

## The complaint

Mr G complains about Fund Ourselves Limited (FOL) in relation to the following:

- he *'did not agree with this loan'* and *'did not understand why the loan was issued'* to him.
- he did not understand the terms of the loan agreement.
- he asked for the interest and any charges to be frozen and/or stopped for two reasons – firstly as he was going through a bad time financially and secondly to give him a breathing space to consider his options.
- later, having cancelled it, he considered the agreement *'void'* and so he complains he's been charged interest during the withdrawal notice period when he should not have been.

Mr G also says that his long term mental health issues have not been considered and accommodated by FOL.

## What happened

FOL sent to us a copy agreement between it and Mr G dated 1 January 2022. It seems that Mr G applied for an £800 loan and it was approved. The arrangement fee was £400 and the term was 174 days during which Mr G was due to pay £266.67 each month for six months. The total amount to pay was £1,600.

Mr G, in this complaint was not complaining that the loan was lent irresponsibly and so I have not approached Mr G's complaint from that perspective. Hence the reason I have been careful to list all the complaint points Mr G has said to us and to FOL in the first part of this provisional decision. Now I understand that Mr G does wish to complain about irresponsible lending and that will form part of a new complaint. FOL has been informed.

On 4 January 2022, a few days after the loan was approved, Mr G emailed FOL to say he'd tried to sort this out on the telephone but had not been able to and so he had emailed to make a *'formal complaint'* and he sent that email to the correct complaints email address for FOL. He asked for charges and interest to be frozen or stopped because he was going through a bad financial time and he wanted time to think of his options and he was dealing with mental health complications.

His complaint was acknowledged the next day on 5 January 2022 in which FOL informed Mr G that it had eight weeks to investigate and respond to his complaint. And FOL reminded Mr G that as he was within the 14 day *'cooling off period'* he could return the funds and cancel the agreement.

The terminology *'cancel'* and *'withdraw'* often is used interchangeably. The import of that email message was that Mr G could change his mind about the loan if he wanted.

Mr G's response was that unfortunately he had some issues with his debit card and his access to internet banking and it might take until 20 January 2022 to sort out. So, he asked for any added interest to be removed and for the account to be frozen. On 7 January 2022 Mr G emailed again asking for responses to his earlier emails and then emailed a second

time on 7 January 2022 saying: *I hereby request you end any agreement as such as I express my right to cancel. You must allow at least 30 days for any money to be returned.*

FOL acknowledged his cancellation email the same day and said it was waiting for medical evidence from Mr G (so that request for medical evidence appears to have been the subject of other emails, copies of which have not been sent to us) and informing Mr G that in accordance with the agreement, interest would continue to accrue until it was repaid. It cited specific provisions of the loan agreement (paragraph 13) and that made it clear the interest charged was calculated daily.

On 11 January 2022 Mr G contacted the Financial Ombudsman and wanted a swift response from FOL as he was concerned he'd be pushed over the notice period. He asked our adjudicator if his complaint would be affected if he paid off the loan and the answer he received was 'no'. It seems that Mr G did repay it but we have no details as to how or when. Our adjudicator did expedite an email to FOL to explain that Mr G had referred his complaint to the Financial Ombudsman.

On 18 January 2022 Mr G wrote to us to say: *'They still have refused to stop any interest and charges or assist me any further or give me a final response letter.'*

Our adjudicator asked Mr G's permission to send to FOL the medical evidence he had sent to us. That was then sent to FOL.

Soon after that, FOL did issue its final response letter (FRL) dated 21 January 2022 in which it said the following:

- that the daily interest was set out in the agreement Mr G had signed; and
- that it had acknowledged his cancellation notification on 7 January 2022 (the terminology used by FOL was withdrawal in accordance with the agreement); and
- the interest was chargeable daily until the full amount plus the interest had been paid and that had to be within 30 days and
- there was nothing further it could do except wait for Mr G to repay the loan as in the terms of the agreement. Therefore, Mr G's complaint was not upheld.

