

The complaint

Miss S complains through a representative that My Finance Club Limited (“MFC”) gave her loans without carrying sufficient affordability checks.

What happened

A summary of Miss S’s borrowing can be found below.

loan number	loan amount	agreement date	repayment date	contracted term (days)
1	£400.00	31/01/2021	07/02/2021	30
2	£200.00	28/02/2021	02/03/2021	30
3	£100.00	09/04/2021	23/04/2021	14
4	£150.00	29/04/2021	12/05/2021	28
5	£100.00	14/05/2021	25/05/2021	14
Gap in lending				
6	£100.00	21/02/2022	25/02/2022	14
7	£100.00	28/02/2022	08/03/2022	28
8	£100.00	16/04/2022	26/04/2022	30
9	£100.00	07/06/2022	23/06/2022	20
10	£100.00	30/06/2022	25/07/2022	25

Following Miss S’s complaint MFC wrote to her representative to explain why it wasn’t going to uphold it – because it had had carried out proportionate checks. Unhappy with this response Miss S’s representative referred the complaint to the Financial Ombudsman.

Our investigator didn’t uphold the complaint. She concluded that taking account of the gap in lending she didn’t consider MFC had done anything wrong when it approved loans 1 – 4 and loans 6 – 9. The investigator also thought that for loans 5 and 10 MFC ought to have carried out more checks into Miss S’s situation, but she didn’t have any evidence to show what MFC may have seen had it made better checks. This led to the investigator concluding that these loans also couldn’t be upheld either.

Miss S’s representative didn’t agree with the outcome, and it provided screen shots from when loan 1 was advanced which it says shows Miss S’s dependency on payday loans. Her representative also said in the three months before loan 1, Miss S had taken seven payday loans and two high-cost credit loans.

As no agreement could be reached, the case was passed to me and I issued a provisional decision on 23 November 2023 outlining why I had sufficient evidence from another complaint referred here by Miss S’s representative to say loans 5 and 10 ought to not have been granted.

Both parties were given an opportunity to provide any further submissions as soon as possible, but in any event, no later than 7 December 2023.

MFC responded, to say it agreed with the findings in the provisional decision and it outlined the refund due to Miss S. The investigator then put this offer to Miss S's representative who also accepted it.

Although the deadline is today, in the interest of resolving this case quickly, I'm satisfied it is now appropriate to proceed to issue the final decision.

Below in smaller font is a copy of the provisional findings and these form part of this final decision.

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.

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.

MFC had to assess the lending to check if Miss S could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. MFC's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss S'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 MFC should have done more to establish that any lending was sustainable for Miss S. These factors include:

- *Miss S 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);*
- *Miss S 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);*
- *Miss S 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 Miss S. The adjudicator didn't think this applied to Miss S's complaint, and I agree.

MFC was required to establish whether Miss S could sustainably repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss S was able to repay her loans sustainably. But it doesn't automatically follow that this is the case.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Miss S's complaint.

Looking at the total lending chain, there is a significant break in borrowing between when Miss S repaid loan 5 and when she returned for loan 6 of around nine months. This break is important because in my view it was large enough for MFC to have reasonably concluded that it could treat her applications afresh. What this means, is that while loan 6 was her sixth loan overall, it in effect became loan 1 in a new lending chain and I've kept this in mind when thinking what a proportionate check was and what it may have involved.

Loans 1 – 4

Before these loans were granted MFC made enquires with Miss S about her income. For loan 1 she told MFC she earned £3,150 per month and then for loan 2 £2,400, £2,200 per month for loan 3 and £2,300 for loan 4. MFC says Miss S's income was electronically verified and MFC was given confidence over the accuracy of the information Miss S provided. It also worth saying here that given the amounts borrowed, I don't yet think it had reached the point where MFC needed to verify what Miss S was saying.

Miss S was also asked to provide details of her monthly outgoings across a number of different categories included housing, utilities, food, transport, credit and 'other'. Having looked at what MFC was told by Miss S it would've been satisfied that the loans were affordable.

Before these loans were advanced MFC also carried out a credit search and it provided the results it received from the credit reference agency. It is worth saying here that although MFC carried out a credit searches there wasn't a regulatory requirement to do one, let alone one to a specific standard. But what MFC couldn't do is carry out a credit search and then not react to the to the information it received.

The credit results showed the active accounts that Miss S had at the time each loan was approved, so MFC wouldn't have been aware of recently closed accounts and so wouldn't have known what loan(s) if any had been closed, or the type of loan closed either.

This means, at loan 1, there weren't any signs that Miss S was dependent on payday loans. The credit check results were fairly similar for all loans in this chain and wouldn't have been a concern for MFC. It knew Miss S had current accounts, loans and credit cards. All of these accounts were up to date in each credit search with no recent adverse payment information recorded. The results wouldn't have prompted MFC to have carried out further checks, and they didn't indicate Miss S has having financial difficulties.

I have also considered that the loan amounts fluctuated, and Miss S was repaying her loans early – indeed, loan 2 was repaid so quickly it was almost withdrawn and Miss S was only charged £3.20 interest.

Having taken all of this into account as well as the fact that these loans were for relatively small amounts I think that MFC's checks went far enough. And given the rest of the information gathered also suggested that Miss S could afford to make the payments to loans 1 - 4, I don't think that it was unreasonable for MFC to proceed with these applications.

I accept that Miss S's representative appeared to be suggesting that her actual circumstances weren't fully reflected in the information MFC obtained at the respective times. But MFC could only make reasonable decisions based on the information it had available at the time.

As these were first loans and there wasn't anything to indicate that Miss S might have been experiencing financial difficulty at the respective times, I was satisfied that MFC was reasonably entitled to believe that Miss S could afford to make her payments. And this means I'm intending not to uphold the complaint about loans 1 - 4.

