The complaint

Mr W says My Finance Club Limited lent to him irresponsibly. He says that he took on a large amount of debt and he struggled to keep on top of all of it. He says My Finance Club should have made better checks and found out about this. Mr W says it wouldn't have lent to him if it had done this.

What happened

This complaint is about two payday loans My Finance Club provided to Mr W between March and September 2019. Some of the information I have been provided about the lending is in the table below.

loan number	date started	amount borrowed	term (days)	date ended
1	17/03/2019	£150	30	30/04/2019
2	30/09/2020	£400	38	outstanding

Our adjudicator partially upheld the complaint. He thought that My Finance Club should have made better checks before approving loan 2. He thought if it had done this it would have seen that Mr W wouldn't have been able to sustainably repay this loan. This is largely because he was spending significant amounts each month on gambling.

My Finance Club disagreed with the adjudicator's opinion. It said that:

- the long period between loan applications demonstrated he was not reliant on short term lending
- he had a reasonable income and expenditure and the loan looked to be affordable
- Mr W was gambling, but this was a personal choice which has resulted in him being unable to meet his obligations. So, this wasn't a reason not to approve his loan application

As no agreement has been reached the complaint has been passed to me.

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 irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. My Finance Club needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr W could repay the loans in a sustainable manner.

These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that My Finance Club should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer's 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 *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've decided to uphold Mr W's complaint in part and have explained why below.

Mr W didn't disagree with our adjudicator's opinion about loan 1. Because of this, I don't think there is any ongoing disagreement about this loan. So, I won't be making a decision about this lending. But it was part of the borrowing relationship Mr W had with My Finance Club. So, it is something I will take into account when considering the other loan he took.

My Finance Club's records show that after Mr W repaid loan one he applied a total of 26 times for more lending with My Finance Club. My Finance Club declined these loans for various reasons. In the time straight after loan 1 (over the period March to June 2019) the loans were declined mostly because My Finance Club thought the lending wasn't affordable for Mr W. And nearer the start of loan 2 (over the period June 2019 to September 2020) the recorded reason for the loans being declined were recent arrears on other lending and defaults on other credit. So, I don't think it's reasonable to conclude Mr W's finances had improved in between these two loans.

I think My Finance Club could've realised at that time that Mr W may have had some significant and longer term financial problems and he didn't just want the loans to help with a temporary cash flow problem. My Finance Club should've also become concerned about whether it knew enough about Mr W's true financial situation.

I think that it would've been proportionate to fully review Mr W's financial situation And I think that My Finance Club needed to verify the information it found out where possible. This is to make sure Mr W was in position to make the repayments sustainably.

I don't think My Finance Club did this. It largely relied on what Mr W told it and some information from Mr W's credit file. So, I need to think about what My Finance Club would've seen if it had carried out proportionate checks.

It's already established that Mr W was having problems repaying his existing credit. My Finance Club's own checks showed this was the case. And it's unclear to me why it thought it was reasonable to lend in this instance when it hadn't felt this was right for Mr W for the proceeding 17 months. I've not seen any indication that his circumstances had materially improved.

But I think it's reasonable to say proportionate checks would've also shown My Finance Club that Mr W was spending a significant amount on gambling. And in the months leading up to loan 2 he was spending much more than his income.

I won't talk about whether this was due to personal choice, or otherwise. It's firstly not appropriate for me to do this, and it can be a very complicated issue. And any consideration about compulsive or problematic spending doesn't relieve My Finance Club of its responsibility to ensure Mr W was able to sustainably repay this lending.

In this situation any loan repayment (and Mr W's other essential spending) was, at least in part, dependent on Mr W receiving a return from the money he spent on gambling. At best this is unlikely. So, it follows that it's not reasonable to say that Mr W would be able to sustainably repay any lending where this was the case. So, I think that if My Finance Club would've how found out about Mr W's gambling, it wouldn't have thought it was responsible to lend to Mr W because of this.

I think that My Finance Club would've found out this information if it had made proportionate checks. And I think My Finance Club would've seen Mr W wouldn't have been able repay the loan in a sustainable way. So, I think that My Finance Club shouldn't have given loan 2 to Mr W and I think he's lost out as a result of this. So, I'm upholding Mr W's complaint about loan 2 and My Finance Club should put things right.

Putting things right

In deciding what redress My Finance Club should fairly pay in this case I've thought about what might have happened had it not approved loan 2.

Clearly there are a great many possible, and all hypothetical, answers to that question. For example, having been declined this lending Mr W may have simply left matters there, not attempting to obtain the funds from elsewhere. 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 W 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 W would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce My Finance Club's liability in this case for what I'm satisfied it has done wrong and should put right.

My Finance Club shouldn't have given Mr W loan 2.

If My Finance Club has sold any outstanding debts My Finance Club should buy these back if it is able to do so and then take the following steps. If My Finance Club is not able to buy the debts back then My Finance Club should liaise with the new debt owner to achieve the results outlined below.

A) My Finance Club should add together the total of the repayments made by Mr W towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.

B) My Finance Club should calculate 8% simple interest* on the individual payments made by Mr W which were considered as part of "A", calculated from the date Mr W originally made the payments, to the date the complaint is settled.

C) My Finance Club should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr W as though they had been repayments of the principal on all outstanding loans. If this results in Mr W having made overpayments then My Finance Club should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. My Finance Club should then refund the amounts calculated in "A" and "B" and move to step "E".

D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans If this results in a surplus then the surplus should be paid to Mr W. However, if there is still an outstanding balance then My Finance Club should try to agree an affordable repayment plan with Mr W. My Finance Club shouldn't pursue outstanding balances made up of principal My Finance Club has already written-off.

E) My Finance Club should remove any adverse information recorded on Mr W's credit file in relation to loans upholding at step 2.

*HM Revenue & Customs requires My Finance Club to deduct tax from this interest. My Finance Club should give Mr W a certificate showing how much tax My Finance Club has deducted, if they ask for one.

My final decision

For the reasons I've explained, I partly uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 July 2021.

Andy Burlinson
Ombudsman