DRN-4193861

The complaint

Mr P complains that My Finance Club Limited ("MFC") gave him loans without carrying out the correct affordability checks.

What happened

Mr P was advanced five loans and I've outlined a summary of his borrowing below:

loan number	loan amount	agreement date	repayment date	contracted term (days)
1	£250.00	01/02/2021	26/02/2021	30
2	£400.00	27/02/2021	06/03/2021	32
3	£100.00	11/03/2021	11/03/2021	28
4	£200.00	19/03/2021	31/03/2021	28
5	£100.00	01/04/2021	30/04/2021	29

MFC says all of Mr P's loans were settled early expect for loan 5 which was settled in line with the credit agreement.

Following Mr P's complaint MFC wrote to him to explain why it wasn't going to uphold the complaint because it had had carried out proportionate checks. Unhappy with this response. Mr P referred the complaint to the Financial Ombudsman Service.

In the adjudicator's latest assessment, he partly upheld the complaint about loan 5 only. He concluded further checks needed to have been carried out by MFC, and had better checks been conducted it would've likely discovered Mr P was spending a significant sum each month gambling. However, the adjudicator didn't uphold Mr P's complaint about loans 1 – 4 and referred him back to his original assessment as to why he wasn't upholding these loans.

MFC agreed with the adjudicator's assessment to uphold loan 5 only, and it calculated using the formula given to it by the adjudicator that Mr P was owed £27.15.

Mr P didn't agree with the outcome, saying that he also thought loans 1 – 4 were irresponsibly lent. The loans were taken back-to-back and his financial position was the same for each application. As no agreement has been reached, the case has been passed to me for a 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.

MFC had to assess the lending to check if Mr P could afford to pay back the amounts he'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 Mr P'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 Mr P. These factors include:

- Mr P 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 P 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 P 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 P.

MFC was required to establish whether Mr P could *sustainably* repay the loans – 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 P was able to repay his 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 Mr P's complaint.

Loans 1 – 4

Before these loans were granted MFC made enquires with Mr P about his income. For loan 1 he told MFC he earned £1,943 per month and then for loans 2 – 4 Mr P declared an income of £1,795. MFC says Mr P's income was verified because for loans 1 – 3 it asked for a copy of his payslip. MFC has supplied copies of the payslips it was given, and having looked at these, the amounts declared by Mr P were accurate.

Mr P was also asked to provide details of his monthly outgoings across a number of different categories included housing, utilities, food, transport, credit and 'other'. For loan 1, Mr P declared monthly outgoings of £1,100 and for loans 2 – 4 and so his monthly outgoings came to £1,078. Based on the information it had to hand these loans looked affordable as Mr P had sufficient disposable income to afford his repayments.

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 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 check results were fairly similar for all loans and wouldn't have been a concern for MFC. It knew Mr P had current accounts, a telecommunications account and a credit card. All of these accounts were within the credit or overdraft limits and there wasn't any adverse payment information recorded. The results wouldn't have prompted MFC to have carried out further checks, and they didn't indicate that Mr P has having financial difficulties.

I've thought about what Mr P says about the quick update in borrowing, and I can see that loans were approved shortly after a previous loan had been repaid, and in some situations that could be an indicator that there are money management issues. However, I have also considered that the loan amounts fluctuated, and Mr P was repaying his loans early – indeed, loan 3 was repaid so quickly it was almost withdrawn and Mr P was only charged 80 pence interest.

In saying that, loan 2 was taken the same day after loan 1 had been repaid and I do think that had that pattern continued then MFC would've needed to consider what a proportionate check needed to entail. But for the first four loans in a lending chain given the information MFC collected, I don't think it needed to do any more.

Overall, given these were the first loans it was reasonable for MFC to have relied on the information that Mr P provided as well as the information it collected about his income and from the credit search. The checks MFC carried out were proportionate and showed Mr P could afford the repayments. There also wasn't anything else to suggest that the loans would either be unaffordable for him or unsustainable.

I'm therefore not upholding Mr P's complaint about the approval of loans 1 – 4.

Loan 5

The adjudicator upheld this loan and directed MFC to pay redress as outlined in their assessment. MFC has accepted this loan ought not to have been advanced and so this loan is no longer in dispute, and I therefore don't need to make a formal finding. But, I have, for completeness outlined below what MFC needs to do and what it has agreed to do to put things right for Mr P.

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 loan 5, 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 Mr P 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 Mr P 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 Mr P 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.

As MFC has agreed, it shouldn't have provided Mr P with loan 5.

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

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

My final decision

For the reasons I've outlined above, I am upholding Mr P's complaint about loan five only.

My Finance Club Limited should put things right for Mr P as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 December 2023.

Robert Walker
Ombudsman