DRN-4460694

Complaint

Mr T has complained that Plane Saver Credit Union Limited ("Plane Saver") provided him with unaffordable loans.

This complaint is about a number of what should be termed as unregulated loans. Nonetheless, Plane Saver is a lender for the purpose of our compulsory rules and the loans in question were lending money.

Mr T says the loans were unaffordable and simply increased the amount he owed.

Background

Plane Saver provided Mr T with an initial loan for £3,335.09 in October 2017. The loan had an APR of 12.7% and the total amount to be repaid of £3,797.28, which included interest of £462.19, was due to be repaid in 24 monthly instalments of £158.22.

In April 2018, Mr T was provided with a second loan. This loan was for £17,995.00 and to purchase a vehicle Mr T had already selected. It had an APR of 6.9% and the total amount to be repaid of £21,333.60, which included interest of £3,328.60, was due to be repaid in 60 monthly instalments of £355.57.

Plane Saver then provided Mr T with a third loan for £2,984.32 in December 2018. £1,484.32 of the funds from this loan went towards settling the remaining balance on loan 1. This loan had an APR of 16.2% and the total amount to be repaid of £3,470.39, which included interest of £486.07, was due to be repaid in 22 monthly instalments of £157.33.

In July 2021, after having had a change of circumstances as well as a number of discussions regarding reducing his payments, Mr T was provided with a refinance loan. As I understand it this loan was to refinance the remaining balance on loan 2.

The amount of the advance was £7.020.37 and all of the funds went towards repaying what was owing on loan 2. The loan had an APR of 9.6% and a term of 44 months. This meant that the total amount to be repaid of £8,302.58, which included interest, fees and charges of £1,282.21, was due to be repaid in 44 monthly instalments of £188.58.

One of our investigators considered Mr T's complaint. He told Plane Saver that it shouldn't have provided Mr T with any of these loans as it ought to have seen that he was struggling financially and therefore not in a position to make the required repayments. So he upheld the complaint.

Plane Saver disagreed with our investigator's assessment and asked for an ombudsman's review. As this was the case the complaint was passed to me.

My provisional decision of 6 November 2023

I issued a provisional decision – on 6 November 2023 - setting out why I was intending to partially uphold Mr T's complaint.

In summary, I thought that Mr T's complaint should be partially upheld because Plane Saver didn't act unfairly when agreeing to provide loans 1, 2 and 4 to Mr T. But it also ought reasonably to have realised that it shouldn't have provided loan 3 so it failed to act fairly and reasonably when providing Mr T with this loan.

I then set out a method of putting things right which I considered addressed Plane Saver's shortcomings and Mr T's resulting loss.

Responses to my provisional decision

Plane Saver didn't have provide anything further that it wished for me to consider.
Mr T disagreed with my provisional decision stating:

- He felt that some parts of the provisional decision felt like a personal scrutiny over him.

- The provisional decision has gone in a completely different direction to the investigator who initially reviewed the case.

- The second loan had the highest burden and Plane Saver was aware of his position at this stage.

- He has provided proof of Plane Saver being irresponsible yet it has appeared to get off lightly whereas his spending and borrowing habits have been analysed with a fine tooth comb.

- I cannot say that all the non-contractual payments going out of his account are unimportant or not part of his budget and expenditure.

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 explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr T's complaint.

Having carefully considered everything, I'm minded to only partially uphold Mr T's complaint. I appreciate that this is a different outcome form that of the investigator that initially reviewed the case.

But I am not bound by the outcomes reached by investigators that look at individual cases. And for the reasons I explain the investigator has got the regulatory obligations of the Credit Union, incorrect. I will explain why this is makes a difference in the case in more detail.

Furthermore, while Mr T believes that his complaint has been judged harshly and that Plane Saver has been judged more favourably. However, I am required to apply the same standards as I do against all Credit Unions. And I'm satisfied that there has been no bias or lack of accountability in this case.

It is important to note that Mr T's agreements were unregulated and so Plane Saver's obligations aren't exactly the same as those for most lenders. In particular, as it is a Credit Union, Plane Saver's specialist sourcebook is the Credit Unions sourcebook ("CREDS") rather than the Consumer Credit Sourcebook ("CONC") given it wasn't carrying out credit-related regulated activities when providing these loans to Mr T.

Nonetheless, as it is a firm authorised by the Financial Conduct Authority ("FCA"), I consider it fair and reasonable to expect Plane Saver to have carried out reasonable enquiries into Mr T's circumstances to check that he'd be able to make the payments to these loans. I'd also only expect it to have proceeded in the event that those reasonable enquiries demonstrated that Mr T could make the payments.

