DRN-5199818

The complaint

Mr M has complained that Inclusive Finance Limited trading as Creditspring ("Creditspring") gave him a loan without properly considering his finances. Mr M says that had further checks been made Creditspring would've concluded he couldn't afford to repay the repayments.

Mr M has also said that the interest and charges were excessive, and they were not clear to him.

What happened

In February 2024, Mr M was given a fixed sum credit agreement that potentially allowed him to drawdown up to £1,000. However, the agreement only initially allowed £500 to be drawdown. This first drawdown was to be repaid – interest free - by five monthly repayments of £83.33 followed by one final payment of £83.35. But as part of the agreement, Mr M also agreed to pay a £14 monthly membership to Creditspring. Mr M took the first drawdown in March 2024.

Mr M would only be able to access the second £500 once the first drawdown had been repaid. In total, had Mr M made use of both drawdowns, and repaid them in line with the credit agreement he would've repaid a total of £1,168.

Despite asking Creditspring, no statement of account has been provided so I don't know when the first drawdown was repaid or whether Mr M took the second one.

Following Mr M's complaint, Creditspring explained it wasn't going to be upholding the complaint because the checks it conducted showed Mr M could afford his repayments. However, Creditspring said.

> *"… I note the fact that you are experiencing financial hardship and I would like to offer our support during this time. As such, I am offering to waive the remaining membership fees due £140, as a gesture of goodwill. Should you wish to accept this offer, I would request your confirmation in writing within 14 days of receipt of this email."*

Unhappy with this response and offer, Mr M referred the complaint to the Financial Ombudsman.

An investigator reviewed the complaint, and he didn't uphold it saying Creditspring had conducted proportionate checks which showed Mr M would likely be able to afford his monthly repayments.

Mr M didn't agree, and I proceeded to issue a provisional decision outlining why I was intending to uphold Mr M's complaint. Both parties were asked to provide any further submissions, as soon as possible, but in any event, no later than 6 December 2024.

Creditspring acknowledged the provisional decision but didn't have any further comments. Mr M accepted the provisional decision, but he went on to say, that following a separate complaint he had made against Creditspring it has already refunded him, as a goodwill gesture £98. Mr M says some of this refund was made up of refunded membership fees. Mr M says this refund shouldn't be taken account when working out the redress for this complaint.

A copy of the provisional findings follows this in smaller font and form part of this final decision.

What I said in my provisional decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr M's complaint. Having carefully considered everything I've decided to uphold Mr M's complaint. I'll explain why in a little more detail.

Creditspring needed to make sure it didn't lend irresponsibly. In practice, what this means is it needed to carry out proportionate checks to be able to understand whether Mr M 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 checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to do be done 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 firm to be able to show that it didn't continue to facilitate loans to a customer irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr M's complaint.

Creditspring says that Mr M declared a monthly income of £2,550 as well as £450 for rent. On top of this it asked Mr M details of his other costs – but these were taken as part of a range, for example he declared transport costs to be between £0 - £99 per month.

Creditspring says where a range was taken the top of the range was used for the expenses – that doesn't seem an unreasonable approach. Mr M declared his other expenses came to £896 per month.

However, Creditspring says this information was 'adjusted' and increased to £1,204 per month – and with a maximum payment due of £97.35 it was comfortable that the lending was affordable.

As well as assessing Mr M's income and expenditure, Creditspring, also carried out a credit search and it has provided the results it received from the credit reference agency. The credit search results revealed that Mr M wasn't insolvent, had no County Court Judgements nor missed payments. Creditspring was told that Mr M's monthly credit commitments were around £775 – which is significantly higher than the figure he declared as part of his application.

Overall, given the value of the loan, the monthly repayments and the checks Creditspring carried out. I'm minded to say these checks were proportionate and indicated to Creditspring that Mr M could afford to take on the borrowing.

However, Mr M has said, Creditspring had access to his bank account through open banking. I asked the investigator to make enquires with Creditspring to see if this was the case, and if so what were the results of its review. However, despite being given ample chance to provide the requested information it hasn't confirmed whether open banking was used as part of Mr M's affordability check.

However, Mr M has in my view provided persuasive proof that open banking was used by Creditspring. He provided a copy of an email that came from a company that appears to have been used to share the information and the email says.

> *"Thanks for using [business name] to share your data. We can see you have recently used our service to share your data with Creditspring."*

Given this email, I'm satisfied that Creditspring did use open banking, albeit it is disappointing that it hasn't provided the information that has been requested. Nonetheless, this does show that Creditspring's checks went further than initially thought by the investigator. And as Creditspring hasn't responded I don't know for sure exactly what sort of open banking check it carried out.

