

## The complaint

Mr A complains FUND OURSELVES LIMITED (“FOL”) attempted too many times to take a loan payment from his bank account.

## What happened

The issues Mr A has had with FOL stems from a loan he took of £200. Mr A was contracted to make four payments of £90.40 on 14 April, 14 May, 14 June and 14 July 2022. The first two 3payments were made as expected.

However, Mr A says that he had difficulties repaying his third payment – which was due in June 2022. Mr A had agreed for his monthly payment to be taken by Continuous Payment Authority (“CPA”). After two attempts Mr A says under the terms and conditions of the loan agreement, FOL shouldn’t have made any more payments requests. Instead, Mr A says it attempted to take the payment a further 12 times.

Due to the number of attempts FOL was making, Mr A says he asked his bank to issue a new debit card – which had a different card number. However, he says FOL updated his card details and then took a payment on 17 July 2022 (this was the late June 2022 payment) from money Mr A had received from a friend to help him commute to a new job. Mr A says as a result of FOL taking this payment, he lost his job.

FOL considered the complaint and issued its final response letter which explained the CPA was cancelled as Mr A requested on 10 August 2022. However, FOL concluded:

*“With the breach of terms and conditions, we would like to apologise for the error and we have escalated this to management and the technical team to makes [sic] sure this is rectified immediately – we can see that the funds were not collected due to this technical error.”*

In order to put things right, FOL agreed to remove the interest due on the final repayment of £28.40 and only collect the final instalment amount of £90.40. Unhappy with this response, Mr A referred his complaint to the Financial Ombudsman Service.

FOL then said Mr A didn’t make that final payment and therefore the loan account was defaulted in November 2022. It also said that while it did attempt to take the payment to avoid the account going into default – none of the attempts were successful.

An adjudicator then reviewed the complaint, and she explained that FOL had accepted an error had been made and the adjudicator thought FOL didn’t need to do any more than what it had already agreed to do in the final response letter.

Mr A didn’t agree with the adjudicator’s assessment saying in summary:

- There was clear evidence of a breach of the terms and conditions.
- Mr A said his financial hardship was clear and the adjudicator ought to have questioned whether the loan was irresponsibly lent.

- Mr A says he doesn't believe that providing evidence of his loss job opportunity would change the outcome.
- He didn't accept the excuse provided by FOL that this issue arose due to a technical error.
- Mr A said the job he was offered was a lifeline, he was unemployed when the loan was granted, and he is still unemployed now.

As no agreement was reached, the case was passed to me to resolve and I then proceeded to issue a provisional decision where I explained I was intending to uphold Mr A's complaint in part.

Both parties were asked to respond as soon as possible, but in any event, no later than 20 September 2023.

Fund Ourselves hasn't responded to or acknowledged the provisional findings.

Mr A responded and I've summarised his response below:

- He says FOL has provided mis-leading information about how it obtained his new card details because he didn't update his card details.
- Mr A says the terms and conditions allowed FOL to update his bank details automatically.
- Mr A provided further information about his lost employment opportunity, including that the shop is now open under new management with many of the old staff returning to work there.
- Mr A says that his bank informed him that FOL had indeed updated his card details.
- Mr A provided a copy of the email received from FOL which confirmed he hadn't requested the CPA to be cancelled - even though he had cancelled it with his bank.
- Mr A provided a copy of an email that showed there were at least 21 failed attempts by FOL to obtain payments towards the loan.
- Mr A confirms that he doesn't have any evidence of his job lost being directly related to FOL but says that it was and he's lost out on around £600 per week and he provided further details as to why finding employment is more difficult for him.
- Mr A says FOL should be fined for its actions.