Loan 6 – 9

As I've said above, there is a significant break in borrowing after Miss S repaid loan 5 and when she returned for loan 6. This break is large enough for MFC to reasonably treat Miss S as if she was a new customer.

Before these loans were granted MFC made the same sort of enquires with Miss S as I've outlined above for loans 1 – 4. Her income for these loans has been declared as low as £2,474 for loan 6 to as high as £3,000 per month for loan 7.

Miss S was also asked to provide details of her living costs for the same categories as the previous loan chain. Having looked at what Miss S declared, which MFC could rely on she

had sufficient disposable income to afford her loan repayments for each of the loans in this chain.

Before these loans were advanced MFC also carried out a credit search and it provided the results it received from the credit reference agency and I've reviewed each one.

The credit check results were fairly similar for all loans and wouldn't have been a concern for MFC. It knew the type of accounts that Miss S had but all the active ones had been managed well and there wasn't any adverse payment information being recorded. As before, it is of course possible that Miss S had been a regular user of payday loans, but this wasn't reflected in the information MFC was provided with.

These were the first loans of a new lending chain, and it was reasonable for MFC to have relied on the information that Miss S provided (along with the results of its own checks) that showed these modest loans were likely affordable for her. There also wasn't anything else to suggest that the loans would either be unaffordable for her or unsustainable.

I'm therefore intending to not uphold Miss S's complaint about the approval of loans 6 - 9.

Loans 5 and 10

For both of these loans the adjudicator concluded that perhaps further checks ought to have been carried out. I've thought about this, and I do agree with what the adjudicator said. For loan 5, this was now her fifth loan in a little under five months and it was her second loan in just over two weeks, with the previous loan being repaid early and then Miss S returning only 2 days later for a new loan.

Loan 10 was also the fifth loan in that lending chain, and all the loans in that chain were taken out within four months, indeed, this was Miss S's second loan in June 2022 and was taken out a week after her previous loan had been repaid.

So, although, the loans weren't always increasing in value, I do think, the number of loans, and the quick uptake in borrowing ought to have been of concern for MFC. Like the adjudicator I agree that further checks needed to have been conducted before it advanced these loans in order to satisfy itself that Miss S could actually afford the repayments.

MFC could've gone about doing this a number of ways, it could've asked to see bank statements, Miss S's credit file or any other documentation that MFC felt was reasonable to obtain.

However, just because I think further checks needed to be carried out that isn't the end of the matter, for me to be able to uphold Miss S's complaint about these loans, I would also have to be satisfied that had MFC carried out further checks it would've likely discovered these loans were unaffordable for her. The adjudicator couldn't uphold these loans because she said she didn't have enough information.

However, on another complaint that has been considered by the Financial Ombudsman there are copy bank statements from around the time these two loans were advanced and so I've considered those statements.

In the weeks before loan 5 was advanced, Miss S had been advanced over £2,000 of payday and instalment loans from other lenders. She also had outstanding payday loans that she was already paying £182 per month for. And of course, on top of this she had the repayments to loan 4 that needed to be paid. And looking further back, there is evidence that Miss S was a regular user of payday loans.

I'm therefore persuaded that MFC would have seen that Miss S was already in a difficult financial position at the respective times and also found out why this was the case. I'm also satisfied that reasonable and proportionate checks would more likely than not have shown MFC that Miss S's existing precarious financial position was because she was struggling

financially.

A similar picture would have also been apparent had MFC made further enquires with Miss S when loan 10 was advanced. Just in the month of June 2022, Miss S had been advanced four payday / instalment loans owing these lenders £2,488. So, this is further demonstration, that a year after loan 5 was approved, Miss S was still having to make use of such lenders, and so I don't think loan 10 was affordable for Miss S either.

So, I'm persuaded by what Miss S has said about already being in a difficult financial position at the respective times and the reasons for this. And as reasonable and proportionate checks should have extended into finding out more about Miss S's income and expenditure, I'm satisfied that they would more like than not have shown MFC that it shouldn't have provided loans 5 or 10 to Miss S.

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.

No new submissions have been provided and MFC has accepted the findings that were made in the provisional decision and Miss S's representative has also accepted them. I therefore see no reason to depart from the findings that I previously made and which can be found above.

I still think MFC should've carried out further checks before granting loans 5 and 10 and had it carried out further checks it would've realised Miss S couldn't afford these loans.

I've set out below what MFC needs to do, and what it has already agreed to do, in order to put things right for Miss S.

Putting things right

In deciding what redress MFC should fairly pay in this case I've thought about what might have happened had it not provided loans 5 and 10, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Miss S may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Miss S in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Miss S would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce MFC's liability in this case for what I'm satisfied it has done wrong and should put right.

MFC, shouldn't have provided Miss S with loans 5 and 10.

- A. MFC should add together the total of the repayments made by Miss S towards interest, fees and charges on loans 5 and 10.
- B. MFC should calculate 8% simple interest* on the individual payments made by Miss S which were considered as part of "A", calculated from the date Miss S originally made the payments, to the date the complaint is settled.
- C. MFC should pay Miss S the total of "A" plus "B".
- D. MFC should remove any adverse information it has recorded on Miss S's credit file in relation to loans 5 and 10.

*HM Revenue & Customs requires MFC to deduct tax from this interest. MFC should give Miss S a certificate showing how much tax it has deducted, if she asks for one.

My final decision

For the reasons given above and in the provisional decision, I am upholding Miss S's complaint in part.

My Finance Club Limited should put things right for Miss S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 4 January 2024.

Robert Walker
Ombudsman