There are different types of open banking checks with different degrees of detail provided. For example, it may have just received an overview of the incoming and outgoings payments and what Mr M was spending his money on. Or it received a read only version of his bank statements.

Without any further clarification from Creditspring, I've used the bank statements Mr M has provided from the account he says he gave Creditspring access to. That doesn't mean the complaint will be upheld merely that I've considered what it likely would've seen given it did use the services of an open banking provider as part of the affordability assessment.

Having looked at the statements provided by Mr M in the three months before the finance was provided, I can see that Mr M had payments to credit cards, loans and a mobile phone contract totalling nearly £400 per month. There is also a payment made on or around the first of the month for £977 and it's called "bills" and given the lack of other living costs on the account I think it's likely that this was Mr M's share of the household bills. Indeed, this is close to the figure Mr M provided for the mortgage payment that he said he had to make.

However, the account shows that Mr M was using a number of online gambling websites and he was spending a significant amount of money each month on those websites. I accept that there are credits received from some of these websites but these are clearly not guaranteed and I wouldn't be able to say that this lending was sustainable only if Mr M was successful with any gambling transactions he was making.

So, given the bank statements provided by Mr M, I do think it's likely, that had Creditspring taken a closer look at what it was being told – and what it seems it had access to through open banking that it would've decided the lending wasn't affordable nor sustainable for him. I've thought about what Mr M says about the interest rate was excessive and wasn't clear.

As I set out at the start of the decision, this product didn't have an interest rate – rather there was a monthly membership fee of £14. But whether I agree with Mr M's assertions that it wasn't clear wouldn't lead me to a different outcome of the complaint because I've already decided, given the reasons outlined above that the finance shouldn't have been advanced. I am therefore intending to uphold Mr M's complaint.

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.

Neither party has provided any further comments about the outcome that I outlined in the provisional decision, so I still think Creditspring ought to not have lent to Mr M based on the likely results that it received from its open banking report.

However, Mr M has now let me know that since this unaffordable lending complaint there has been another complaint with Creditspring – and in that complaint a refund has already been made which may include some of the membership fees that I have recommended be refunded as part of this complaint.

I can only consider the complaint that I've been asked to look at, namely whether Creditspring did all it should've done before lending to Mr M. So, I don't know what the other complaint was about or what was decided but I don't need to know the full details to reach a fair outcome in this complaint.

As this complaint has been upheld, I can only recommend – as part of the redress that Creditspring refund any interest, fees or charges that it has charged Mr M (or may charge him). But if, following another complaint some or all of those fees have been refunded, I wouldn't be in a position to ask it to in effect refund him twice.

In the circumstances, of this complaint, I do think it's fair that Creditspring is able to offset any refund that is due on this complaint against any membership fees that it may have already refunded to him. In short – Mr M shouldn't receive a double refund of fees.

So, I'm upholding Mr M's complaint for the same reasons as set out in the provisional decision and I've set out below what Creditspring needs to do in order to put things right for Mr M.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

As part of the final response, Creditspring made an offer to put things right for Mr M, we've asked whether the offer is still available, but it hasn't responded. Nonetheless, I don't think I need to wait for an answer in order to propose fair redress in this case.

I'm satisfied that Creditspring shouldn't have granted the lending and so Mr M shouldn't have to repay any more – beyond any capital that he borrowed and the redress I've set out below does that.

- remove all interest, fees and charges applied to Mr M's lending from the outset. The payments Mr M made, whether to Creditspring or any third-party, should be deducted from the new starting balance – the amount originally lent. If Mr M has already paid Creditspring more than this, then it should treat any extra as overpayments. And any overpayments should be refunded to Mr M;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr M to the date of settlement*
- however, if an outstanding balance still remains due then Creditspring should try and work with Mr M to repay what is owed. I would remind Creditspring to treat Mr M fairly and with forbearance.

- if no outstanding balance remains after all adjustments have been made, all adverse information Creditspring may have recorded about this loan should be removed from Mr M's credit file.

Creditspring can, adjust the above to take account of any membership fees that have already been refunded to Mr M.

*HM Revenue & Customs requires Creditspring to deduct tax from this interest. Creditspring should give Mr M a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons I've explained, above and in the provisional decision I'm upholding Mr M's complaint.

Inclusive Finance Limited trading as Creditspring should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 January 2025.

Robert Walker
Ombudsman