A copy the provisional findings follows in small 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.*

*I want to be clear, that this is not an unaffordable lending complaint, this decision solely deals with what happened when FOL attempted to take payment and the steps it took. If Mr A is unhappy with the circumstances around the lending of the loan, he will need to take this up separately with FOL, if he hasn't already done so.*

*And from the comments Mr A provided after the adjudicator's assessment then his main concern is that FOL attempted to take a payment too many times, and I agree with him because the terms and condition and the industry regulator are clear on this point. And it is this that this decision focusses on.*

*Firstly, the terms and conditions which governs the loan says (7.2.3):*

*"If the attempt to collect the repayment failed on the repayment date or the next business day as per clause 7.3.1 the Creditor will re-attempt to collect the repayment*

*using CPA within thirty-five dates of the repayment date but will make no more than two attempts to take the same payment CPA.”*

*And the industry regulator in the Consumer Credit Sourcebook (CONC) says:*

*CONC 7.6.13R*

*(1) Where:*

*(a) high-cost short-term credit provides for repayment in instalments; and  
(b) a firm has on two previous occasions made a payment request, under a continuous payment authority, to collect (in whole or in part) the same instalment due under the agreement, which have been refused;  
subject to (3) and (4), the firm must not make a further payment request under the continuous payment authority to collect that instalment.*

*(2) The firm must not make a further payment request under the continuous payment authority to collect any other instalment that is or becomes due under the agreement, unless any request is in accordance with CONC 7.6 and in the course of a dialogue between the firm and the customer:*

*Looking at the above, FOL has clearly not adhered to either the terms and conditions of the account or CONC. From the information provided by Mr A there were at least six attempts between 14 and 29 June 2022 to take the payment. This is in excess of what both the terms and conditions and CONC say. Indeed, looking at CONC its clear further attempts can only be made once there had been some “dialogue” and in this case, that didn’t happen.*

*And it was also wrong of FOL to say the CPA had been cancelled from 10 August 2022. While this was the date that the CPA was cancelled, it ought to have been cancelled long before that date given what the terms and conditions and what CONC says.*

*FOL has accepted something went wrong here and said it was a technical error and this seems like a reasonable explanation as to what has happened. Although I accept Mr A doesn’t accept what FOL has said, it isn’t in this case going to be possible to find out exactly the nature and type of technical error was.*

*The question for me to now consider, is given an error has been made – and FOL has accepted this, what compensation should fairly be paid.*

*Mr A has said, that after the first two failed collection attempts, his CPA should’ve been cancelled. It wasn’t and he says he cancelled his card, and somehow FOL obtained his new card details – which resulted in further attempts and a payment being taken which prevented Mr A not being able to take on a job. Mr A says it isn’t possible to provide evidence of this job offer because the place of work is no longer trading.*

*I also have to consider that as a result of FOL’s error a payment was taken – which Mr A was due to make but the result of that is that his overall indebtedness to it is now smaller than it otherwise would’ve had, had FOL correctly cancelled the payment in line with the terms and condition and CONC.*

*I also have a contradictory information. Mr A says that he cancelled his card and he says that he didn’t provide FOL with his new card details. The adjudicator, in her view said condition 7.2.6 says:*

*“...Debit card details provided by the borrower may be automatically updated by our payment processing platform if the physical card is replaced by the bank”*

*However, after further enquires with FOL, it explained the only way card details can be updated is if a consumer logs into their account and changes it themselves. So, it isn’t exactly clear how Mr A’s card details were updated. All I can conclude, is somehow his card details were updated with FOL.*

*So far FOL has offered to remove around £28 worth of interest from the outstanding, defaulted balance. But I don't think that adequately compensates Mr A for what has gone wrong here, especially as he did appear to take steps to mitigate what was happening by cancelling the card. And I'm concluded this isn't enough to reflect the distress and inconvenience caused to Mr A.*

*As part of my consideration, I've also thought about what Mr A says about him being unemployed both now and at the time the loan was approved. Thinking about that, and what would be the fairest thing to do in the individual circumstances of this case, in order to bring this matter to a close, FOL should make a payment which has the effect of clearing Mr A's outstanding balance.*

*This would then enable a fair amount of compensation to be paid – after all there is no dispute that Mr A doesn't owe the amount of money outstanding. And, given his current financial situation, it will enable both parties to bring this matter to a close without any further contact or without either side having to engage for example with a repayment plan.*

