DRN-4094779

The complaint

Mr M complains that My Finance Club Limited ("MFC") failed to carry out due diligence on his loan application after he applied for a loan through a third-party credit broker.

Mr M also says MFC failed to take the payments due for the loan even though he had sufficient money in his account. And finally, Mr M says MFC agreed to put the account on hold – which didn't happen.

What happened

The issues Mr M has with MFC stems from a £400 loan approved on 17 February 2022. The loan had a 38-day term, due to be repaid on 27 March 2022 with a payment of £521.60. The loan was settled on 18 October 2022.

Following a complaint, MFC then issued a final response letter (FRL) 5 April 2022. As the loan was approved through a broker, MFC outlined the process that Mr M's application would've taken which led to the loan being funded. It also considered that it had carried out proportionate affordability checks.

Unhappy with this response, Mr M referred his complaint to the Financial Ombudsman on 3 October 2022, where it was initially explained to MFC that Mr M had referred the complaint within six months of the FRL, and so there was no reason why the case couldn't be taken forward.

The complaint was then considered by a different adjudicator who considered the merits of the complaint. He didn't uphold it because he said proportionate checks had been carried out before the loan was granted. He also didn't think MFC had acted unreasonably with its dealings with Mr M about putting the account on hold.

Mr M didn't agree with the adjudicator's assessment, and I've summarised his emails below:

- Mr M says he didn't apply for the loan with MFC, instead he was using a comparison website which had turned him down for a loan and then he received a text message confirming a loan could be issued by MFC.
- Mr M asked for email communication, and he had opted out of third-party communications.
- Mr M says he originally ignored the text message from MFC, but he received 12 texts in 12 hours, and he says MFC didn't carry out checks on his income and expenditure.
- Mr M says only basic income and expenditure information was provided to the broker and further checks would've shown he wasn't working and had no income.
- No consent was provided to MFC to carry out a search of his bank account.
- When the complaint was raised, MFC agreed to place the account on hold, pending the outcome of the complaint. However, this didn't happen. Had it been made clear the account wouldn't be placed on hold Mr M would've settled the loan earlier then he did.
- MFC didn't take account of Mr M's emails after the complaint process had started.

The adjudicator explained to Mr M why his points hadn't changed his mind about the outcome he had reached. Mr M then made the following points;

- Mr M didn't use the broker who MFC suggested and he didn't directly apply to MFC for a loan.
- Mr M didn't provide income and expenditure information.
- Checks weren't carried out because if there were, it would've seen he was using 95% of his available credit card limits and had multiple missed payments.
- Consent wasn't provided for MFC to use open banking to verify his details.
- MFC ignored emails and calls while the complaint was ongoing.

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.

There are a number of elements of Mr M's complaint, so I've split the decision into several parts to address each one in turn.

Applying for the loan

Firstly, if Mr M is unhappy with how the broker used his information, then he will need to take his concerns up with them directly.

MFC has provided a screen shot from its systems showing that it did indeed receive an application for a loan from Mr M through the broker the adjudicator has told Mr M about on 13 February 2022.

However, after 36 hours as the application wasn't completed, MFC sent texts Mr M explaining this and that he could reactivate the application by clicking on a link contained within an email.

MFC has said that it did send text messages(s). Mr M says he received a large number within a short period and he felt pressured to take the loan out. I understand that these messages may have been prompted Mr M to take the loan but based on the information below, I'm satisfied the final application was considered and completed over two days – which demonstrates Mr M could've not proceeded with the loan – if he had not wanted to.

This link was activated on 16 February 2022 at 18:03 with the loan application being completed on 17 February 2022. As part of the loan application process, MFC says Mr M would've been directed back to its website to complete several declarations and to confirm he had read the terms and conditions.

MFC has provided copy screen shots of the process that Mr M would've had to have gone through to have the loan approved, this included, providing his card details (to enable payment to be taken) and then to tick several boxes and provide an electronic signature to confirm he had read the term and conditions as well as the credit agreement. And as part of the process, Mr M was sent a text message with a code from MFC and it has explained this code was entered correctly on its website, if not, the funds couldn't be released.

Finally, after the loan was advanced, Mr M was sent an email that contained his key documents, such as the credit agreement. I can see from MFC's notes that these were opened and read.

