Financial Ombudsman Service

The complaint

Mr and Mrs A complains that Shawbrook Bank Limited (‘Shawbrook’’) irresponsibly gave them a loan they couldn’t afford.

What happened

In June 2018, Mr and Mrs A applied for a fixed sum loan agreement with Shawbrook. They borrowed a total of £11,996 to be used for home improvements. The loan would be repayable by 120 monthly repayments of £156.55. The total amount repayable was £18,996.

In August 2023, Mr and Mrs A complained to Shawbrook to say the loan shouldn’t have been approved as their circumstances made it unaffordable. They suggested this was something that Shawbrook would have discovered for itself had it completed the appropriate checks.

Shawbrook said that Mr and Mrs A had met their lending criteria and affordability had been assessed based on information they’d provided on the application and from information obtained from credit reference agencies. Shawbrook said none of this information indicated any affordability concerns. It also says it noted at the time that Mr and Mrs A were in a debt management plan.

Our investigator didn’t recommend the complaint be upheld. Whilst she felt that Shawbrook could have carried out better checks at the time before agreeing to lend, she didn’t think the loan was likely to have been unaffordable. This was having taken into account the payments that were being made towards the debt management plan.

Mr and Mrs A didn’t accept our investigator’s finding. They pointed out that neither of them were working and were reliant on a state pension and state benefits. They were also repaying an interest-only lifetime mortgage. They sent in further details about their financial circumstances at the time and pointed out that they were reliable on additional funds from friends and family members in order to be able to meet their monthly outgoings.

Our investigator looked at the new information but thought the new loan was still likely to be affordable.

As Mr and Mrs A haven’t accepted our investigator’s finding, the complaint has been passed to me for a decision.

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.

The rules for lenders are set out in the Consumer Credit Sourcebook (“CONC”) within the Financial Conduct Authority’s Handbook of rules and guidance. In summary, these say that before providing Mr and Mrs A with credit, Shawbrook was required to complete proportionate affordability checks to satisfy itself they would both be able to afford to repay the loan in a sustainable way.

There isn't a set list of checks that Shawbrook were required to complete, but it needed to ensure that what checks it did do were proportionate in the circumstances. What is considered proportionate will vary in each case as there is no 'one-size-fits-all' approach. Some of the relevant factors in deciding what would be proportionate are (but are not limited to):

- The amount being borrowed;
- The amount and frequency of the regular repayments;
- The term of the agreement;
- The cost of the borrowing and the total repayable;
- The consumer's individual circumstances.

In this case Mr and Mrs A were expected to repay almost £19,000 over a period of ten years with monthly repayments of around £160. That's a significant commitment on any analysis, although I do appreciate the point our investigator has made about the size of the repayments. Considered as part of the overall size of the monthly household income it could be said to be manageable on the face of things. But I recognise that is only part of the overall picture.

For complaints like these, with a loan of this size and duration, my starting point is that any proportionate affordability checks ought to have been relatively thorough. At the time, Mr A had declared a monthly income of £1,800. This wasn't deemed to be sufficient for the purposes of the credit application and so it was necessary to approve the application on a joint basis, with the inclusion of Mrs A's monthly income of just under £1,200. Against that income background, I've seen that Mr and Mrs A had taken on an interest only lifetime mortgage, whereby the interest and charges were added to the loan without requiring payment by them. Although they didn't have that regular expense, they have pointed out that their financial circumstances had necessitated them taking out this type of mortgage.

For a long term credit commitment like this, it generally won't be sufficient for a lender to rely solely on what a borrower or borrowers declared their income to be. I agree that given the circumstances here, it would have been proportionate for Shawbrook to have verified Mr and Mrs A's income in some way.

Shawbrook completed a credit check and has provided us with the results of those checks which I think gave it a reasonable understanding of what Mr and Mrs A's credit commitments were likely to be. Whilst noting the frequency of credit being used and the level of ongoing active credit, I haven't seen there were any particular issues of concern, such as consistently missed payments or accounts going into default. I've also seen that several long term agreements had been successfully paid off in the previous two years. Having said that, I've also taken on board that some of the payments had been consolidated under the debt management payment plan that Shawbrook was aware of at the time of the loan application, at that point to the value of around £10,000.

The lending rules also set out that generally Shawbrook should take reasonable steps to either find out or make a reasonable estimate of Mr and Mrs A's expenditure before lending. I think it would have been proportionate for Shawbrook to have done more here, given the size, term and overall cost of the loan. That's why we asked to see evidence of what Mr and Mrs A were spending their income on at around the time they applied for the loan. One way of finding out more about this is to look at bank statements from the time, if available. Assuming the statements give a representative picture of income and spending, they can help to establish a fair indication of what Shawbrook would have seen had it carried out better checks at the time.

Our investigator obtained joint statements from Mr and Mrs A from the months before the agreement, going back to January 2018, so as to try and gain a reasonably accurate picture of their overall financial position. Whilst there is some fluctuation in the level of account balance – especially in April 2018 – the joint account always remained in credit. The debt management plan payments were being taken at £120 each month. This was alongside other credit repayments that weren't under that agreement. I can also see the income Mr and Mrs A were receiving at the time was being paid in on regular basis. I also broadly agree that their monthly non-credit commitments, such as essential food and household costs, were likely to be somewhere between £600 and £900. And, as Mr and Mrs A have pointed out to our investigator, regular payments were being made to them by family and friends to help them keep on top of things.

As I've already said, the credit check didn't show any particular issues with repaying credit. But having the debt management plan in place, albeit for a relatively low amount, could suggest that Mr and Mrs A's financial position was at risk of deteriorating. So a better understanding of it would have helped Shawbrook to be reassured that the loan was affordable and could be repaid on a sustainable basis. Checking bank statements would have achieved that, and a close review would have shown that in addition to their regular income, they were receiving additional payments from friends and family. Given that they appeared to have sufficient earned income at the time to meet the new agreement, I can't say this would necessarily have prompted Shawbrook to ask further questions about the reason for these additional payments. But if it had I wouldn't have expected Mr and Mrs A to emphasise their level of reliance on these payments, given their understandable wish to be accepted for the loan. As things stood, based on an average monthly household income of around £2,300-£2,500, the loan would have appeared to be affordable without additional funds being needed, albeit by a small margin.

I therefore think Shawbrook's affordability checks in this specific case were reasonable and proportionate. Having thought about what the results of Shawbrook's affordability checks revealed, I'm satisfied that these didn't highlight concerns as to the affordability and long-term sustainability of the loan. I also don't think it's likely that better checks, if carried out, would have led to a different conclusion. Therefore, I don't think Shawbrook acted unfairly in giving Mr and Mrs A the loan.

I realise this finding will come as a disappointment to Mr and Mrs A, especially as they are continuing to make repayments towards the loan and have told us about some difficult personal circumstances. I also take this opportunity to remind Shawbrook of its obligation to treat them fairly in relation to any financial difficulties they may currently be experiencing.

I've also considered whether the relationship between Mr and Mrs A Shawbrook might have been unfair under Section140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Shawbrook lent irresponsibly to them or otherwise treated them unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons given above, I'm not upholding this complaint.

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

Michael Goldberg
Ombudsman