

The complaint

Mrs L is complaining that Fairscore Ltd trading as Updraft (Updraft) lent to her irresponsibly by providing her with two personal loans.

What happened

In May 2022, Updraft approved a loan of £6,000 for Mrs L. The loan required her to make 47 monthly repayments of £181.39 followed by a final instalment of £223.90. The total amount payable was £8,749.23.

In March 2023, Updraft approved a second loan for Mrs L. This loan was £9,700, requiring 59 monthly repayments of £249.71 and a final instalment of £444.76. This time, the total amount payable was £15,177.65.

Mrs L complained to Updraft in December 2023, saying the loans were unaffordable and had been lent irresponsibly. She said she had a high level of existing debt and that although she'd said she would use the first loan to consolidate debts it should have been clear this wasn't what had happened.

Updraft responded, saying they'd carried out appropriate checks before lending to Mrs L. They said they'd obtained Mrs L's income and expenditure from her and sought to confirm her income using a credit reference agency (CRA). They increased the expenditure figure she'd stated to take into account statistical data but said they'd still been able to confirm the loan repayments were affordable, based on their calculations of her disposable income. So they felt the loans were affordable and didn't uphold her complaint.

Mrs L wasn't happy with Updraft's response, so she brought her complaint to our service, and one of our investigators looked into the matter. Our investigator didn't think Updraft had carried out proportionate checks because of the proportion of her income she was using to service existing debts. Our investigator said that if Updraft had done more they'd have realised Mrs L was heavily reliant on credit and that these loans would therefore cause her financial harm. So our investigator said the complaint should be upheld. But Updraft asked for a decision, saying they had done proportionate checks and calculated the loans were affordable. They added that Mrs L hadn't opened any new credit accounts between February and May 2022 and said if Mrs L had used the funds for their intended purpose she would have reduced her overall debt and outgoings.

I issued a provisional decision on 20 June 2024. In that I said:

"Did Updraft carry out proportionate checks?"

Before approving each loan, Updraft carried out the following checks:

- *Reviewed Mrs L's credit file.*
- *Used a CRA and linked bank accounts to check Mrs L's income.*

- Asked Mrs L about her housing cost and monthly non-discretionary expenditure and then adjusted the figures she'd provided upwards using statistical data and linked bank accounts.
- Used the credit file to calculate Mrs L's existing credit commitments and deducted these and her non-discretionary expenditure from her income to calculate her disposable income.

Whether or not these checks were enough depends on factors such as the amount and term of the loan, the cost of credit, and what Updraft found.

In May 2022, Updraft's credit check showed Mrs L had around 15 active lines of credit, three of which were joint. The total balance across her creditors was around £32,600. Taking 50% of the payments due on the joint accounts, Updraft calculated Mrs L was needing to pay around £940 each month to her existing creditors. So it's clear Mrs L had a large amount of existing debt, but with income of £2,200 per month, these repayments weren't necessarily unreasonable. Mrs L's credit file showed she didn't have any arrears or defaults at the time, so it would have appeared she was managing her finances well.

In March 2023, Updraft's credit check showed Mrs L again had around 15 active lines of credit, of which three were joint, with a total balance of nearly £36,000. None had any adverse markers suggesting arrears or defaults. Updraft calculated Mrs L needed to pay around £1,200 each month to her existing creditors. Updraft verified Mrs L's income as £2,400 per month at this point so the existing debt repayments were around 50% of her income. I'd expect this to have caused Updraft some concern.

In summary, Updraft verified Mrs L's income and payments to existing creditors and used a combination of statistical data and Mrs L's own testimony to estimate Mrs L's non-discretionary expenditure. In both cases, they calculated Mrs L had sufficient disposable income to make the payments needed for the new loan, without factoring in that she was planning to use the new loans to consolidate existing debts. And in both cases, there was no evidence Mrs L was struggling to manage her existing credit. In the circumstances I'm inclined to say these checks were proportionate - I haven't seen anything to indicate that Updraft should have verified Mrs L's expenditure or otherwise done more checks.

Did Updraft make fair lending decisions?

In May 2022, Updraft calculated that Mrs L would have around £417 per month disposable income from which to make repayments of £181 per month. On the face of it, then, the repayments appear to be affordable.