Plane Saver's enquiries into Mr T's circumstances before it agreed to lend to him

For loan 1 Plane Saver's enquiries suggested that Mr T was employed with the military. During the course of its enquiries, Plane Saver carried out a credit search which showed he had debts with high-cost and payday lenders. But that this loan, which was being provided at a much lower rate of interest, was going to consolidate those debts and meant that a lower proportion of his monthly income would be taken up with repayments to credit.

Plane Saver also obtained payslips and a bank statement from Mr T. Plane Saver also appears to have carried out similar checks before agreeing to provide loans 2 and 3. And it looks like Mr T was still using payday and other high-cost loans at the time of loans 2 and 3. For loan 4, which was provided after Mr T had left the military, it looks like Mr T completed a detailed income and expenditure assessment and also provided a copy of a bank statement.

Our investigator told Plane Saver that obtaining a single bank statement during the course of its income and expenditure assessments meant that its checks weren't reasonable. In his view, three months' worth of bank statements should have been obtained. But I'm afraid I don't agree with this. There isn't an agreed number of bank statements that should be obtained during the course of an income and expenditure assessment – indeed it won't even always be reasonable to expect a lender to obtain bank statements before lending.

The important thing that a lender needs to do before lending is to gather enough information in order to be able to make an informed decision on whether to lend. In this case, bearing in mind Plane Saver says and it has evidenced that it obtained a significant amount of information on Mr T's circumstances, before lending on each occasion, I'm prepared to accept that it did carry out reasonable enquiries into Mr T's financial circumstances – at least in terms of the information requested – before providing these loans.

However, it isn't enough for a lender to simply request information from a prospective borrower before deciding to lend to them. So even if a lender may have requested a reasonable amount of information, it may still be the case that it will not have acted fairly and reasonably towards the borrower if it didn't carry out a fair and reasonable evaluation of the information it obtained.

I've therefore considered whether Plane Saver carried out a fair and reasonable evaluation of the information it obtained about Mr T.

Did Plane Saver carry out a fair and reasonable evaluation of the information it gathered before deciding to lend to Mr T?

Loan 1

Our investigator said that Plane Saver shouldn't have provided loan 1 to Mr T as it was apparent that he was in a cycle of payday and high-cost lending. There doesn't appear to be any debate that Mr T owed a number of payday and high-cost lenders a substantial amount and that Plane Saver was aware of this.

However, what is also not in dispute is that the proceeds of this loan were to be used to clear the balances with Mr T's existing creditors at an exponentially lower rate of interest. Indeed, given just how much lower the interest rate was on this loan, I'd even go as far as saying that it had the effect of providing forbearance on Mr T's existing debts.

Plane Saver also ensured that the funds from this loan could only be used to repay Mr T's existing creditors by sending the funds directly to his creditors, rather than providing the proceeds to Mr T and allowing him to settle the loans with his providers. Equally, having reviewed the bank statements obtained, I can't see anything on them which indicated Mr T wouldn't have been able to make the repayments to this loan once his other debts were cleared.

I appreciate that there was always a risk that Mr T could simply continue taking out further loans with the providers whose loans were being settled. But Plane Saver couldn't know that this was what Mr T would do at this stage. All it could do is rely on Mr T's assurances – it couldn't instruct the other high-cost and payday lenders not to lend to Mr T further – and it was reasonably entitled to believe that this loan would place Mr T in a much better position. After all, Mr T would be in a better position provided he didn't take out further lending elsewhere.

Bearing this in mind and the information in the bank statements not contradicting the income and expenditure assessment, I'm currently minded to conclude that Plane Saver didn't act unfairly when providing loan 1 to Mr T. And this leaves me not intending to uphold the complaint about this loan.

Loan 2

Mr T's second loan was provided in order for him to purchase a car. Mr T has said that his motor dealer encouraged him to use Plane Saver for his purchase as he'd pay less tax. It is not apparent to me how or why Mr T would pay less tax as a result of his choice of lender. Although as Mr T's loan payments were deducted from his salary it's possible that this could have had something to do with matters.

In any event, at this stage Plane Saver was providing Mr T with the funds for a vehicle, rather than a cash loan. I also understand that even though this wasn't a conventional hire-purchase or conditional-sale agreement the funds were transferred directly to the motor dealership the vehicle was purchased from and Plane Saver recorded an interest in the vehicle.

The information I've seen also shows that Mr T was already paying £240 a month towards an existing conditional-sale agreement with a different lender and this would be ended as a result of Mr T purchasing his new vehicle. So Mr T effectively had to pay an extra £115 a month at a result of this agreement.

It’s also worth noting that not only is it likely that this loan had a much lower interest rate than Mr T’s previous agreement but it would have automatically resulted in Mr T owning the vehicle outright at the end of the term as long as he made his payments. This is in contrast to Mr T’s previous agreement, which as a Personal Contract Purchase agreement, had a large lump-sum ‘balloon’ payment which needed to be made at the end of the term, in addition to the regular monthly payment.

