DRN-4959733

The complaint

Mrs P is being represented by a claims manager. She's complaining about Fairscore Ltd trading as Updraft because she says it lent irresponsibly by providing loans she couldn't afford.

What happened

Following her applications to Fairscore, Mrs P was given the following loans:

- Loan 1 - December 2021 - £10,000 repayable over 48 months at £281 per month; and

Loan 2 - July 2022 - £1,000 repayable over 12 months at £90 per month.

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be upheld. My reasons were as follows:

> *Before lending to Mrs P, Fairscore was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each loan are:*
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> - *Did Fairscore complete reasonable and proportionate checks to establish Mrs P would be able to repay the loan in a sustainable way?*
> - *If so, was the decision to lend fair and reasonable?*
> - *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*
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> *The rules, regulations and good industry practice in place at the time the loan was approved required Fairscore to carry out a proportionate and borrower-focused assessment of whether Mrs P could afford the repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this meant Fairscore had to satisfy itself that making payments to the loan wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Mrs P.*
>
> *The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.*

In response to Mrs P's complaint, Fairscore described the information it gathered to assess whether Mrs P's loans were affordable before they were approved. This included:

- *information contained in her application, including residential status, employment status and her income, which was separately verified;*
- *information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit, including missed payments and defaults; and*
- *an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of her existing credit arrangements.*

In more recent correspondence with our investigator, Fairscore also told us that it checks customer's credit files and uses open banking to get the best view of their situation. Fairscore maintains its affordability assessments were proportionate to the loans being given and demonstrated they were affordable.

I'll now consider each loan in turn:

Loan 1 in December 2021

According to the information Fairscore has provided, Mrs P declared she was employed with an annual income of £44,000. The credit check summary provided shows she had existing debt totalling over £14,000, which included nearly £7,000 spread across six credit cards. Particularly in view of the amount being lent and the size of the monthly repayment, I think a proportionate affordability assessment should have included a review of Mrs P's credit file and her actual income and expenditure, perhaps by reference to her bank account activity, rather than relying on modelled statistical data. Fairscore appears to be saying it did review this information.

As part of our investigation, we've obtained Mrs P's credit report and copies of her bank statements for the three months prior to the loan to establish what information Fairscore could reasonably have been discovered through a proportionate affordability assessment.

In addition to showing she had six active credit card accounts, Mrs P's credit report also shows she'd exceeded the limit on two of these in September and October 2021. A review of her bank statements in the three months prior to the loan shows her average income was around £2,100 per month. Further, it shows a regular pattern of her account being overdrawn by up to £800 or £900 throughout each month, incurring daily interest charges, and only returning to a positive balance for a few days each month after she received her wages. The statements also show evidence of direct debits being returned unpaid.

I think the evidence indicates Mrs P was living beyond her means and was showing signs of financial difficulty. In the circumstances, it's not clear how Fairscore could reasonably conclude an additional monthly payment of £281 would be affordable. If Fairscore had properly taken account of this information, it's my view that it shouldn't have lent to Mrs P.

In reaching this conclusion, I've taken account of the fact that Mrs P said in her application that she was planning to use the loan to clear her credit cards. But without clarifying which debt was being repaid and that Mrs P would be closing the relevant accounts, I don't think Fairscore could reasonably assume the loan would do anything to improve her overall position or reduce her monthly outgoings.

Loan 2 in July 2022

Fairscore's records show Mrs P's declared income was the same as when she applied for loan 1. But its credit check showed her debt had increased to over £18,000. This included £4,000 of credit card debt, most of which had been accumulated on a new account opened in February 2022 – only three months after loan 1 was approved.

In view of the fact that Mrs P appeared to be getting deeper into debt and had built up a new credit card balance so quickly, I think a proportionate affordability assessment should have included a review of her credit file and her actual income and expenditure, perhaps by reference to her bank account activity, rather than relying on modelled statistical data. Fairscore appears to be saying it did review this information.

In addition to the information I've outlined above, Mrs P's credit report shows she'd twice used her credit cards to make cash withdrawals in the three months before the loan was given. This is an expensive way to obtain cash and can be a sign of financial difficulty. Further, a review of her bank statements shows that, while she no longer had such a large overdraft, her account held only a minimal balance each month prior to her wages being paid. The statements also show the direct debit payment to Fairscore for loan 1 in May 2022 was initially returned unpaid.

I think the fact Mrs P had opened a new credit card account and run up such a significant balance so soon after loan 1, along with a review of her bank statements, shows Mrs P was still living beyond her means and was showing signs of financial difficulty. In the circumstances, it's not clear how Fairscore could reasonably conclude an additional monthly payment of £90 would be affordable. If Fairscore had properly taken account of this information, it's my view that it shouldn't have lent to Mrs P.

In reaching this conclusion, I've taken account of the fact that Mrs P said in her application that she was planning to use the loan to repay credit card debt. But I'm conscious the amount being borrowed wasn't enough to reduce that debt substantially. And as before, without clarifying which debt was being repaid and that Mrs P would be closing any accounts, I don't think Fairscore could reasonably assume the loan would do anything to improve her overall position or reduce her monthly outgoings.

In summary

If Fairscore had adequately assessed whether the loan repayments were affordable and sustainable, it's my view it shouldn't have lent to Mrs P on either occasion. It's for this reason that that I'm upholding her complaint.

Mrs P accepted my provisional decision and Fairscore didn't make any further submissions.

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.

As neither party has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously.

Putting things right

The principal aim of any award I make must be to return Mrs P to the position she'd now be in but for the errors or inappropriate actions of Fairscore. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Fairscore should have lent to Mrs P, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, Fairscore should now take the following steps in respect of each loan:

- Calculate the total of all Mrs P's payments towards the loan, including all interest, fees, charges and insurances (not already refunded).

- If this exceeds the amount borrowed (without the addition of interest or charges), any excess above that amount should be paid to her with simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires Fairscore to deduct tax from any interest. It must provide Mrs P with a certificate showing how much tax has been deducted if she asks for one. If Fairscore intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If the total of all Mrs P's payments doesn't exceed the amount borrowed (without the addition of interest or charges), Fairscore should arrange an affordable payment plan with her for the shortfall.

- Remove any adverse information recorded on Mrs P's credit file relating to this loan, once any outstanding balance has been repaid.

If Fairscore no longer owns the debt, it should liaise with whoever does to ensure any payments Mrs P has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mrs P 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.

My final decision

For the reasons I've explained, I'm upholding Mrs P's complaint. Subject to her acceptance, Fairscore Ltd trading as Updraft should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 9 September 2024.

James Biles

Ombudsman