I'm inclined to say Updraft's estimates of Mrs L's income and living expenses were reasonable – they used a combination of testimony from Mrs L, linked bank accounts, CRA's, and statistical data to get to these figures.

However, when they calculated Mrs L's payments to creditors, Updraft used 3% of all running credit balances. I'm inclined to say they should have used a higher percentage as 3% would rarely allow a consumer to pay off the balance by equal instalments over a reasonable period – which is what CONC 5.2A.27R requires a business to consider. It was particularly important for Updraft to think carefully about this given Mrs L's high debt to income ratio.

The relevant laws and guidance in place don't specify an exact percentage that a firm should use to estimate repayments towards running credit. CONC says this will depend

on typical terms and conditions available for an unsecured loan of an amount equal to the credit limit. Broadly, I think it's fair to assume that for a limit under £1,000, a loan would be for up to 12 months, for £1,000 - £2,000 up to 24 months, and for £2,000 - £5,000 it would be for up to three years. I also think it's fair to assume Mrs L would have been able to access interest rates of around 19% (the rate offered to her by Updraft in May 2022). Calculating repayments on this basis would have increased Mrs L's repayments to creditors from the £943 Updraft calculated to around £1,284 – and therefore reduced her disposable income to around £76 per month. Clearly this wouldn't have been enough for Mrs L to cover the new payments required under this loan.

Similarly, in March 2023, Updraft calculated that Mrs L would have around £315 per month disposable income from which to make repayments of around £250 per month. Firstly, I'm not persuaded that £65 is sufficient disposable income. It's not entirely clear what expenses Updraft took into account but £65 doesn't strike me as much leftover each month to cover discretionary and emergency spending. But in addition, I again think Updraft's estimate of Mrs L's payments to creditors was too low. Using the assumptions set out above would have increased Mrs L's repayments to creditors from the £1,200 Updraft calculated to around £1,308 – and therefore reduced her disposable income to around £207 per month – not enough to cover the new payments required.

I appreciate Updraft's point that if Mrs L had used the loan to consolidate her debts she would be better off. But it's clear Updraft don't typically account for a reduction in existing debts when assessing affordability. And I don't think it would be reasonable to do so without a clear commitment from the consumer at least setting out which debts they were intending to pay off. So I'm not inclined to adjust my findings for this argument.

In summary, although I think Updraft's did enough checks, I don't think they used the information they found to come to an appropriate lending decision. I think Mrs L's levels of existing credit should have led Updraft to re-consider their calculations of her repayments to creditors and disposable income and if they had, they'd have decided the loans weren't affordable for her. So I'm inclined to uphold Mrs L's complaint and say Updraft shouldn't have lent to her.

Did Updraft act unfairly in any other way?

I've also considered whether the relationship between Updraft and Mrs L might be considered unfair under s.140 of the Consumer Credit Act 1974. However, I'm satisfied the redress I am directing below results in fair compensation for Mrs L in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case."

Mrs L accepted my provisional decision and Updraft didn't reply.

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.

I've not seen anything to change my opinion, so my final decision is the same as my provisional decision and I'm upholding Mrs L's complaint.

Putting things right

As Updraft shouldn't have approved either loan, it's not fair that Mrs L pay any interest or charges for the borrowing. She did have use of the funds she was lent, so it's fair she repays them. Updraft should therefore calculate what Mrs L has paid towards the loans and anything she's paid above the amount lent should be refunded.

To settle Mrs L's complaint, Updraft should:

- Refund any payments Mrs L has made in excess of the amount originally lent.
- Add 8% simple interest per year from the date of each overpayment, if there were any, to the date of settlement.
- If Mrs L has paid less than the amount originally lent, arrange a sustainable payment plan for any shortfall.
- Once Mrs L has repaid the amount originally lent in full, remove any adverse information recorded on her credit file regarding the agreement.

If Updraft consider tax should be deducted from the interest element of my award they should provide Mrs L a certificate showing how much they've taken off so that she can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained, I'm upholding Mrs L's complaint. Fairscore Ltd trading as Updraft need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 15 August 2024.

Clare King
Ombudsman