The income and expenditure assessment carried out does appear to indicate that the extra Mr T would have to pay as a result of the increased payments, was affordable. Mr T’s bank statements and the credit search carried out indicated that Mr T still had some payday and high-cost credit use. And the notes from the time appear to indicate that Mr T was warned about the consequences of such borrowing and that this would impact his ability to obtain further credit, both with Plane Saver and elsewhere, going forward.

More importantly, looking at Mr T’s bank statement, while I do not seek to make retrospective value judgements over Mr T’s expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions account going from his account. Unfortunately this comes across as me having gone through Mr T’s finances with a fine tooth comb. But I can assure Mr T that this isn’t the case. As the bank statements played a part in Plane Saver’s decision to lend, it simply is a case of looking through them looking to see if Plane Saver made a fair lending decision.

Mr T has said that all the non-contractual payments going out of his account are not unimportant or not part of his budget and expenditure. But the question is would they legitimately have prevented Plane Saver from lending to Mr T. And having considered the case, I don’t think that Plane Saver would more likely than not have been prevented from lending to Mr T, bearing in mind the transactions on his bank statements.

I don’t think that this statement clearly demonstrates that when Mr T’s committed and contractual expenditure is deducted from his income, the additional amount Mr T would have to pay each month as a result of this agreement is clearly unaffordable.

Mr T may believe that the result of this assessment has been that it is been a scrutiny of his spending. And Mr T may even go further and say that Plane Saver my not be held to account for its actions. I am sorry that Mr T feels this way. However, a scrutiny of an individual’s finances is bound to be an emotive subject. And as Mr T has alleged that he has lost of because of what Plane Saver did wrong. And now many years after the event, I have to try and recreate whether or not reasonable checks would have made a difference here.

Bearing in mind, Mr T was being provided with funds to purchase a vehicle of his choosing at a lower interest rate and the information in the bank statement not contradicting income and expenditure assessment, I’m currently minded to conclude that Plane Saver didn’t act unfairly when providing loan 2 to Mr T. And this leaves me not intending to uphold the complaint about loan 2 either.

Loan 3

Loan 3 was provided to Mr T only eight months or so after loan 2. And at this stage Mr T hadn’t repaid loan 1 either. I’ve already explained that Plane Saver had noted that Mr T was still using payday and high-cost loans at the time that he applied for loan 2. And having looked at the information from the time, I can see that Mr T was still using payday and high-cost loans at the time of loan 3.

Given Plane Saver said that Mr T’s continued usage of such products would impact on his ability to borrow further, I would have expected it to have played a significant role in Plane

Saver's decision making. I say this while particular mindful of the fact that loan 1 had been provided to clear Mr T's cycle of high-cost and payday lending and 14 months later Mr T was still borrowing from these lenders in the same way.

So while it remains the case that Mr T's bank statement continues to show significant amounts of non-committed, non-contractual and discretionary transactions account going from his account, nonetheless I do think that Plane Saver ought reasonably to have taken account of Mr T's pattern of borrowing when deciding whether to provide further funds to him.

And I think that by loan 3, Plane Saver ought fairly and reasonably to have realised that Mr T's financial position was such that further loans were simply unsustainable for him. In my view, Mr T's 'repayment record' suggested he was moving further and further away from the eventual debt-free position consolidation loans (such as the one provided for loan 1) are, in theory at least, supposed to leave a borrower at the end.

Mr T was not only looking to prolong the period of time he'd be paying loan 1 for, as he was refinancing it over a similar term despite having been 14 months in, he was also taking himself back to the position he was at the start by increasing his borrowing back up to a similar level. I know that Mr T considers this was deliberate and an indication that Plane Saver was acting in its own interests.

But I don't think it is the case. It's my view that Plane Saver believed that a further consolidation loan at a far better interest rate than Mr T would be able to obtain on the open market might have been a solution to his problem. And it is more a case of it failing to consider the overall pattern of lending and look Mr T's financial position in a holistic way.

Nonetheless, having considered everything, I'm currently minded to conclude that Plane Saver didn't act fairly and reasonably towards Mr T when providing loan 3. This is because it provided loan 3 in circumstances where it ought to have realised that it was unsustainable or otherwise harmful for Mr T and increased his overall indebtedness where he'd struggle to repay what he was being lent.

Loan 4

I think it would be helpful for me to start my consideration of loan 4 by saying that in the ordinary course of events, where a fourth loan was provided eighteen months or so after a firm ought reasonably to have realised that a third loan was increasing a borrower's indebtedness in a way that was unsustainable or otherwise harmful, it would normally follow that the fourth loan was unaffordable and shouldn't have been provided.

