DRN-4824428

The complaint

Mr D, through a representative, says UK Credit Limited lent to him irresponsibly.

What happened

Mr D took out a guarantor loan from UK Credit in August 2018. It was for £5,000 over 48 months. The monthly repayment was £222.59 and the total repayable was £10,684.32. It was given on the basis that Mr D had a guarantor who would be responsible for the repayments if Mr D failed to make them.

Mr D says UK Credit failed to complete proportionate checks and should have done more before lending.

Our investigator recommended the complaint should be upheld. He said UK Credit did not make a fair lending decision based on the information it saw on Mr D's credit report.

UK Credit disagreed saying it had asked Mr D about his defaults and CCJ before lending and his explanations made it clear the defaults were not a reflection of Mr D's financial circumstances at the point of sale. It asked for an ombudsman's 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when UK Credit lent to Mr D. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged UK Credit to lend responsibly. Amongst other things, UK Credit was required to carry out a reasonable and proportionate assessment of whether Mr D could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So UK Credit had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr D. In other words, it wasn't enough for UK Credit to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr D. Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (eg. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for. 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 repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether UK Credit did what it needed to before agreeing to lend to Mr D, and have considered the following questions:

- did UK Credit complete reasonable and proportionate checks when assessing Mr D's
- loan application to satisfy itself that he would be able to repay the loan in a
- sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did UK Credit make a fair lending decision?
- did UK Credit act unfairly or unreasonably in some other way?

UK Credit asked for some information from Mr D before it approved the loan. It asked for details of his net monthly income and employment. It completed a detailed expenditure review on a call with Mr D asking about all housing and living costs, as well as non-essential spending. It checked his credit file to understand his credit history and existing debts. It also asked about the purpose of the loan which was debt consolidation. It spoke with Mr D to understand the background to the adverse data it could see on his credit file. From these checks combined UK Credit concluded that Mr D would have monthly disposable income of £595 after making the repayment and so the loan was affordable.

I think these checks were proportionate given the stage in the lending relationship, the term and value of the loan and the monthly repayment relative to Mr D's income. However, I don't think UK Credit made a fair lending decision based on the results of the checks. I'll explain why.

The credit check UK Credit completed showed Mr D had no active credit, but £19,313 of defaulted debt across three accounts from 2017, 2018 and 2019. One of the accounts had a CCJ registered against it. Mr D was making repayment to just one of these accounts, the balance of the others remained at the value they had defaulted at. UK Credit calculated this debt should be costing Mr D £512.83 a month and this new loan would cost £222.59. Whilst its purpose was debt consolidation Mr D was not planning to settle any of his debt – it was for his partner's existing debts.

This means UK Credit knew Mr D would be spending around a third of his income on credit each month. I think at this level it ought to have been concerned that over a 48-month term he might struggle to make his repayments sustainably. And in the context of his relatively recent defaults and CCJ this concern ought to have been heightened. I am aware that Mr D told UK Credit he was unaware of the credit card that had defaulted and that one of the hire purchase agreements was in dispute. But at the time of this application they were ongoing liabilities in his sole name. In the round, I do not think it was responsible of UK Credit to extend further credit to Mr D at this time and in these circumstances.

It follows I find UK Credit was wrong to lend to Mr D.

Putting things right

It's reasonable for Mr D to repay the capital amount that he borrowed as he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been given to him. So he has lost out and UK Credit needs to put things right.

It should:

- Refund all interest, fees and charges applied to the loan account.
- If reworking Mr D's loan account will result in him having effectively made payments above the original capital borrowed, then UK Credit should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking Mr D's loan account will result in a capital balance remaining UK Credit must work with Mr D to agree an affordable repayment plan.
- Remove any adverse information recorded on Mr D's credit file in relation to the loan once any outstanding capital balance has been repaid.

*HM Revenue & Customs requires UK Credit to deduct tax from this interest. UK Credit should give Mr D a certificate showing how much tax it's deducted if he asks for one. If it intends to apply the refund to reduce an outstanding balance it must do so after deducting the tax.

My final decision

I am upholding Mr D's complaint. UK Credit Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 July 2024.

Rebecca Connelley
Ombudsman