

The complaint

Mr F has complained that FUND OURSELVES Limited (“Fund Ourselves”) gave him a loan without carrying out sufficient affordability checks.

What happened

Mr F was advanced one loan of £600 on 22 April 2022 and he was due to make four monthly repayments of £297.60. Mr F had some problems repaying this loan, and Fund Ourselves confirmed the loan was repaid on 24 July 2023.

Following Mr F’s complaint about the sale of the loan, Fund Ourselves considered the complaint and didn’t uphold it. Unhappy with this response, Mr F referred his complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator, and he didn’t think Mr F’s complaint should be upheld. He concluded that proportionate checks had been carried out and there was no indication that either Mr F was in financial difficulties, or the loan couldn’t be repaid in a sustainable manner. He also thought that it was fair that Fund Ourselves removed the default marker from the credit file because Mr F was attempting to set up a repayment plan.

Mr F didn’t agree and he asked for an ombudsman to review the complaint. I’ve summarised his response below, in addition he also provided a copy of a “multi agency credit report”.

- Proportionate checks were not carried out before the loan was granted because Mr F had been approved for other loans shortly before this one.
- When this loan was approved Mr F had opened 11 new accounts in the previous five months which ought to have raised questions about his finances and he was also utilising several credit cards.
- At the time, his income was around £1,500 per month, albeit this was received as weekly payments and given the large amount of disposable income which was declared, Fund Ourselves ought to have questioned why the loan was needed.
- Due to the likely vulnerable background of customers who take this sort of lending further checks should be carried out on each application.
- On the same day this loan was approved, Mr F had made a number of other incomplete applications with Fund Ourselves for amounts ranging from £150 to £800.
- Mr F doesn’t consider he has been treated fairly considering the interest rate of the loan and the amount of disposable income that he declared.

As no agreement could be reached, the case was passed to me to resolve. I issued a provisional decision explaining the reasons why I was intending to not uphold Mr F’s complaint.

Both parties were asked to provide any further submissions as soon as possible, but in any event no later than 3 November 2023.

Neither Fund Ourselves nor Mr F provided any further submissions for my consideration and so I have finalised the final decision along the same lines as the provisional decision.

A copy of the provisional findings follows this, in a smaller font and forms 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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

Fund Ourselves had to assess the lending to check if Mr F could afford to pay back the amount he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Fund Ourselves' checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr F's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Fund Ourselves should have done more to establish that any lending was sustainable for Mr F. These factors include:

- Mr F having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- Mr F having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);*
- Mr F coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).*

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Mr F. As there was only one loan granted, the adjudicator didn't think this applied to Mr F's complaint and I agree.

Fund Ourselves was required to establish whether Mr F could sustainably repay the loan – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr F was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

The main regulations can be found in the Consumer Credit Sourcebook (CONC) in section 5.2A. This is the relevant rules and guidance that I've followed when considering whether a proportionate check was carried out.

I also know that Mr F has raised concerns about how expensive this credit was and therefore that would lead to further checks. CONC 5.2.A.20 is clear that the cost of the credit needs to be factored into an assessment, along with, for example, the monthly repayment and the capital sum borrowed. I can quite understand why Mr F feels, given the sector Fund Ourselves operates in that further checks are needed before each loan – but that isn't what the regulation says or allow, and I've kept this in mind.

It is also worth saying that in July 2015, the industry regulator brought in a cost cap for this type of loan. Simply put, it means a lender can't charge more than 100% of the capital sum borrowed. In this case, the total Fund Ourselves could collect (including any late fees or additional interest) was £1,200. I've not seen anything to suggest that Fund Ourselves has collected more than this and so it isn't, as far as I can see, in breach of the cost cap.

Mr F has also raised Principle 6 which says;

“A firm must pay due regard to the interests of its customers and treat them fairly”

This is an overarching principle that all regulated firms need to adhere to and so is to be used in conjunction with the relevant sections of CONC – in this case 5.2A. The regulator has set out six core outcomes of principle 6, that a firm should try to achieve such as “Where consumers receive advice, the advice is suitable and takes account of their circumstances.”

