

Complaint

Mrs B has complained about a loan Fairscore Ltd (trading as “Updraft”) provided to her.

She says the loan was unaffordable for her and so shouldn’t have been provided to her in the first place.

Background

Updraft provided Mrs B with a loan for £1,500.00 in August 2022.

Mrs B’s loan had a term of 24 months and an APR of 32.27%. This meant that the total amount to be repaid of £2,005.56, including interest, fees and charges of £505.56, was due to be repaid in 23 monthly instalments of £81.96 followed by a final instalment of £120.48.

One of our investigators reviewed Mrs B’s complaint and he thought Updraft hadn’t done anything wrong or acted unfairly when providing Mrs B with her loan. So he didn’t think that Mrs B’s complaint should be upheld.

Mrs B disagreed so the case was passed to an ombudsman.

My provisional decision of 13 May 2024

I issued a provisional decision – on 13 May 2024 - setting out why I was intending to uphold Mrs B’s complaint.

In summary, I was intending to uphold Mrs B’s complaint because I was satisfied that Updraft had sufficient information for it to have reasonably conclude that Mrs B was unlikely to be able to repay her loan without experiencing significant adverse consequences. I didn’t think it was fair and reasonable for Updraft to ignore the information it had and so I found that Updraft had not made a fair lending decision.

Responses to my provisional decision

Updraft did not respond to my provisional decision or provide anything further for me to consider.

Mrs B confirmed receiving my provisional decision as well as her acceptance of it. She did not provide anything further for me to consider.

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 Mrs B’s complaint.

Having carefully considered everything I'm upholding Mrs B's complaint. I'll explain why in a little more detail.

Updraft needed to make sure it acted fairly and reasonably when lending to Mrs B. In practice, what this means is Updraft needed to find out enough about Mrs B such that it could have a reasonable understanding of whether Mrs B could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

The information Updraft has provided suggested that it carried out a credit check and requested open banking access from Mrs B, which provided bank transaction data, before this loan was provided. It worked out Mrs B's expenditure by adding the amount she paid to creditors each month and added this to estimates of her regular expenditure based on statistical data. It further argues that all of this information shows that the monthly payments to this loan were affordable – particularly as the loan was being used for consolidation purposes.

The first thing for me to say is that I'm concerned that Updraft relied on the use of average data to calculate Mrs B's living expenses when arriving at its monthly disposable income figure. I accept that it can sometimes be appropriate for a lender to use average data to calculate a prospective borrower's expenditure – particularly where a low monthly payment is involved.

However, I'm mindful that in this case, the bank account transaction data Updraft obtained from Mrs B showed that she didn't fit the profile of the average borrower. Both our investigator and Updraft appear to be suggesting that it is reasonable to request information and then treat that information selectively.

But I don't think it is fair and reasonable, nor proportionate, for a lender to request bank account transaction data from a customer and then ignore concerning matters within this information in favour of using average data, in circumstances such as here, where the data being used is clearly more optimistic than the excluded information.

After all, a respondent firm cannot unsee what it has already seen. So I'm not persuaded by Updraft's and our investigator's argument that Mrs B's bank account transaction data was only used to check her income and that it was reasonable for everything else to be disregarded.

As Updraft failed to properly scrutinise the information that it had, in favour of relying on average expenditure data, in circumstances where the information gathered indicated Mrs B did not fit within the portfolio of the average borrower, I'm not persuaded that the checks it carried out before lending to Mrs B were reasonable and proportionate.

As I think that Updraft needed to have done more, I've gone on to decide what I think Updraft is more likely than not to have seen had it done that here. Given the circumstances

here, I would have expected Updraft to have had a reasonable understanding about Mrs B's regular living expenses as well as her income and existing credit commitments. I've therefore considered the bank account transaction data Mrs B allowed Updraft access to, in order to determine what it is likely to have found out had it adequately considered this information.

To be clear, I'm not saying that Updraft had to request bank statements from Mrs B before lending. But, in this case, Updraft did choose to request bank account transaction data as part of its affordability assessment and it used some of this data and chose to ignore other parts of it. I think that for its assessment to have been fair and reasonable, Updraft also needed to consider the potential impact of what the less positive aspects of this information showed.

Having considered this bank account transaction data, it's clear that Mrs B was already struggling to manage her existing commitments. She was gambling unsustainable amounts of money in comparison to her income. And this left her pretty much permanently overdrawn.

So I think that appropriate scrutiny of the bank account transaction data that Updraft requested access to and which it had, would have shown it that Mrs B was likely to use this loan to repay other credit, cover the hole this left in her finances, or worse still to gamble; any or all of which meant she was unlikely to be able to repay this loan without borrowing further or suffering significant adverse consequences.

I'm also mindful that this should have set out alarm bells in relation to the stated purpose of borrowing too. It is said that this loan was taken for debt consolidation purposes. But without any indication of what it was that would be consolidated and when there was the level of gambling there was present on Mrs B's statement, I don't see how it was reasonable to accept the stated loan purpose at face value.

As this is the case, I do think that Mrs B's existing financial position meant that she was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further. And I'm satisfied that the information Updraft had ought to have shown it that it shouldn't have provided this loan to her. As Updraft provided Mrs B with this loan, notwithstanding this, I'm satisfied that it failed to act fairly and reasonably towards her.

Mrs B ended up paying interest, fees and charges on a loan she shouldn't have been provided with. So I think that Mrs B lost out because of what Updraft did wrong and that it now needs to put things right.

Fair compensation – what Updraft needs to do to put things right for Mrs B

Having thought about everything, I'm satisfied that it would be fair and reasonable for Updraft to put things right for Mrs B by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mrs B made, whether to Updraft or any third-party debt purchaser, should be deducted from the new starting balance – the £1,500.00 originally lent. If Mrs B has already repaid more than £1,500.00 then Updraft should treat any extra as overpayments. And any overpayments should be refunded to Mrs B;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mrs B to the date of settlement†

- if no outstanding balance remains after all adjustments have been made, all adverse information Updraft recorded about this loan should be removed from Mrs B' credit file.

† HM Revenue & Customs requires Updraft to take off tax from this interest. Updraft must give Mrs B a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 13 May 2024, I'm upholding Mrs B's complaint. Fairscore Ltd should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 27 June 2024.

Jeshen Narayanan
Ombudsman