

The complaint

Mr R complains that Fairscore Ltd, trading as Updraft, lent to him irresponsibly when it gave him a fixed sum loan agreement which he says he couldn't afford.

What happened

Mr R took out a loan agreement with Updraft for £8,000 in July 2022.

Mr R complained to Updraft in November 2022. Mr R said Updraft shouldn't have lent to him because he was struggling with other debt, and he had a gambling problem. He said that as Updraft had access to his bank statements through open banking that it should have realised this and not lent to him. He asked that Updraft write off the loan.

Updraft reviewed Mr R's complaint and upheld it. It realised that when it reviewed Mr R's bank statements as part of the loan application it didn't identify gambling transactions made through a third party. It accepted that if it had done so, it would have realised the loan was unaffordable for Mr R.

Updraft agreed to refund all the interest and charges Mr R had paid. It also agreed that he wouldn't have to pay any interest on the remaining loan. In addition, it offered Mr R £300 to recognise the distress and inconvenience its error had caused Mr R.

Mr R didn't agree with the proposed settlement. He said that Updraft should write off the whole of the amount he owes.

Our investigator reviewed Mr R's complaint but didn't agree that the whole loan sum should be written off. Mr R didn't agree with our investigator's conclusion, so his case has been passed to me to decide.

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.

This is not a complaint where I have to decide fault; Updraft has accepted it lent to Mr R unaffordably and Mr R agrees with that. So, I don't have to look at what happened when the loan was sold. I'm only looking at whether Updraft fairly compensated Mr R for what went wrong.

I don't need to set out all of the background, because it's contained in correspondence which all parties have seen, and as Updraft has accepted it made an error, the only matter left for me to decide is whether Updraft's settlement is fair, or whether the circumstances require that it does more to compensate Mr R.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website. This includes how we would ordinarily seek to ensure a consumer is compensated when credit is provided unaffordably. I've taken that into account when I have considered Mr R's complaint.

Having carefully considered everything that both parties have said and provided I have come to the same conclusion as that of our investigator. I will explain why I have reached this decision.

Mr R's bank statements show that he was gambling excessively at the time he applied for the loan. He says that the entire loan went to pay for gambling. However, he told Updraft that he intended to use the loan to consolidate other existing borrowing. Mr R says that as Updraft had access to his bank statements (which other lenders did not) that Updraft should write off the entire amount.

Our usual approach in cases like this is to direct that interest and charges already paid are refunded to the consumer along with 8% statutory interest; that future interest is disappplied; that any adverse information as a result of credit is removed from any credit files and that the lender works with the consumer to arrange a suitable repayment plan for the outstanding amount.

We may consider whether a loan should be written off in circumstances that indicate there is little prospect of a consumer repaying the outstanding amount and that requiring them to do so would cause undue financial hardship. Or we may think that a business ought to have realised at the time that providing funds to a consumer was so clearly unsustainable that there was no realistic prospect of it ever being paid back.

In Mr R's case, I haven't seen evidence to suggest that the repayment of the base loan would cause undue financial hardship. And while Mr R used most of the loan to gamble, he did transfer money to other accounts and there was evidence of both winnings from his gambling and other non-gambling transactions from which Mr R benefitted. Updraft didn't lend to Mr R knowing that he would spend the money on gambling; it thought that he would be consolidating some of his other debt because that's what he told it.

So, while Updraft didn't make the right decision when it lent to Mr R, I don't think that it would be fair to direct Updraft to write off the loan completely. I think Updraft's existing proposal is fair. Indeed, it goes beyond this service's usual approach as Updraft also offers an additional lump sum as a gesture of goodwill, which this service would be unlikely to have directed.

My final decision

My decision is that Updraft's proposal to compensate Mr R is fair and reasonable in the circumstances. I do not direct that Updraft needs to write off the loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 December 2023.

Sally Allbeury
Ombudsman