DRN-4532193

The complaint

Mr W says Chetwood Financial Limited, trading as BetterBorrow, irresponsibly lent to him.

What happened

Mr W took out a 24-month instalment loan for £2,500 on 24 June 2022. The monthly repayments were £123.92 and the total repayable was £2,974.14.

Mr W says he was in desperate financial need when he applied for the loan as he had a gambling addiction. His outgoings were high relative to his income. Getting this loan meant he had to take out other loans to repay it. He asks for all interest to be refunded, with interest, and for any adverse data to be removed from his credit file.

Our investigator upheld Mr W's complaint. She said BetterBorrow's initial checks generated some information that ought to have promoted it to complete further checks. And had it done so, it would have realised Mr W could not sustainably repay this loan.

BetterBorrow disagreed asked for an ombudsman's review. It re-iterated the checks it had done and the results they generated, saying Mr W had £573 disposable income and so could afford the loan.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did BetterBorrow complete reasonable and proportionate checks to satisfy itself that Mr W would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr W would have been able to do so?
- If so, did BetterBorrow make a fair lending decision?

The rules and regulations in place required BetterBorrow to carry out a reasonable and proportionate assessment of Mr W's ability to make the repayments under the agreement. This assessment is sometimes referred to as an affordability assessment or affordability check.

The checks had to be borrower-focused – so BetterBorrow had to think about whether repaying the loan would be sustainable. In practice this meant that BetterBorrow had to ensure that making the repayments on the loan wouldn't cause Mr W undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for BetterBorrow to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr W. Checks also had to be proportionate to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that such a check ought generally to have been more thorough:

- The lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income).
- The higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income).
- The greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I have reviewed the checks that BetterBorrow carried out prior to lending to Mr W. It asked about his income and verified this externally. It used national statistics to understand his housing and living expenses. It carried out a credit check to understand his credit history and his existing commitments. From these checks combined it concluded Mr W had disposable income each month of over £500 and so could afford the loan repayments.

I am not satisfied these checks were proportionate given some of the information they revealed. I find the results showed a more comprehensive financial review was needed. I say this as BetterBorrow learnt Mr W's net monthly income was £2,060. And that he had debt of £18,603 across loans, credit cards and an overdraft (which seems to have been unauthorised). It calculated this was costing him £709 a month. I would argue this is understated as to sustainably repay the credit card debt would have cost £555.75 a month taking the total loans and cards repayments to around £865. This was a high proportion of Mr W's income – something which can be an indicator of pending financial difficulties. In these circumstances I find BetterBorrow ought to have checked Mr W's actual financial position, and not relied on any assumptions or averages.

I have reviewed Mr W's bank statements for the three months prior to application. I am not saying BetterBorrow had to do exactly this but it is a reliable way for me to know what better checks would most likely have shown the lender. From them I can see Mr W was gambling heavily (over 50+ transactions some days) and was also persistently reliant on his overdraft facility. So I am sure BetterBorrow, as a responsible lender, would have made a different lending decision had it completed proportionate checks.

It follows I find BetterBorrow was wrong to lend to Mr W.
I hope Mr W now has the support he needs, if not he could contact Step Change on 0800 138 1111 or National Debtline on 0808 808 4000 for advice about financial difficulties. And if he needs help to manage his gambling he could contact GamCare on 0808 802 0133.

Putting things right

Mr W should repay only the capital portion of the loan. But he has paid interest and charges on a loan that should not have been given to him and this is unfair. So BetterBorrow will have to:

- Remove all interest, fees and charges applied to the loan. And treat any payments made by Mr W as payments towards the capital amount.
- If Mr W has paid more than the capital, refund any overpayments to him with 8% simple interest* from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, BetterBorrow should agree an affordable repayment plan with Mr W, treating him fairly and with forbearance if appropriate.
- Remove any adverse information about the loan from Mr W's credit file once any outstanding capital balance has been repaid.

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

My final decision

I am upholding Mr W's complaint. Chetwood Financial Limited, trading as BetterBorrow, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 March 2024.

Rebecca Connelley
Ombudsman