

## **The complaint**

Mr M complains that FUND OURSELVES LIMITED (Fund Ourselves) hasn't correctly updated his credit file to reflect he withdrew from two loans. Mr M says these loans shouldn't be reported on his credit file.

## **What happened**

In total, Mr M says he was advanced two loans from Fund Ourselves. The first loan was for £280 and was advanced on 8 December 2021 and he said he withdrew from the loan agreement on 14 December 2021. The second loan begun on 18 December 2021 for £350. Mr M says for this loan he also withdrew within the 14-day cooling off period on 31 December 2021.

Mr M then raised a complaint to Fund Ourselves because in his view, it hadn't complied with Section 66A (7) of the Consumer Credit Act 1974. Mr M is unhappy these loans have been reported to the credit reference agencies (CRA) because he withdrew from the credit agreements within the 14-day cooling off period. These two loans should be treated as if they hadn't happened and so therefore shouldn't be reported on his credit file.

Fund Ourselves responded to the complaint on 28 April 2022. In this final response letter, it explained the Consumer Credit Act 1974 doesn't say that if a customer withdraws from a loan that the record of the loan has to be removed from the credit file.

Fund Ourselves did say that if the information it had reported was incorrect – such as showing a balance - it would correct it. Finally, it provided a link to an online article by a third party credit reference agency provider which explains, that should a loan be cancelled, it may show on a credit file. Therefore, Fund Ourselves said it hadn't made an error.

Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman.

The complaint was then considered by an adjudicator. He concluded, Fund Ourselves had made an error. He said S66A (7) of the Consumer Credit Act doesn't give Fund Ourselves discretion as to whether it reports the loans to the credit reference agencies – and in his view the agreements should be treated as if they never had existed. It therefore followed that Fund Ourselves should remove the loans from Mr M's credit file.

In order to put things right he asked Fund Ourselves to remove these loans from Mr M's credit file and pay him £150 compensation for the distress and inconvenience this matter has caused.

Fund Ourselves didn't agree with the assessment, because it says it had received a final decision about a similar case, where the ombudsman hadn't upheld it.

As no agreement could be reached the complaint was passed to me. I then proceeded to issue a provisional decision explaining the reasons why I was intending to not uphold Mr M's complaint.

In response to the provisional decision both Mr M and Fund Ourselves were asked to provide any further submissions as soon as possible, but in any event, no later than 27 July 2023.

Fund Ourselves responded to say it agreed with the provisional decision and it had nothing further to add.

Mr M hasn't responded to the provisional decision.

A copy of the provisional findings follows this in 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.*

*Mr M says as he cancelled the loan agreements no information should be reported to the credit reference agencies. I've thought about this carefully and while I understand Mr M's frustration, Fund Ourselves, in my view hasn't done anything wrong in reporting these loans to the credit reference agencies as it was reporting accurate information, I've explained why below.*

*I've considered what the Consumer Credit Act says about cancelling a credit agreement. Specifically, section 66A which says:*

*66A Withdrawal from consumer credit agreement*

*(1) The debtor under a regulated consumer credit agreement, other than an excluded agreement, may withdraw from the agreement, without giving any reason, in accordance with this section.*

*(2) To withdraw from an agreement under this section the debtor must give oral or written notice of the withdrawal to the creditor before the end of the period of 14 days beginning with the day after the relevant day.*

*So clearly, in this case, Mr M was entitled to withdraw from the two credit agreements by giving Fund Ourselves notice within the 14 days period. In this case, there is no dispute about this and as far as I can see Mr M did withdraw from the two loan agreements and paid the balance that was due within 30 days of him giving notice.*

*I'm satisfied Mr M withdrew from the agreements within the required timescales and the Consumer Credit Act goes on to say;*

*(7) Subject as follows, where the debtor withdraws from a regulated consumer credit agreement under this section—*

*(a) the agreement shall be treated as if it had never been entered into*

*And this is the subsection Mr M is relying on to support his view, that as he withdrew from the credit agreements then these agreements would be treated as if they hadn't been entered into and therefore shouldn't be reported to the CRAs.*

*However, while Section 66A does refer to how a withdrawn agreement itself should be regarded, it is silent on how such an agreement should be treated for the purposes of credit file reporting. The only reference to how such agreements should be reported is found in paragraph 11.21 of the Department for Business Innovation & Skills (BIS) guidance on the implementing Consumer Credit (EU Directive) Regulations 2010/1010. The requirement to implement this directive was the reason Section 66A came into being.*

*Paragraph 11.21 of the BIS guidance states:*

*“11.21 Section 66A(7)(a) is intended to be binding on the parties to the agreement rather than more generally. CRAs could have regard to section 66A(7)(a) and treat agreements where the borrower has exercised the right of withdrawal as never having existed, removing the agreement from their database. However, they could also record the agreement as having been repaid. The important thing is that the consumer should not be disadvantaged in any way by having withdrawn from and repaid a credit agreement.”*

*Clearly, from the guidance there are situations where it could be appropriate for a lender to remove the withdrawn loans from the credit file. However, in this case I don't think it would be the fair or reasonable thing for me to direct Fund Ourselves to do.*

*I say this because Mr M took one loan and withdrew from it six days later. And then, four days afterwards, Mr M approached Fund Ourselves for a new, larger loan. This time his notice of withdrawal was made 13 days after the loan was granted (and within the relevant time period). So, in total, Mr M spent at least 19 days out of a 23 day period in the month of December 2021 indebted to Fund Ourselves. As this is the case, I don't think that it is unfair for Fund Ourselves to report these loans as settled rather than not report them at all to credit reference agencies.*

*The BIS guidance does appear to provide some latitude. And it will be down to the particular facts and circumstances of the loans in question in terms of whether the information reported to credit reference agencies is fair and reasonable. And bearing in mind the particular circumstances here, I don't think that what Fund Ourselves is reporting misrepresents the sequence of events or what happened here. Therefore, I don't think that Fund Ourselves has acted unfairly and I'm intending to not uphold Mr M's complaint, or intend to require Fund Ourselves to amend what it has reported to credit reference agencies or pay Mr M compensation.*

*I appreciate Mr M will be disappointed with this outcome, but I hope my explanation has provided useful as to why I am intending to not uphold his complaint.*

### **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, I see no reason to depart from the findings I made in the provisional decisions.

So, I've reached the same conclusions I reached before, for the same reasons and that is in the individual circumstances of Mr M's complaint, Fund Ourselves isn't required to take any further action.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 August 2023.

Robert Walker  
**Ombudsman**