But ultimately, the product met Mr F’s needs for access to money fairly quickly and the existence of payday loans isn’t an automatic breach of Principle 6. Principle 6 doesn’t negate or mean that just because a loan is expensive it can’t be provided, when there are other rules such as the industry wide cost cap which must also be considered in conjunction with it.

I’ve considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr F’s complaint. Having considered all the information provided, I am also concluding that Fund Ourselves carried out proportionate checks and so it doesn’t need to take any further action.

As part of his application, Mr F declared a monthly income of £2,700 and Fund Ourselves says this income was electronically verified through a third-party tool provided by a credit reference agency, in order to gauge its accuracy. Fund Ourselves says the results indicated Mr F’s income was likely to be accurate.

I appreciate Mr F says his income wasn’t as high as he declared, but that wasn’t reflected in the information he provided to Fund Ourselves. For a first loan I’d only expect Fund Ourselves to have verified his income, if there were grounds for doing so. For example, it being given contradictory or unrealistic information – which doesn’t appear to have been the case here. So given this was early in the lending relationship I don’t think it was unfair or unreasonable of Fund Ourselves to have relied on what Mr F declared to it, or to have realised that Mr F had given misleading information.

Mr F was also asked to declare his outgoings across a number of different variables, such as outstanding debt, rent and travel. He declared these costs to be £890 per month. As this was a first loan it was reasonable and proportionate for Fund Ourselves to have relied on the information Mr F provided.

Fund Ourselves believed, based on the information Mr F provided, he had enough disposable income to afford the loan repayments. Therefore, it would’ve been reasonable for Fund Ourselves to believe the loan to be affordable for Mr F.

Fund Ourselves carried out a credit search and it has provided a copy of the results it received from the credit reference agency. It is worth saying here that although Fund Ourselves carried out credit searches, there isn’t a regulatory requirement to do one, let alone one to a specific standard. But what Fund Ourselves couldn’t do is carry out a credit search and then not react to the information it received – if necessary.

The credit checks for example don’t show the recent loan that Mr F says he had been granted by another lender in the days before he took this one. This isn’t unusual, because it can take some time for information to appear on a credit report and in addition, the other loan provider may not have reported it to the same credit reference agency that Fund Ourselves used when carrying out its check. Fund Ourselves wasn’t aware of this loan and therefore couldn’t factor it into its affordability check and as I’ve said above, it was entitled to rely on the information it received from both Mr F and the credit reference agency.

Having looked at the results, there wasn’t anything that I can see that would’ve led Fund Ourselves to have either declined or have prompted it to have carried out further checks and I’ve explained why below.

It knew that Mr F wasn’t insolvent through a County Court Judgement or through any other type of insolvency. It also knew that Mr F didn’t have any accounts enter delinquency within

the last 12 months, one account was defaulted between 12 and 36 months before the loan was approved. It was also told that Mr F had a total of 12 active credit accounts and owed other creditors a total of £3,453.

Fund Ourselves was aware that in total, over the last six years, Mr F had defaulted on eight accounts. The majority of these were defaulted in 2018, so it would seem that around four years before the loan was advanced Mr F found himself in a difficult position.

The most recent default was recorded around two years before this loan was approved. In some situations, the number of defaults that Mr F had visible on his credit file could be a prompt to carry out further checks, but as the defaults, were from some time ago, I don't think in this case, for a first loan that Fund Ourselves would've been overly concerned with them, as it wasn't at the time a reflection of how Mr F may repay his loan.

Fund Ourselves was aware of a number of credit cards that Mr F had – at least seven. Two of them were within a couple of pounds of the credit limit whereas there were other cards, that had a much smaller balances in proportionate to the limit or in some cases no balance at all. The balance of these cards came to £2,246 – which was the majority of the total debt that Mr F had.