FOL had explained in its FRL that

*'...you have requested to stop/freeze the interest as you have informed us you are waiting for a new bank card, you're suffering from mental health, and that you did not agree to the terms. We asked you to provide proof that you're suffering from mental health so we can assess how we can assist you, however we are still awaiting documentation.'*

One of our adjudicators looked at the complaint and her view was that FOL had acknowledged Mr G's notice to cancel; that it had issued its FRL within the required eight week period; and that the agreement was clear in its terms relating to the daily interest. Our adjudicator said that Mr G had agreed to the loan terms electronically confirming he was content to proceed. So, our adjudicator did not think FOL had done anything wrong.

The part not addressed in the FRL, because FOL had said it had no evidence, was a part that our adjudicator was not able to address either. And that related to Mr G's contention that his health issues meant he had not agreed to the terms of the agreement. And later, I have seen that Mr G had said to our adjudicator that he had been advised that the agreement would be *'voided if I didn't understand the terms because of my disability but the company itself still did virtually nothing to help me.'* This element will be addressed in the main body of the decision.

Our adjudicator had been sent a call recording. It had been made by Mr G. I come back to this later in the decisions.

Our adjudicator issued a second view in which she again invited Mr G to send medical evidence as to his disability in relation to the non-understanding of the agreement.

As for the complaint point about the stress caused during the complaint process, our adjudicator indicated that FOL had not had the time to investigate that and she was unable to address it.

Mr G was not content and asked for the complaint to be referred to an ombudsman. So, it was passed to me to decide.

I have issued two provisional decisions. One provisional decision on 10 March 2022. After that I received fresh evidence from both parties and issued a second provisional decision dated 14 March 2022. I invited both parties to respond by 28 March 2022.

The ultimate position is that I said in my second provisional decision that I was planning to award Mr G a distress and inconvenience payment of £200.

But, in line with my first provisional decision I was not planning to uphold other elements of Mr G's complaint.

Mr G has responded to say he accepts my second provisional decision.

FOL has acknowledged receipt of the second provisional decision but has not said more.

For ease of reading and for completeness I am duplicating my two sets of provisional findings here. They are set out in smaller type to differentiate them from my final decision today. They both form part of this final determination.

### ***The first provisional decision dated 10 March 2022***

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There are multiple issues arising from this loan approved on 1 January 2022 and so I have used sub-headings.

#### **Preliminary finding on some recordings**

I am not content to use the audio recording Mr G sent to us. I am not satisfied that this was a recording in which the FOL representative knew he or she was being recorded. And for Mr G to seek to rely on that now does not seem right. So, I am saying in this provisional decision that I have disregarded that recording.

#### **Additional complaint point raised after adjudicator's view**

After Mr G had received our adjudicator's first letter of opinion, in which she did not uphold his complaint, he made an additional point. Mr G's view was that FOL has failed in what he describes as its '*duty of care*' towards him as he felt that when he telephoned the FOL representatives they did not treat him correctly and offered no help.

This has not been investigated by FOL and it is not fair or reasonable for me to proceed on this point without giving FOL time to investigate that element. I am aware Mr G is keen to get this complaint resolved. But it is not appropriate for me to make any findings on this '*duty of care*' element without evidence.

So, I have had to balance the request by Mr G for this complaint to be moved forward to an ombudsman promptly, with the knowledge that investigation and gathering of evidence for the additional complaint point will cause delay. If I had paused and asked FOL for all its call recordings (which it may not have retained) then that would have taken time.

It's a matter for Mr G to respond to this part and if he wishes this to be investigated – either as part of this complaint or as a new complaint altogether – FOL needs to be given time to investigate and for the call recordings (if they have retained them) to be sent to us.

Without more, I am making no findings on this part.