*I've also thought about what Mr A says his losses are, but I've not seen enough evidence to show that either this offer of employment was guaranteed or how long that this offer may have continued – given Mr A says the shop has now closed. Finally, I've not seen enough to be persuaded that FOL's error was the sole cause of Mr A not being able to take his job forward. I appreciate Mr A will be disappointed by my position on this matter, but I have to make my findings based on the information and evidence provided by both parties and be fair and reasonable to both parties in my decision making.*

*I also want to make it clear that FOL isn't required to remove the default. This is because, after the last payment was attempted, the account fell further into arrears and no payment plan was agreed – despite there being contact between Mr A and FOL. A default, in my view, is an accurate reflection of the conduct of the account. However, FOL will need to update the credit file to show the default as being recorded as satisfied. Taking everything into account, I plan to uphold Mr A's complaint and I've outlined below what FOL needs to do to put things right for Mr A.*

## **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.

I've thought about what Mr A says in relation to the provisional decision. But overall, this hasn't changed what I'm going to be asking FOL to do in order to put things right for him and I've explained why below.

Firstly, looking at the terms and condition of the account, these do suggest that the bank account information can be updated automatically – as outlined in the provisional decision. As part of my review of the complaint, I did ask further information of FOL and it explained that, the only way the details can be updated is if a customer logs in and updates the details. A screen shot was then provided, which FOL says shows this.

In saying that, Mr A has been consistent throughout his contact with both FOL and the Financial Ombudsman that he didn't update his card details and FOL – using condition 7.2.6 – could automatically update his bank details. So, it does seem to me, at least, there is the possibility that FOL is able to automatically update card details – because if there wasn't, why is there a condition within the loan terms to allow this.

But whether FOL did update Mr A's card details or not doesn't really lead me to change my mind about the outcome. This is because, by the time the details were updated, it had gone

beyond the point where FOL ought to have continued to take payment and / or accepted the new card details.

I say this because CONC 7.6.13(2)R is clear, after the failed requests, no new CPA ought to have been collected until there had been dialogue with Mr A – which clearly didn't happen in this case. So, FOL did make an error with the number of attempted repayments it made and therefore it was wrong of it to have collected the payment in July 2022.

I can quite understand why Mr A wants FOL fined and punished for what has happened. But that isn't within my remit. Any award that I may make can't be used to fine or punish the lender for a mistake it has made. I'm also not here to determine what a jury may or may not award, as we are independent and an alternative to the courts.

However, in saying that, I've thought carefully about what Mr A has said about the employment opportunity that he says has been lost and the trouble he has with trying to obtain employment.

I'm satisfied in this case, that FOL shouldn't have collected the payment in July 2022 without speaking with Mr A first. I know Mr A will be disappointed by this, but I can't link the payment taken from him with his lack of employment, especially in light of the fact that Mr A said the shop in question was closed for a period of time anyway and has now reopened – albeit under difference management. So, I can't say with any certainty that Mr A would've had the job even after the shop had reopened.

But thinking about my remit and the fact that the awards can't be seen as being punitive, the proposed outcome I made in the provisional decision to, in effect, write off Mr A's outstanding balance and mark the default as satisfied is in my view fair and reasonable. As this will bring this matter to a close.

I appreciate Mr A will be disappointed by this decision, but I want to reassure him that I've read and considered everything that has been provided and I've outlined below what FOL needs to do in order to put things right for him.

### **Putting things right**

In order to put things right, FOL needs to take the following two steps:

- FOL needs to make a payment to either itself or a third party who may own the debt which as the effect of clearing Mr A's outstanding balance in full; and
- Once this payment has been made, FOL needs to arrange for Mr A's credit file to be updated to show the default has been satisfied.

### **My final decision**

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

FUND OURSELVES LIMITED needs to put things right for Mr A, as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 November 2023.

Robert Walker  
**Ombudsman**

