DRN-4303391

Financial Ombudsman Service

The complaint

Mr G says Fairscore Ltd, trading as Updraft, irresponsibly lent to him.

What happened

Mr G took out a loan for £3,000 over 36 months from Updraft in December 2021. The monthly repayments were £124.91 and the total repayable was £4,571.95. He says he should not have been approved given his financial situation. He was already struggling to repay all his debts and this extra loan made things worse.

Mr G took out a second loan in March 2022. Updraft upheld Mr G's complaint about this loan, but said its checks were proportionate for the first loan and it was not wrong to provide the loan. Unhappy with this assessment Mr G brought his complaint about the December 2021 loan to this service.

Our investigator upheld Mr G's complaint. She said there were signs Mr G might not be able to repay the loan sustainably.

Updraft disagreed and asked for an ombudsman's review.

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 of the relevant rules, guidance and good industry practice - on our website. 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 G's complaint.

These two questions are:

1. Did Updraft complete reasonable and proportionate checks to satisfy itself that Mr G would be able to repay the loan without experiencing significant adverse consequences? - If so, did it make fair lending decisions? If not, would those checks have shown that Mr G would've been able to do so?

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

The rules and regulations in place required Updraft to carry out a reasonable and proportionate assessment of Mr G'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 Updraft had to think about whether repaying the loan would cause significant adverse consequences for Mr G. In practice this meant that the business had to ensure that making the payments to the loan wouldn't cause Mr G undue difficulty or significant adverse consequences.

In other words, it wasn't enough for Updraft to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr G. Checks also had to be proportionate to the specific circumstances of the loan applications. 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 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 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).

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr G's complaint. Updraft has provided evidence to show that it asked for some information from Mr G before giving the loan. It asked for his monthly income, his employment status and his housing costs. It completed an income verification check with a third-party and used national statistics to make an assumption about his living costs. It carried out a credit check to understand his credit history and his existing credit commitments. Based on the results of these checks Updraft thought it was fair to lend to Mr G as he had monthly disposable income of £287.90.

There has been debate between the investigator and Updraft about whether or not its checks were proportionate, but I need not make a finding on this point as even based on the information it did gather I don't think Updraft made a fair lending decision. I'll explain why.

When Mr G applied for this loan Updraft's assessment showed he was already spending around £868.96 of his income each month to repay existing debt – so around 45% of his income. I think this ought to have concerned Updraft. As the industry is aware, consumers spending a high proportion of their income on credit are at risk of falling into financial difficulties. So I don't think it was responsible to increase this further.

I anticipate Updraft would argue that its loan was for debt consolidation but I cannot see it took any steps to fully understand which debts Mr G intended to settle, other than that they were from amongst his credit card debts. And the loan would only have allowed him to settle a small percentage of his debt. Mr G had 18 store and credit cards, as well as a number of high-cost loans that he had taken out recently. And Mr G would still have had access to the same credit limits even if he had cleared some of his debt. So I don't think Updraft had the assurances it needed that giving this loan would not cause Mr G financial harm. And it needed to check this, not just the pounds and pence affordability of the loan. I think the credit check showed that whilst Mr G was managing to make his repayments on his active accounts it was most likely he was reliant on credit to do so and juggling credit to make his repayments.

So, overall, I find there were sufficient indicators in the available information for Updraft to realise that giving Mr G this loan would likely cause financial harm.

It follows I think Updraft was wrong to lend to Mr G. I have not seen any evidence it acted unfairly towards Mr G in some other way.

Putting things right

I think it's fair and reasonable for Mr G to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him. Updraft must put this right.

It should:

- Refund all interest and charges Mr G paid on his loan and remove all future interest and charges.
- If reworking Mr G's loan account in this way results in him having effectively made payments above the original capital borrowed, then Updraft should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking Mr G's loan account results in there being an outstanding capital balance Updraft must try to agree an affordable payment plan with Mr G.
- Remove any adverse information recorded on Mr G's credit file in relation to the loan once any outstanding capital balance has been repaid.

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

My final decision

I am upholding Mr G's complaint. Fairscore Ltd, trading as Updraft, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 16 October 2023.

Rebecca Connelley
Ombudsman