Mr G '*did not agree with this loan*' and '*did not understand why the loan was issued*' to him and he did not understand the terms of the loan agreement.

Mr G used the words duplicated in my sub-heading in his email dated 4 January 2022 which was a few days after the loan had been approved and it was the first working day of the new year after the bank holiday break. The fact that he did not '*agree*' with the loan sounds like he was regretting having it and I notice that it was only a few days later he chose to cancel or withdraw from the agreement as he was entitled to do. The period after signing a regulated credit agreement when a consumer can have a re-think is commonly referred to as the '*cooling off*' period.

My view is that Mr G had the option to withdraw during that '*cooling off*' period, and that FOL pointed that out to him in its acknowledgement of his complaint on 5 January 2022 (just a day after he had complained). So, I do not think that I can point to anything that FOL has done wrong in relation to Mr G's '*agreeing*' with the loan. And by reminding him he could cancel or withdraw upon repayment of the funds was FOL being of assistance to Mr G.

If, Mr G really was saying he did not understand the loan and therefore had not agreed to it then this raises the point about Mr G's capacity. And I deal with that point here.

Mr G has raised several complaints at the Financial Ombudsman and for each one he has sent the same two (partial copy) documents to demonstrate some medical and mental issues he has had to deal with long term.

One is date stamped in 2008 and so it is not up-to- date and to that extent not satisfactory. But I accept that the condition to which that letter relates reveals a long term condition which may mean that Mr G may need assistance understanding things.

The other is undated and is a small part of a larger document - the full copy of which we have not seen. That indicates Mr G has, or had, a disorder which affects him in a particular way. And it also reveals an addiction of one kind. I do not mention any further details here.

I have reviewed this part of Mr G's complaint in detail and this is the part which I do not think our adjudicator addressed and is one of the reasons I have issued a provisional decision. I address it under the next sub-heading.

### *Mental capacity*

Mr G seems to be saying that his mental state may mean that he was not able to consider all the terms and conditions of the loan agreements. So, he's saying he never really understood the loan.

To consider whether Mr G's complaint about his ability to understand the agreement and therefore whether, as part of his complaint, FOL did anything wrong, I have reviewed the Financial Conduct

Authority (FCA) Consumer Source Book (CONC) Guidelines chapter 2.10 – *Mental Capacity Guidance*. As a regulated business this applies to FOL and is relevant.

Reviewing the CONC Guidelines, provisionally, I do not consider that there was likely to have been a breach by FOL. And I say this for several reasons and one is because the date of the loan is 1 January 2022 which was New Years' Day and a public bank holiday and usually a date when many financial businesses are closed. So, from that I deduce that Mr G likely made his application on-line. So, it's unlikely Mr G spoke to anyone from FOL.

Factoring that deduction into Mr G's circumstances, and applying the CONC Guidelines, a firm (such as one regulated like FOL) when granting a consumer credit agreement '*...should consider the customer's individual circumstances.*'

CONC 2.10.4 Guidance states that:

*'A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.'*

And the FCA Guidance lists some behavioural indicators which, if the lender observes any, may lead to the firm having reasonable grounds to suspect that a customer may have some form of '*mental capacity limitation*'. These are in CONC 2.10.8 and are a guide list.

Mr G has not provided us or FOL with any incidents or factual matters which he thinks would have led FOL to thinking, or given reasonable grounds for it to suspect, that he had mental health issues, or lacked understanding. And as it was likely an on-line application then the details of that on-line application can be forwarded to me by either party within the two week reply date deadline I have given at the end of this provisional decision.

And even if FOL did have any reasonable grounds to suspect that a customer may have some form of '*mental capacity limitation*', then CONC 2.10.7 guidance states '*...this does not necessarily mean that the customer does not have the mental capacity to make an informed borrowing decision.*'

On current evidence, and assuming that the 1 January 2022 loan application was made on- line then I think it's highly unlikely FOL would have had any reasonable grounds to suspect Mr G's mental capacity limitation – if that is what Mr G's long-term condition means for him.

