DRN-4457750

The complaint

Miss L complains that Fairscore Ltd (trading as Updraft) irresponsibly agreed a loan for her.

What happened

Fairscore agreed a loan of £5,000 for Miss L in September 2021. The total amount owed was £7,906 to be repaid in 48 instalments of £165 (figures rounded).

Miss L complained to Fairscore that it was irresponsible to have agreed the loan for her because it was unaffordable. She said that she was borrowing from high cost short term lenders and buy-now-pay-later companies at the time.

Fairscore said it carried out an affordability assessment before lending to Miss L to check she could afford the repayments. It relied on information she provided, information from her credit file and her bank transactions and concluded that the loan would be affordable for her. It didn't uphold Miss L's complaint and she referred it to us.

One of our investigators looked into Miss L's complaint. They found that Fairscore should have seen from its assessment that Miss L was reliant on credit and not likely to be able to afford the loan repayments. They concluded that Fairscore had been irresponsible to lend to Miss L and recommended that her complaint be upheld.

Fairscore didn't agree with this conclusion and asked for the complaint to come to an ombudsman for a 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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Fairscore, need to abide by. Fairscore will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, Fairscore needed to check that Miss L could afford to meet her repayments out of her usual means for the term of the loan, without having to borrow further, while meeting existing commitments and without the repayments having a significant adverse impact on her financial situation. The checks needed to be proportionate to the nature of the credit (the amount borrowed or the term, for example) and to Miss L's circumstances and Fairscore needed to have proper regard to the outcome of its assessment in respect of affordability risk.

The overarching requirement was that Fairscore needed to pay due regard to Miss L's interests and treat her fairly. CONC gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did Fairscore complete reasonable and proportionate checks when assessing Miss L's application to satisfy itself that she would be able to make her repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did Fairscore make a fair lending decision?

Fairscore provided some of the information it relied on in its assessments including what Miss L said in her application form and its affordability estimates. Fairscore said it checked this information against Miss L's bank account transactions and used information from her credit file to estimate her monthly debt repayments.

Miss L said in her application form that her salary was £45,500, and confirmed that her rent came to £476 and she spent £644 a month on other items. Fairscore relied on a monthly income figure of £2,882 in its assessment and estimated that Miss L spent £1,474 a month repaying her existing debt commitments (excluding an amount of £291 Miss L was paying on a loan that was in an arrangement to pay which she said was to be cleared with this new loan). Fairscore estimated that Miss L's total outgoings came to £2,594 leaving her with £288 a month spare.

Fairscore said that there were no indications in the information it had that Miss L was having financial difficulties. It said there were no missed payments showing on her credit file, apart from the issues with the account mentioned above. However, the credit file information showed that Miss L had unsecured credit balances of around £17,500 across seven loans, five current accounts with overdrafts,15 revolving credit accounts and by now pay later accounts. She also had a hire purchase agreement with a balance over £31,000. Most of Miss L's revolving credit accounts were at or near their credit limits and she was spending around half of her income repaying debt each month. I think it's fair to say that Miss L was reliant on credit and overindebted when she applied for this loan.

Fairscore said that the purpose of the loan was to clear some of Miss L's credit card debt. It hasn't expanded on this and I can't see that it asked Miss L for any information about how she intended to use the loan, apart from noting there was an arrangement to pay on one loan account. Assuming Miss L used the loan to clear her account that was in an arrangement and some of her credit card balances, she'd still potentially be left with debts of around £12,500 plus her hire purchase agreement and continue to spend a significant amount of her income repaying these and her new loan.

Furthermore, Fairscore's assessment showed that Miss L had no spare income to meet her loan repayments unless she used the loan to clear an existing debt. In these circumstances, I don't think Fairscore could reasonably consider that Miss L would be able to meet her repayments for the loan for four years without further investigation of how she intended to use the loan.

Bearing in mind CONC 5.2A.25G I think it should have been clear to Fairscore that its assessment showed a high level of affordability risk to Miss L, and it didn't have proper regard to this outcome when it offered her the loan.

Fairscore said in response to our investigator's view that the loan would have been affordable for Miss L even if she hadn't used it for consolidating her debts but, if she had used it for this purpose, then she would have been in a better position on a monthly basis.

I don't have enough information to say that Miss L would have been in a better position on a monthly basis had she used the loan to consolidate her credit card debts and it's not immediately obvious to me that she would have been, given the amount Miss L would need to repay under the agreement. As I've mentioned above, Fairscore's assessment showed that the loan would not be affordable for Miss L if she didn't use it to clear some of her existing debts and agreeing further credit for her in this case was more likely than not going to increase her indebtedness.

Fairscore confirmed that the loan was credited to Miss L's account the same day she applied for it and was not used for debt consolidation but as cash flow. I understand that Miss L has had problems meeting her repayment for the loan and has arranged payment plans with Fairscore.

Altogether, I've concluded that Fairscore didn't lend responsibly on this occasion and didn't treat Miss L fairly or with due regard to her interests when it entered into the agreement.

Putting things right

I've concluded that Fairscore was irresponsible to have agreed this loan for Miss L in 2021. I think it's fair that she repays the capital amount she borrowed as she's had the use of the money however, I don't think it's fair that Miss L pays any interest, fees or premiums associated with the loan.

To put things right for Miss L, Fairscore should:

- Cap the amount she needs to repay at the capital amount she borrowed, this being £5,000 in total;
- Consider all payments she's made as payments towards this capital amount; and
    - If Miss L has repaid more than the capital she borrowed, then Fairscore should refund these overpayments to her along with 8% simple interest per annum**; or
    - If she hasn't yet repaid the capital then Fairscore needs to treat Miss L fairly and with forbearance which might mean agreeing an affordable repayment plan with her or amending an existing one.
- Remove any adverse information about this loan from Miss L's credit file once settled.

If Fairscore has since sold an outstanding balance to a third party debt collector it must either buy it back or work with the third party to bring about the above steps.

** HM Revenue & Customs requires Fairscore to take off tax from this interest. Fairscore must give Miss L a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've explained above I am upholding Miss L's complaint about Fairscore Ltd (trading as Updraft) and it now needs to put things right for her as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 12 April 2024.

Michelle Boundy
Ombudsman