Overall, I'm satisfied that the initial application for credit did come from a credit broker and as part of the application, Mr M had to do more than just respond to a text message. And the option was always open to him to withdraw from the loan if he decided it wasn't suitable for him.

Affordability checks

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 M 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. 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 M'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 M. These factors include:

- Mr M 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 M 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 M 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 M. As there was only one loan, the adjudicator didn't think this applied in Mr M's case.

MFC was required to establish whether Mr M 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 M 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 in particular, 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 M's complaint.

Before this loan was approved, Mr M provided details, likely to the broker to show that he worked full time and received an income of £3,000 per month. MFC also says Mr M's "*income was verified using information collected directly from your bank to gain confident that your income was correct"*.

Mr M says this is meant MFC must have used open banking – which he didn't consent to. MFC has since clarified that it didn't use open banking to access his bank account. Instead, it uses a tool provided by a credit reference agency and MFC says the response it received indicated a high degree of confidence, meaning that it was likely, over the last year, the amount Mr M had declared in terms of income had been received by him.

I appreciate, that Mr M says he wasn't working at the time, but this wasn't reflected in the information he provided to either MFC or the broker and given this was the first loan I don't think MFC needed to do more. It was entitled to rely on the income figure provided by Mr M.

In terms of monthly expenditure, Mr M provided details about his expenditure across a number of different sectors such as housing, utilities, 'other', food and other credit – to name a few. MFC says Mr M's outgoings came to £1,070 per month. Therefore, based on the information it had to hand the loan looked affordable.

No housing costs had been declared, but on part of the application Mr M had declared that he lived at home with parents and MFC has confirmed these details it obtained from his credit file as well as the electoral roll. So, the small housing costs wouldn't have been a concern.

Before this loan was approved 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 search 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 – if necessary.

The credit check results wouldn't have been a concern for MFC. It knew of two current accounts that had been managed well – with no adverse payment markers. MFC was also told about two credit cards with a total outstanding balance of £8,903. This was within the credit limits and again there were no missed payment markers.

Overall, given this was the first loan I think it was reasonable for MFC to have relied on the information that Mr M provided about his income and expenditure. And even if that was only provided to the broker and not directly to MFC, it was still information MFC could've relied on.

The checks MFC carried out where proportionate and showed Mr M could afford the repayments. There also wasn't anything else to suggest that the loan would either be unaffordable for him or unsustainable.

I'm therefore not upholding Mr M's complaint about the approval of the loan.

Other considerations

I've also gone on to consider some of the other points Mr M has raised. Firstly, he says that he had enough funds in his account to make the payment when it became due. MFC has provided screen shots from its system, showing the payment was requested on 27 March 2022 and 28 March 2022, but these payments were "*declined*".

Therefore, as is common and what is required by MFC the payment authority Mr M had previously provided was cancelled. This was the right course of action to have taken and no error was made by MFC in the processing of the payment.

Mr M has also said, that MFC agreed to put the account hold, while the complaint was investigated. This wasn't something MFC had to do. MFC says after Mr M raised his complaint ,it put a communication hold on the account until the FRL was issued on 5 April 2022. At which point, MFC says the communication hold was lifted because it had issued its outcome on the complaint.

Following a call with Mr M on 21 April 2022, a further hold was placed on the account, due to Mr M being unhappy with how the complaint was investigated. This hold was to be in place until 28 June 2022. The information provided by MFC, says that Mr M was told that interest could be removed, depending on the outcome reached by the Financial Ombudsman.

I can then see, from what MFC has provided that there was further contact between itself and Mr M during July, August and September 2022. And from what MFC says happened on these calls, Mr M asked to settle the loan for a reduced amount and / or for any information to be removed from his credit file. But the payment amount agreed on these calls would need to be made by certain deadlines. None of deadlines were met and therefore MFC wasn't bound by the offers that it had agreed. Which was reasonable.

I've not seen any evidence that MFC deliberately tried to elongate the process for Mr M in order to extract the maximum payment from him. Indeed, based on what MFC has said, and provided it seems that it made allowances by putting contact holds on the account, and then agreeing partial settlement payments – but these weren't paid by Mr M and I can't say that was an error by MFC.

Overall, having taken everything into account I do not uphold Mr M's complaint.

My final decision

For the reasons set out above, 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 17 August 2023.

Robert Walker
Ombudsman