DRN-4645172

The complaint

Miss M complains that Fairscore Ltd trading as Updraft irresponsibly agreed loans for her.

What happened

Updraft agreed two loans for Miss M. I’ve summarised some of the information it provided about these in the table below.

	Start date	End date	Amount borrowed	Monthly payments	Loan term (months)	Total owed
Loan 1	17/07/2021	Unknown	£7,000	£245	36	£8,910
Loan 2	15/05/2022	02/12/2022	£1,000	£91	12	£1,097

Miss M complained to Updraft that it was irresponsible to have agreed the loans for her because they were unaffordable. She said that she was unable to meet the repayments alongside her other commitments and ended up borrowing more.

Updraft said it carried out affordability assessments before lending to Miss M 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 loans would be affordable for her. It didn’t uphold Miss M’s complaint and she referred it to us.

One of our investigators looked into Miss M’s complaint. They found that Updraft would have learnt that Miss M didn’t have enough disposable income to meet her repayments, had it carried out proportionate checks before lending to her. They concluded that Updraft had been irresponsible to lend to Miss M and recommended that her complaint be upheld.

Updraft didn’t agree with this conclusion and asked for the complaint to come to an ombudsman for a review and it came to me. I issued a provisional decision on 6 February 2024 explaining why I thought Miss M’s complaint should succeed. I allowed time for any comments or new information from either party. Miss M agreed with my decision and Updraft said it had nothing further to add.

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.

Having reviewed everything, and having no new information to consider, I see no reason to depart from my provisional conclusions. I remain of the view that Miss M’s complaint should succeed and I’ll set out my reasons for upholding her complaint again in this final decision.

As before, I’ve had regard to the regulator’s rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Updraft, need to abide by. Updraft 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, Updraft needed to check that Miss M 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 M's circumstances and Updraft needed to have proper regard to the outcome of its assessment in respect of affordability risk.

The overarching requirement was that Updraft needed to pay due regard to Miss M'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 Updraft complete reasonable and proportionate checks when assessing Miss M's applications 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 Updraft make fair lending decisions?

Updraft provided the information it relied on in its assessments including what Miss M said in her application form. Updraft checked this information against Miss M's bank account transactions, and used information from her credit file to estimate her monthly debt repayments.

Miss M provided her bank statements and a recent copy of her credit file.

<u>Loan 1 July 2021</u>

Miss M said in her application form that her salary was £60,000. Updraft relied on a monthly figure of £2,437 in its assessment as it could see from Miss M's bank account transactions that she'd been paid around this amount for the last three months. Miss M said that her rent came to £400, bills to £50 and she spent £100 a month on other items. Updraft got in touch with Miss M to confirm these figures and to ask why her living costs were so low. Miss M replied that she lived with her partner and had a company car so her rent and transport costs were low.

Updraft recorded that Miss M had existing debts of over £50,000, with a balance of about £14,400 on a large loan and £35,700 on at least five revolving credit accounts. Updraft said that Miss M's credit file showed no current financial difficulty, she was up to date with all her existing credit commitments and was not over her credit card limits. It noted that Miss M's loan repayments were £451 and estimated that she spent £1,106 repaying her credit card debt. It concluded that Miss M would have an amount of £330 spare each month to cover her loan repayment of £245 and so it found that the loan would be affordable for her.

I think Updraft's assessment should have raised serious concerns about Miss M's ability to repay the loan without difficulty given her level of existing debt and how little she would have left over each month after meeting her loan repayment.

Our investigator concluded that had Updraft looked into Miss M's finances in more depth it would have found out that her expenses were higher than the figures it had relied on and so it was unlikely she would be able to afford her repayments for the loan. In response, Updraft said that its assessment found that the loan would be affordable and so it disagreed it had been irresponsible to lend.

As Updraft will know, the regulations require lenders to check that credit will be affordable without the borrower experiencing significant adverse impacts, not simply that the credit is affordable on a pounds and pence basis. I think Updraft should have declined to lend to Miss M even without conducting a more rigorous assessment.

CONC 5.2A.25G states that potential indicators that the level of affordability risk arising out the agreement may be high include circumstances where:

- the total value of the customer's outstanding debts relative to the customer's income is high; or
- there is a high likelihood that the customer will not make repayments under the agreement by their due dates…it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

I think both of these indicators were present here. Updraft's assessment found that Miss M was spending around 64% of her income repaying her existing debts, including over £35,700 of revolving credit. I think it's fair to say that Miss M was overindebted and reliant on credit, even though it seemed her living costs were relatively low, and Updraft should have realised this from its assessment.

Miss M told Updraft that she'd applied for the loan to consolidate some of her credit card balances, and confirmed with us that she did. Even so, Miss M was likely to continue spending over 60% of her income each month repaying her debts. Miss M's debts were so significant compared to her means, it doesn't seem likely to me that she was going to be able to meet her repayments for the loan without borrowing again from elsewhere, and providing further credit to her at this point simply prolonged her indebtedness.

I can see from the statement of account that Miss M met her repayments for this loan on time at least until July 2023. Updraft also said in response to our investigator that the loan had been fully repaid which demonstrated that it had been affordable. Miss M told us recently that she was still making repayments to the loan so I am unsure whether or not it has in fact been repaid. In either case, just because Miss M managed to successfully meet her repayments doesn't mean she managed to do so without borrowing from elsewhere. I can see from Miss M's credit file that she continued to rely on her credit cards to the extent that within a year of taking out the loan her balances reached £41,000.

Altogether, I've concluded that Updraft didn't treat Miss M fairly or with due regard to her interests when it lent to her under these circumstances.

<u>Loan 2 May 2022</u>

Updraft carried out similar checks when Miss M applied for another loan around ten months later. With this second loan application Updraft not only had access to the same level of information as before but also had the benefit of seeing whether Miss M's finances had improved.

Updraft recorded that Miss M's income was £3,942, that she spent £1,174 each month on her rent and living costs, and £1,845 a month repaying debt. Updraft concluded that Miss M would have around £923 spare each month and could afford to meet the repayments of £91 for a new loan. It recorded that Miss M's debts amounted to around £56,400 with £12,000 loan balances and £41,000 of revolving credit. Miss M's income had increased and this meant she was spending a lower proportion of it each month meeting her existing debt commitments. However, she now owed significantly more on her credit cards.

I think Updraft should have been seriously concerned that Miss M wasn't making inroads into her debt, despite its previous loan being for consolidation. Even though its assessment showed that the loan might be affordable for Miss M, for the same reasons as before, I can't find that it treated her fairly and with due regard to her interests when it agreed to lend to her under these circumstances.

Miss M's credit file shows she continued to borrow after taking out this loan and her revolving credit balances had reached £45,000 by late 2023. I understand that she is now in an arrangement to pay with four of her credit card providers, including the account she used her first loan to repay.

In summary, I've concluded that Updraft was irresponsible to agree these two loans for Miss M and I am upholding her complaint.

Putting things right

I've concluded that Updraft was irresponsible to have agreed two loans for Miss M in in 2021 and 2022. 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 M pays any interest, fees or premiums associated with the loans.

To put things right for Miss M, Updraft should:

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

** HM Revenue & Customs requires Updraft to take off tax from this interest. Updraft must give Miss M 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 M's complaint about Fairscore Ltd trading as Updraft and it 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 M to accept or reject my decision before 25 March 2024.

Michelle Boundy
Ombudsman