However, given the particular circumstances here, I don't think that it automatically follows that loan 4 was unfairly provided to Mr T. I say this because even though Mr T signed a new agreement he wasn't provided with any further funds as this agreement was a restructure of the remaining balance on loan 2. So Mr T's indebtedness wasn't being increased although he might have to pay more overall as the term of his loan was being increased.

It isn't in dispute that by this stage, Mr T had got in contact with Plane Saver and said that as a result of a change in his employment circumstances he was struggling to make the payments to loan 2. I understand that Mr T went as far as contacting a debt charity in order to set up a debt management plan.

It's important to note that once a lender is told that a borrower is experiencing financial difficulty it's fair and reasonable to expect it to exercise forbearance and due consideration in accordance with generally accepted standards. Ultimately, we'd expect a lender to listen to a borrower, get an understanding of their circumstances and the assess the most appropriate way to move forward.

Having considered the content of the correspondence between Plane Saver and Mr T it looks like there were attempts to determine whether this was a temporary situation which required a short-term plan (such as temporarily allowing payments from Mr T's savings) or whether a longer-term solution was needed.

I appreciate that Mr T considers that this wasn't doing him a favour or helping his situation. But Mr T wasn't permitted access to his savings until the amount of them exceeded the outstanding balance on his borrowing. This was a term and condition of his membership of the Credit Union and so I'm satisfied that allowing payments to be made from Mr T's savings in this way, was a concession on Plane Saver's part. And this effectively provided some breathing space to come up with a longer-term solution.

Mr T has said that Plane Saver did not answer the telephone calls of his debt management company. I don't know whether this is the case as that is what his debt management company have told him. But, in any event, Mr T did not go ahead with a debt management plan and instead requested making reduced payments, Plane Saver asked him to complete an income and expenditure assessment and also provide a payslip and bank statement. As a result of the information, Plane Saver agreed to reduce Mr T's monthly payment by around 50%.

I appreciate that Mr T is unhappy that this resulted in more interest being charged but this was because the term of the loan was being increased and this meant that Mr T would have to pay interest over a longer term. There even isn't anything in the guidance for regulated agreements, which Plane Saver wouldn't automatically be subject to, which states that forbearance has to always be offered on an interest free basis. What a lender has to do is to find an affordable solution for the borrower to be able to repay what they owe.

Furthermore, Mr T said he wanted to temporarily reduce his payments and he still had the option to overpay should his circumstances improve and he wished to limit the amount of interest he'd have to pay.

I'm also mindful that in this instance, the interest rate was relatively low at 9.6% APR. And more importantly the information in Mr T's bank statement didn't indicate that he'd have difficulties making the required payments. Indeed, from what I can see on the bank statement Mr T wasn't using, or at least wasn't using the account he provided statements for to make or receive payments to, payday and high-cost lenders in the same way as he was previously.

So while I appreciate that he was on a reduced income, I do think that Plane Saver was reasonably entitled to conclude that Mr T would be able to make the reduced payment required for loan 4. As this is the case, I'm currently minded to conclude that Plane Saver acted fairly and reasonably towards Mr T when it provided loan 4.

In my view, it reduced Mr T's payments to an affordable level. It did not increase the overall amount Mr T had to pay to an amount that was unsustainable and if Mr T's inability to make the original payment was temporary he still had the option of increasing his payments. I'm therefore not intending to uphold Mr T's complaint about this loan.

So overall and having considered everything, I'm issuing a final decision which finds that Plane Saver acted fairly and reasonably when providing loans 1, 2 and 4 to Mr T. But that it didn't act fairly and reasonably towards Mr T when providing loan 3 to him.

As Mr T had to pay interest and charges on a loan he should never have been provided with – loan 3 - I'm issuing a final decision which finds that he had lost out as a result of Plane Saver failing to act fairly and reasonably towards him when providing loan 3.

Fair compensation – what Plane Saver needs to do to put things right for Mr T

Having thought about everything, I'm intending to issue a final decision which says Plane Saver should put things right for Mr T by:

- refunding all interest, fees and charges Mr T paid on loan 3;
- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Mr T to the date of settlement†
- using the refund from the above to reduce what Mr T owes on loan 4;
- removing any adverse information recorded on Mr T's credit file as a result of loan 3.

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

I understand that the outstanding balance on loan 4 has been cleared as a result of Mr T selling his vehicle. As the parties have agreed this is the case, I am satisfied that no further action needs to be taken in relation to this loan.

My final decision

For the reasons I've explained, I'm partially upholding Mr T's complaint. Plane Saver Credit Union Limited should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 December 2023.

Jeshen Narayanan
Ombudsman