DRN-4293194

The complaint

Mr B is complaining about PCF Bank Limited's decision to lend to him.

What happened

In August 2018, Mr B entered into a conditional sale agreement with PCF to finance the purchase of a car. He paid a deposit of £4,000 and borrowed £10,000 over a 48-month term, with monthly repayments of £286.84. Mr B said he had to surrender the car in February 2020 because he found the payments unaffordable. He says that at the time PCF lent to him he'd been declined by other lenders. And he says the high interest rate offered to him by PCF reflected his below-average credit worthiness. Mr B says PCF didn't do enough to check his income and ability to repay the loan. So he thinks PCF shouldn't have lent to him and should put him in the position he'd have been in if they hadn't.

Mr B complained to PCF but they didn't uphold his complaint. They said they'd completed detailed checks before deciding to lend to Mr B – checking his monthly income, credit commitments and expected living costs. PCF said the income on the three bank statements they'd looked at significantly exceeded the annual income Mr B had declared on his application. They explained they'd used Office of National Statistics (ONS) data to calculate Mr B's monthly expenditure. Looking at Mr B's credit file, PCF said Mr B had recently settled a similar hire purchase agreement on which he'd not missed a payment over 52 months. And they'd seen Mr B paid his mortgage on time and maintained his other credit commitments. So, they said, they'd concluded the finance agreement was arranged responsibly and was affordable at the time based on Mr B's income and credit history.

Mr B was unhappy with PCF's reply so he came to our service. He said he was self-employed and the amounts showing in his bank statements as income were cash deposits rather than payroll. Mr B thought PCF should have checked his company accounts. He added that PCF had seen his bank statements which showed no surplus at the end of each month.

One of our investigators looked into Mr B's complaint and said he thought the checks PCF had carried out were proportionate. He then looked at what the evidence PCF had gathered showed and estimated Mr B's disposable income by looking at Mr B's bank statements. Our investigator concluded there weren't any indicators that Mr B couldn't sustainably afford the repayments under the conditional sale agreement and therefore that PCF hadn't acted unfairly in approving the finance.

Mr B disagreed with our investigator and asked for a decision. In doing so, he said his income was variable over the year and PCF should have checked his previous Self Assessment tax returns. He said he had a large amount of total debt at around £305,000 at the time of the application, including a mortgage, three credit cards, and a significant personal loan. And he said he was regularly using both his arranged and unarranged overdraft facility as well as occasionally being charged for unpaid direct debits.

Mr B added that his minimum credit card payments at the time averaged £841 per month. And he said he was paying £1,000 a month to his partner's mother to repay a loan and making multiple payments to his partner for childcare and other expenses. He said PCF should have looked at his actual outgoings rather than using ONS figures. And that if they'd looked at his bank statements properly they'd have seen he was deep in his overdraft despite his income being higher than usual during the months in question.

I issued a provisional decision on 19 July 2023. In that provisional decision, I said:

"*The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.*

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did PCF carry out proportionate checks?

PCF's initial assessment had a red flag in relation to Mr B's current account turnover so they asked for three months of bank statements. Looking at Mr B's bank statements, it's clear that his income was erratic and variable. And most of it was in cash deposits. While the average for the three months was around £9,000 per month, significantly higher than the £78,000 Mr B had told them, I'm inclined to say the erratic nature of Mr B's income suggests PCF should have done more to check what a sustainable figure for his income would be.

PCF also looked at Mr B's credit file and his company's credit file. Looking at his company's credit file, there are no significant concerns, although the risk rating increased from low risk to moderate risk at the beginning of August 2018. Mr B's individual credit file showed he had seven active lines of credit, with no defaults or late payments. Although it showed Mr B's total credit balance was around £305,000, he had a mortgage so I can see why this amount wouldn't have been a concern.

PCF then estimated Mr B's disposable income using the salary Mr B had given them and expenditure data from the ONS. I can't see that Mr B gave PCF any reason to think his spending might not be in line with national averages. And his credit history didn't contain any indicators that Mr B might be having financial difficulties. So I can understand why PCF didn't think it was unreasonable to use the ONS data.

However, PCF had a copy of Mr B's bank statements – and they don't appear to have considered what those statements showed. CONC 5.2.1R(2)(a) says a firm must take into account in its assessment the information of which it's aware. The statements show Mr B repeatedly dipping into his overdraft and paying fees and interest to do so. I'm inclined to say this should also have led PCF to do more detailed checks.

What would PCF have found?

A proportionate check would have involved PCF finding out more about Mr B's income and expenditure.

To determine what PCF would have found if they'd done more checks, I've looked at Mr B's tax returns for the tax years 2016/17 and 2017/18 to calculate Mr B's average net monthly income. And I've had a closer look at Mr B's bank statements to determine his regular financial commitments and non-discretionary expenditure.

