

The complaint

Mr S complains that UK Credit Limited (UKCL) failed to keep him informed about his increasing liability under a guarantee he had signed for his daughter's loan.

What happened

In September 2016, Mr S's adult daughter took out a regulated fixed-sum loan agreement with UKCL. She borrowed £7,499 at 37.9% APR. The total charge for credit was £7,784.80, and the total amount repayable (assuming that all monthly payments were made on time) was £15,283.80, which was to be repaid over 60 months at £254.73 a month. Interest would also be charged on any arrears at the same rate, and there were to be charges for any late payments.

Mr S signed a guarantee and indemnity form for this loan. The loan funds were paid into his bank account, for him to pass on to his daughter.

The loan term was due to end in September 2021, but it actually ended in December of that year, having been extended several times by a few days at a time, which added up to about three months. That was because Mr S's daughter had changed her due payment date from time to time. This had resulted in additional interest being charged. The account had also been in arrears on occasion, for periods adding up to around two years, incurring further interest and also charges. This meant that at the end of the loan term, there was still an outstanding balance of £2,233.28 (which included £253.63 of arrears).

In 2022, Mr S and his daughter complained together that UKCL had not been transparent about the additional interest and charges. UKCL did not agree, and said that it had sent letters and annual statements setting out the interest and charges. Being dissatisfied with that response, Mr S and his daughter brought this complaint to our service. That joint complaint was severed into two complaints which were dealt with separately by the same investigator. This decision is about Mr S's complaint.

Mr S says that he was not told at the time about the changes in the due payment dates or the effect that had on the interest that was charged. This additional interest was not clearly indicated as such on the annual statements, so he hadn't realised that he had become liable for an increased amount of debt. He says that the interest should be broken down clearly on the annual statements so that guarantors can see if further interest has been charged on top of the total amount repayable. He also says that he was never given clear information about the rates of this additional interest or how charges would be applied.

Our investigator upheld this complaint. She said that the annual statements had failed to make it clear to Mr S that additional interest had been added to the loan balance for which he was contingently liable. She also said that it had not been fair to increase Mr S's liability without first getting his authorisation to change the monthly repayment dates. To put things right, she recommended that Mr S's liability under the guarantee should not include the additional interest and charges.

UKCL did not accept that decision. It argued that it had allowed the borrower to extend her payment due date from time to time as an act of forbearance, because her account had been in arrears. It added that it had told Mr S about this in a letter sent at the time, and he had not replied, so UKCL had inferred that this meant he had no objection at the time. However, the investigator did not change her mind, because only one such letter had been sent; UKCL had not told Mr S about each change in the payment date. The investigator also said that Mr S had only signed a guarantee for the total amount repayable under the loan agreement, not for any additional interest which may subsequently be incurred. She thought it wasn't fair to hold Mr S liable for additional debt without obtaining his prior consent.

UKCL asked for an ombudsman to review this case. I wrote a provisional decision which read as follows.

What I've provisionally 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.

Having done so, I do not propose to uphold it. I will explain why.

Firstly, I cannot agree that UKCL needed to obtain Mr S's permission to vary the payment due dates, or that by not doing so he was not liable for the additional interest that was thereby incurred. He agreed that he would be liable for any further interest when he signed the guarantee and indemnity form. That includes not only interest incurred because the loan term was extended, but also interest charged on arrears.

The guarantee makes Mr S liable to pay UKCL "all sums due under the Agreement" (paragraph 1) and "all sums payable by the Debtor under the Agreement as therein provided (whether such sums become payable by reason of any breach by the Debtor of the Agreement or otherwise)" (paragraph 2). Further down, there is a declaration that he has received a copy of the Agreement and has read it.

The Agreement does not cap the borrower's liability at the total amount repayable; that amount is only what the borrower has to repay if all of the monthly payments are made on time. The Agreement says on page 1, under the heading "Charges":

"Interest will continue to be charged on overdue amounts at the contractual rate above (see Condition 4). If you fail to pay a monthly repayment, we may charge you a fee of £30 for each month (or part of a month) that any repayment remains overdue."

The contractual rate is given on the same page. On the next page, Condition 4 says that interest will be charged on any unpaid interest (among other things). Both the borrower and the guarantor are liable for these additional charges and interest.

I also do not agree that Mr S was not notified about what was happening. I have seen UKCL's contact notes, and I can see that UKCL frequently contacted him about his daughter's arrears. Beginning in November 2017, UKCL sent text messages to his phone telling him that his daughter was in arrears, and asking him to get in touch. The early messages read as follows:

"Hello [*Mr S's first name*], please call me urgently to make [*borrower's full name*]'s loan payment. If payment isn't received by [*date*] further action will be taken which could affect your credit rating. This is an event I am keen to

avoid and I look forward to building a resolution with you soon. Regards,
James”

Later, starting in April 2018, there were further text messages which read as follows:

“Hello [*Mr S’s full name*], please call me urgently to discuss the loan account you are guarantor for. The account is currently in arrears for over 2 months worth of installments and this means that your responsibilities as guarantor to make the installments is now legally enforceable. The applicant is doing what she can to reduce the arrears but as guarantor you are now responsible for making the installment repayments until the arrears have reduced to zero” (*sic*)

Mr S was sent 18 messages of this nature. Then on 3 May 2018, there was a phone call with Mr S in which arrears interest was specifically discussed, and he was told that there was a potential large balance at the end of the loan term unless he made a contribution. In another call the next day, he was told that the expected additional balance would be approximately £3,400. Mr S emailed UKCL later that day to make an offer to pay the arrears in four instalments, and he specifically mentioned that this was to reduce the interest. So I cannot accept that he didn’t know about it.

After that, several more text messages were sent to Mr S’s phone in 2018 and 2019. Then on 27 May 2020, UKCL sent him a copy of a letter it had sent to his daughter, which said that her payment date had been deferred. The letter went on to say that interest would continue to be charged on the outstanding loan balance (although this would not be treated as arrears if her payment was made by the extended due date). Then it said that at the end of the extended loan term, in December 2021, there would be an additional amount payable (because of the interest and any arrears which had already accrued) of £1,952.76.

That letter was sent over a year and a half before the end of the loan term, so I do not accept that UKCL failed to keep Mr S informed about the additional interest and charges.

For the above reasons, I am not minded to uphold this complaint.

Responses to my provisional decision

UKCL did not reply to my provisional decision. Mr S did reply, not about the matters I had written about above, but instead to ask me to consider a complaint about the original deadline for the monthly loan repayments not matching his daughter’s payday, and the three days of extra interest he said this had led her to incur.

I don’t think that falls within the scope of what a guarantor can complain about; that was a matter which would more properly fall to be dealt with as part of his daughter’s separate complaint (which is now closed). But even if I took a different view about that, I would not have upheld his complaint about that issue, because UKCL was not under an obligation to offer his daughter a different deadline; she agreed to the terms she was offered, and changed the date later. She also had the option of not taking the loan.

There is therefore no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 May 2024.

Richard Wood
Ombudsman