Fund Ourselves received information that Mr F had potentially two loan accounts outstanding, one was costing £30 per month and the other was costing £88 per month. Given the relatively small monthly repayments, it's possible these were either high-cost credit loans, instalment loans or home credit loans. I can't tell from the credit report, but I don't need to speculate here, because I don't think it makes any difference.

And I say this because while there was some historic data on the credit file, there wasn't any recent data that suggested that Mr F was either over indebted, reliant on these types of loans or was having problems managing his finances. The credit search results, could be relied upon.

I can see from the information Fund Ourselves has provided, that on the day this loan was advanced, a number of loan applications were made by Mr F with requests for amounts ranging from £75 to £400. However, the information provided by Fund Ourselves doesn't show these loans were denied, instead they appear to have been left incomplete. This means, as far as the information provided shows, no declined reason was given and therefore no affordability assessment was likely undertaken by Fund Ourselves.

I don't think, on its own, that a number of incomplete applications would've led Fund Ourselves to conclude further checks were needed. This is because it didn't decline the applications and as far as it was concerned Mr F was just deciding how much to borrow and or how much each loan may cost.

There also wasn't any evidence from the credit check that would've led it to have conducted further checks or to have declined the application. There also wasn't to suggest that Mr F was likely having current financial difficulties or that the loan repayments would be unsustainable for him.

This also means, that I don't yet think it had reached the point in the lending relationship where Fund Ourselves would've concluded it needed to have verified what Mr F was telling it. I appreciate that Mr F has provided copies of his bank statements. But in this case, taking account of size of each payment, what Mr F declared it would've been disproportionate for Fund Ourselves to have viewed them.

Overall, Fund Ourselves carried out proportionate checks before the loan was approved - which showed Mr F could afford the repayments he was committed to making. I'm also satisfied it was entitled to rely on the information Mr F declared about his income and expenditure at the time, even though it has since become clear that the information he provided Fund Ourselves may not have been entirely accurate. And there also wasn't anything else to suggest the loan would either be unaffordable or unsustainable for him.

So, I don't think Fund Ourselves did anything wrong when it approved the loan for Mr F and it therefore follows that I don't uphold the complaint.

Default

After the complaint was referred here, Mr F notified the Financial Ombudsman that Fund Ourselves had recorded a default on his credit file – and a screen shot of Mr F's credit file was provided by him, showing the default was still being recorded as of at least May 2023.

Fund Ourselves says due to arrears on the account, it sent a default notice on 6 September 2022. And it has provided a copy of an email that was sent to Mr F explaining that a default notice had been issued and that this was his last chance to try and bring the loan account into order.

And I can see from emails Fund Ourselves had previously provided, that Mr F was in contact with it during the course of September 2022, which included providing income and expenditure information and it's clear from the emails that Mr F wanted a repayment plan set up and to avoid a default being recorded on his credit file.

A repayment plan was set up on 22 September 2022 but Fund Ourselves says this was a day after the account had defaulted. Fund Ourselves has explained though that it could see that Mr F wanted a plan and was trying to get it sorted, and this why the default was asked to be removed from his credit file.

Fund Ourselves, has since confirmed, that a request was made to the credit reference agency on 16 May 2023 to have the default removed. Fund Ourselves did this because it could see that Mr F was attempting to set up a repayment plan at the time, albeit one wasn't set up by the deadline.

The default record ought to now have been removed from Mr F's credit file, given the amount of time that has passed since Fund Ourselves made the request. I consider this to be fair and reasonable and therefore Fund Ourselves doesn't need to take any further action.

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 provided any new submissions for my consideration, I see no reason to depart from the findings I made in the provisional decision and which can be found above. I still think, Fund Ourselves carried out a proportionate check before it granted the loan and the checks showed the loan to be affordable.

Fund Ourselves has asked for the credit reference agencies to remove the default from Mr F's credit file and this was fair and the right course of action for Fund Ourselves to have taken. Fund Ourselves doesn't need to take any further action in relation to the complaint.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 December 2023.

Robert Walker
Ombudsman