DRN-4712310

Complaint

Mr H has complained that Chetwood Financial Limited (trading as "Better Borrow") provided him with an unaffordable loan. He says sufficient enough checks weren't completed into his financial background before the loan was provided.

Background

Better Borrow provided Mr H with a loan of £10,000.00 in June 2022. This loan had an APR of 30.3% and a 36-month term. This all meant the total amount repayable of £14,618.75, which included interest, fees and charges of £4,618.75, was due to be repaid in 36 instalments of just over £405.

One of our investigators looked at this complaint and thought that Better Borrow unfairly provided this loan to Mr H as proportionate checks would have shown it was unaffordable. Better Borrow disagreed with our investigator and asked for an ombudsman to review the complaint.

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 set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr H's complaint.

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 H's complaint. These two questions are:

1. Did Better Borrow complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay his loan in a sustainable way?

    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Mr H would've been able to do so?

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

Did Better Borrow complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay his loan in a sustainable way?

Better Borrow provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required Better Borrow to carry out a reasonable and proportionate assessment of Mr H'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 Better Borrow had to think about whether repaying the loan would cause significant adverse consequences *for Mr H*. In practice this meant that Better Borrow had to ensure that making the payments to the loan wouldn’t cause Mr H undue difficulty or adverse consequences.

In other words, it wasn’t enough for Better Borrow to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr H. Checks also had to be “proportionate” to the specific circumstances of the loan application.

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 customer’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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- 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).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I’ve carefully thought about all of the relevant factors in this case.

Were Better Borrow’s checks reasonable and proportionate?

Better Borrow says that it carried out an income and expenditure assessment with Mr H prior to providing him with this loan. It also carried out a credit check. Mr H declared that he was earning just under £4,000.00 a month. This declaration was electronically cross-checked against information showing how much Mr H’s bank account received each month. And Better Borrow also took account of Mr H’s existing credit commitments, asked him about his housing costs and using all of this information determined that Mr H would end up having £1,484 in disposable income left over each month.

I’ve carefully considered what Better Borrow has said. But the credit check it carried out showed Mr H had a number of settled payday style loans. It was also evident from Better Borrow’s credit check that Mr H had missed payments on his credit cards on three occasions in the last six months. Furthermore, Mr H had recently taken out another loan just before this application. All of this leads me to think that Better Borrow needed to take steps to verify Mr H's actual monthly expenditure.

After all the monthly disposable income figure arrived at didn't tally with someone with Mr H's credit file and his want or need to borrow on these terms. The combination of the amount being lent and the monthly payment, together with the discrepancies in the information gathered persuades me it would have been reasonable and proportionate to have carried out further checks here.

As I can't see that this Better Borrow did take further steps to verify Mr H's expenditure, I don't think that the checks it carried out before providing Mr H with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Better Borrow that Mr H would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Better Borrow that Mr H would have been unable to sustainably repay this loan.

Better Borrow was required to establish whether Mr H could make his loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided. Having done so, it's clear that Mr H was struggling under the weight of his commitments. He was developing a reliance on credit and even then he was struggling to make his mortgage repayments on time. I appreciate that Better Borrow's credit check might not have shown late mortgage payments. But I can see the returned direct debits. So I think that further checks are more likely than not to have shown that Mr H was in a difficult financial position. And I think it's unlikely that Better Borrow would have lent to Mr H in these circumstances.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr H would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Better Borrow to the fact that Mr H was in no sort of position to make the payments on this loan without suffering significant adverse consequences.

Did Better Borrow act unfairly or unreasonably towards Mr H in some other way?

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that Better Borrow acted unfairly or unreasonably towards Mr H in some other way. So I don't think Better Borrow acted unfairly or unreasonably towards Mr H in some other way.

Did Mr H lose out as a result of Better Borrow unfairly providing him with this loan?

As Mr H paid interest and charges on a loan that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what Better Borrow did wrong.

So I think that Better Borrow needs to put things right.

Fair compensation – what Better Borrow needs to do to put things right for Mr H

Having thought about everything, Better Borrow should put things right for Mr H by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr H made should be deducted from the new starting balance – the £10,000.00 originally lent. If Mr H has already repaid more than £10,000.00 then Better Borrow should treat any extra as overpayments. And any overpayments should be refunded to Mr H;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr H to the date of settlement†;

- if no outstanding balance remains after all adjustments have been made, all adverse information Better Borrow recorded about this loan should be removed from Mr H's credit file.

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

I'd also remind Better Borrow of its obligation to exercise forbearance and due consideration if it intends to collect on an outstanding balance, should one remain after all adjustments have been made to the account and it's the case that Mr H is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Mr H's complaint. Chetwood Financial Limited needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 May 2024.

Jeshen Narayanan
Ombudsman