Mr B's tax return for the tax year 2016/17 shows income of £64,100 and tax due of £8,630. For 2017/18 it shows income of £64,400 and tax of £8,227. So Mr B's net *monthly income over the course of the two years preceding the lending was around £4,650 on average.*

To estimate Mr B's expenditure, I've looked the last three months' bank statements before the lending decision. On average, these show monthly mortgage payments of around £1,187, council tax of £260, and gas and electricity of £162. On average he spent around £150 per month on petrol and £450 per month on groceries. On top of this, he had regular direct debits including TV, phones, gym membership and insurance totalling around £350 per month.

Mr B was also making a weekly payment of £250 to an individual, and significant ad-hoc payments to another individual which averaged around £1,300 per month. When we asked, he told us that the £250 per week (£1,000 per month) was to repay a loan from his partner's mother and the £1,300 was payments to his partner for childcare and some other expenses.

On top of this, Mr B was making payments of around £1,300 against a loan and his credit cards. So his average non-discretionary monthly expenditure was around £6,160. This is significantly higher than his income and so wouldn't have allowed Mr B to make repayments on this agreement without having to borrow further or suffer adverse financial consequences. So I'm inclined to say PCF shouldn't have lent to Mr B."

Mr B accepted my provisional decision, but PCF didn't. In summary, they said:

- The non-reportable credit arrangements don't appear to have impacted Mr B's ability to service a hire purchase agreement for twice the instalment amount as PCF's.
- Mr B's 2016/17 income was lower than 2017/18 and his credit commitments decreased over the same time frame so he was in a net-improved situation at the time of the loan.
- The consumer indebtedness index (CII) was in a lower range indicating that Mr B wasn't over-indebted and wouldn't struggle with the commitment.
- The use of an approved overdraft, working within the limit isn't an indicator that someone is in a distressed situation. If there were fees for bounced items then they'd take a different view.
- When signing the agreement, Mr B acknowledged a statement confirming he wasn't aware of any changes to his financial circumstances, and that on this basis he deemed the loan affordable.

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.

In my provisional decision I said that PCF should have done more checks because they could see from Mr B's bank statements that he was repeatedly dipping into his overdraft and paying fees and interest to do so. I disagree with PCF's view that using an overdraft within the assigned limit doesn't suggest a consumer has issues. An overdraft is generally an expensive form of credit and therefore an indicator that a consumer *may* be in financial difficulties. In addition, I note the April statement, which PCF had a copy of, included charges for unarranged overdraft and for an unpaid transaction.

I appreciate PCF's comments about the CII – but this understandably didn't take into account the loan arrangements he had with individuals. I don't have details of these loan arrangements so it's difficult to say whether Mr B's net situation was indeed better in 2017/18 than in 2016/17. Similarly, while PCF says these non-reportable arrangements don't appear to have impacted Mr B's ability to service a previous hire purchase agreement, it's not clear how this links in with the personal loan arrangements. I'm not persuaded by these comments that the checks were proportionate. I maintain that PCF should have done more checks.

Finally, PCF says Mr B deemed the loan affordable when signing the agreement - – but this confirmation doesn't carry any weight when looking at the requirements of CONC.

In my provisional decision I found that Mr B's sustainable income was less than his non-discretionary expenditure at the time of the loan. PCF's comments don't change that finding. So I'm satisfied PCF shouldn't have lent to Mr B.

Putting things right

As I don't think PCF should have approved the lending, I don't think it's fair for them to charge any interest or other charges under the agreement. In my provisional decision I explained how I thought PCF should put things right. Neither party objected to that, so the paragraphs that follow are unchanged from my provisional decision.

Mr B had the use of the car for around 18 months so I think it's fair he pays for that use. There isn't an exact formula for working out what fair usage should be. However, in deciding what's fair and reasonable, I've thought about the amount of interest that was charged under the agreement, the usage Mr B likely had of the car and what his costs to stay mobile might have been had he not entered into this agreement. In doing so, I think a fair amount Mr B should pay is £290 for every month he had use of the car. So I think it would be fair and reasonable for PCF to retain £5,220.

To settle Mr B's complaint, PCF should do the following:

- End the agreement with nothing further to pay unless, as seems the case, this has already been done.
- Refund all the payments Mr B has made (including the deposit), less £5,220 for fair usage.
    - If Mr B has paid more than the fair usage figure, PCF should refund any overpayments, adding 8% simple interest per year from the date of each overpayment to the date of settlement. Or;
    - If Mr B has paid less than the fair usage figure, PCF should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once PCF has received the fair usage amount, it should remove any adverse information recorded on Mr B's credit file regarding the agreement.

If PCF consider tax should be deducted from the interest element of my award they should provide Mr B a certificate showing how much they've taken off so that Mr B can reclaim that amount, assuming he is eligible to do so.

My final decision

As I've explained above, I'm upholding this complaint. PCF Bank Limited need to take the steps I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 September 2023.

Clare King
Ombudsman