks into Mr J's income would have shown Live Lend that Mr J was unlikely to be able to repay this loan without borrowing further or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr J would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty.

And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Live Lend to the fact that Mr J was in no sort of position to make the payments on this loan without suffering significant adverse consequences.

Did Live Lend act unfairly or unreasonably towards Mr J in some other way?

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that Live Lend acted unfairly or unreasonably towards Mr J in some other way. So I don't think Live Lend acted unfairly or unreasonably towards Mr J in some other way.

Did Mr J lose out as a result of Live Lend unfairly providing him with this loan?

As Mr J paid and is being expected to pay 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 Live Lend did wrong.

So I think that Live Lend needs to put things right.

Fair compensation – what Live Lend needs to do to put things right for Mr J

Having thought about everything, Live Lend should put things right for Mr J by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr J made should be deducted from the new starting balance – the £10,000.00 originally lent. If Mr J has already repaid more than £10,000.00 then Live Lend should treat any extra as overpayments. And any overpayments should be refunded to Mr J;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr J to the date of settlement†;

- if no outstanding balance remains after all adjustments have been made, all adverse information Live Lend recorded about this loan should be removed from Mr J's credit file.

† HM Revenue & Customs requires Live Lend to take off tax from this interest. Live Lend must give Mr J a certificate showing how much tax it has taken off if he asks for one.

I'd also remind Live Lend of its obligation to exercise forbearance and due consideration if it intends to collect on an outstanding balance, should one remain after all adjustments have been made to the account and it's the case that Mr J is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Mr J's complaint. Chetwood Financial Limited needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr J to accept or reject my decision before 20 November 2023.

Jeshen Narayanan
Ombudsman