DRN-4149948

Financial Ombudsman Service

The complaint

Mr K complains APFIN LTD trading as cashasap.co.uk (“Apfin”) provided him with a loan when he already had multiple outstanding payday loans, a number of credit cards at their credit limits and defaulted loans to the value of £18,000.

What happened

Mr K was granted one loan on 9 July 2022 for £150. Mr K was due to make six monthly payments – which decreased each month. The first payment was for £61.95 with the final payment due to be £31.16. Apfin says an outstanding balance is still due to be paid.

Apfin considered the complaint, and it didn’t uphold it. It said the loan value was a small amount compared to Mr K’s declared monthly income and Apfin was entitled to rely on the information Mr K had provided which showed the loan to be affordable. Unhappy with this response, Mr K referred his complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator, who didn’t uphold it. She said Apfin had reasonable grounds to believe Mr K could afford the loan and that it had carried out proportionate checks.

Mr K didn’t agree and instead asked for an ombudsman’s final decision. In summary he said:

- He had defaults recorded against him in 2017 and 2018 – and these were still outstanding at the time. And as such there ought to have been an expectation that he would make repayments towards the defaulted sums of around 5% per month – meaning payments of around £900 per month were due to the defaulted creditors.
- There were other payday lenders outstanding at the time costing £400 per month and he had a large amount still outstanding.
- Mr K was also at his credit limit across a number of credit cards.
- The credit report shows that Mr K was overindebted.
- Mr K had another complaint assessed by the Financial Ombudsman Service which was upheld and the loan in the other case was advanced only a few months before the Apfin one. And as a previous loan has been upheld due to irresponsible lending, then so should this one.

As no agreement has been reached, the case has been passed to an ombudsman for a final decision.

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.

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.

Apfin had to assess the lending to check if Mr K 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. Apfin'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 Mr K'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 Apfin should have done more to establish that any lending was sustainable for Mr K. These factors include:

- Mr K 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 K 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 K 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 K. The adjudicator didn't consider this applied in Mr K's complaint because there was only one loan.

Apfin was required to establish whether Mr K 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 K was able to repay his loan sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

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

Before the loan was approved, Apfin asked Mr K for details of his income, which he declared as being £2,102 per month. As this was the first loan, Mr K confirmed this figure to be accurate it was reasonable for Apfin to have relied on it.

Mr K also declared monthly outgoings of £550 for the loan and this was broken down as £50 for travel and £500 for outstanding credit commitments. Mr K didn't declare any costs for rent, utilities, or other household bills. And that, in certain circumstances ought to have been a concern for Apfin.
But it says that Mr K declared he lived at home with his parents, so it would explain why he may not have had these costs and it also meant he wouldn't be exposed to having to make payment for a priority bill such as a mortgage. For a first loan, I think it was reasonable for Apfin to have relied on what Mr K told it about his income and expenditure.

After carrying out these checks, Mr K had sufficient disposable income to be able to afford the largest repayment of around £62 per month. The loan would've looked affordable.

Before the loan was approved Apfin also carried out a credit search and it has provided a summary of the results it received from the credit reference agency. It is worth saying here that although Apfin carried out credit searches, there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Apfin couldn't do is carry out a credit search and then not react to the information it received if necessary.

Having reviewed the credit check results there isn't anything in any of the results that would've indicated that Mr K was having current financial difficulties, for example it knew there were no insolvency markers, defaults recorded within the last three years or delinquent accounts within the last year.

The headline figures were that Apfin knew that Mr K had 12 active credit accounts and had opened three accounts within the last six months. The number of active accounts as well as the number opened within the last six months, in my view wouldn't have indicated to Apfin that Mr K was reliant on this sort of high-cost credit.

It also knew that Mr K in 2017 must have had significant financial difficulties because he defaulted on at least 9 accounts in that year totalling nearly £20,000 worth of debt. But, Apfin knew, from the credit results that no further accounts had defaulted since 2019 and Mr K hadn't had any repaymnet problems leading to missed payment markers within the last 12 months before this loan was approved. So it would've been apparent that whatever the financial difficulties were in 2017 had now ben resolved.

So, while, the number of defaults in 2017 may have been of a concern, I have also considered these defaults were five years or so before this modest loan was advanced, I think it was reasonable for Apfin not to have made further enquires and / or declined this loan application solely due to the defaults.

I also don't think Apfin would've thought that Mr K was making repayments to the defaulted balances at a rate of 5% of the total – when there was no evidence to support that. This means I don't think it had to factor in payments to the defaulted account balances at that rate when trying to establish Mr K's monthly living costs.

Given the evidence provided, I think it was reasonable for Apfin to have relied on the information Mr K gave about his income and expenditure to show he had sufficient disposable income to afford the repayments he was committed to making. There also wasn't anything else to suggest that Mr K was having current financial difficulties or that the loan would be unsustainable for him.

Mr K says that as another complaint he raised, about a loan from anther provider which was advanced before this Apfin loan has been upheld, it therefore follows this complaint should also be upheld. I thank Mr K for drawing this the complaint to my attention and I can quite understand given the other complaint, why Mr K feels this complaint should also be upheld.

However, my remit is to consider the circumstances of this complaint and given the relativity small loan amount advanced and the checks that Apfin carried out, I do not think this loan should be upheld. And just because another complaint has been upheld it doesn't automatically follow that all other loans, advanced by other lenders should also be upheld.

This will depend on a number of factors including but not limited to, the number of loans advanced, the amount of funds advanced and the checks the lender may have conducted. But importantly, I have to consider the individual circumstances of each complaint, which is what I have done here.

I appreciate Mr K will be disappointed by the decision I've reached on this case but having reviewed all the information I am not upholding it.

An outstanding balance remains due, and I would remind Apfin of its obligation to treat Mr K fairly and with forbearance – if necessary.

My final decision

So, for the reasons I've explained above, I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 September 2023.

Robert Walker
Ombudsman