And I says this for two reasons: with on-line applications on a bank holiday I doubt much that Mr G had spoken to anyone from FOL before proceeding with the loan.

The second reason is that another way that FOL would have known would be if Mr G had told FOL in his application documents about this aspect of his life which I think was unlikely when applying for (and having approved) a loan.

Over and above this, I have reviewed some of the other complaints Mr G has brought to the Financial Ombudsman about different financial institutions. My reading of them does not give me the impression Mr G had difficulty understanding a variety of elements surrounding the financial agreements and/or transgressions he was referring to in those other complaints.

I am planning not to uphold this part of Mr G's complaint.

#### Mr G's request to freeze and/or remove interest and charges during the withdrawal notice period

Mr G asked for the interest and any charges to be frozen and/or stopped for two reasons – firstly as he was going through a bad time financially and secondly to give him a breathing space to consider his options.

Mr G has not sent to us any details to demonstrate that he may have been in financial difficulty at that time. So, I have not been furnished with any facts to substantiate this part of Mr G's complaint.

I note that he asked for interest and charges to be frozen and/or removed if already applied, but the agreement was clear and without more, FOL had no reason to remove or freeze those interest payments.

And '*breathing spaces*' usually are applied when a customer is in arrears. This request by Mr G had been made within a few days of the loan being approved and before the first scheduled repayment date. And so, the issue of arrears had not arisen.

I cannot see that FOL had done anything wrong or contrary to the agreement. So, I am planning not to uphold this part of Mr G's complaint.

#### Avoiding the agreement

Mr G has said that, having cancelled the loan agreement, he considered the agreement '*void*' and so he complains he's been charged interest during the withdrawal notice period when he should not have been.

Again, I have not received any documentation from either party that Mr G was charged interest or any charges during the withdrawal notice period. And so, I do not know that they were. But as Mr G is complaining about that then likely he was.

If Mr G's argument stems from the fact he's saying he did not have capacity to understand what he was contracting into because he lacked the mental capacity, then I refer back to my earlier provisional findings where I cited CONC chapter 2.10 and the Guidelines for regulated businesses. Following on from those provisional findings in that section of my provisional decision, I think that Mr G's argument is not persuasive.

And the legal position after a loan has been cancelled or a party has withdrawn is not something I can determine. The legality or otherwise of a contract is for a Court Judge to determine.

The FCA in its CONC 11.1 has rules in relation to the Right to Cancel. And I have reviewed those.

And I have reviewed the legislation surrounding a consumer's right to withdraw. The Consumer Credit (EU Directive) Regulations 2010 apply and fits alongside the CONC 11.1 provisions I've just referred to. Regulations in that 2010 Statutory Instrument amend the Consumer Credit Act 1974 and inserted is section 66A (1) which provides:

*'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.'*

Here, reference to debtor will be Mr G and creditor will be FOL.

I have checked the definition section and the agreement Mr G entered is not an '*excluded agreement*'.

Sections 66A (9) and (10) provide:

*'(9) Where the debtor withdraws from an agreement under this section—*

*(a) the debtor must repay to the creditor any credit provided and the interest accrued on it (at the rate provided for under the agreement), but*

*(b) the debtor is not liable to pay to the creditor any compensation, fees or charges except any non-returnable charges paid by the creditor to a public administrative body.*

*(10) An amount payable under subsection (9) must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period may be recovered by the creditor as a debt).*

This seems to be why the FOL agreement includes provisions along these lines and stipulates that interest is payable. I duplicate here paragraphs from the agreement:

*'13.5 The Borrower must pay the amount of credit borrowed without delay and no later than 30 calendar days after giving notice of withdrawal.*

*13.6 The Borrower must pay interest accrued from the day the credit was provided to the day it is repaid. Such interest will be calculated at the interest rate under this agreement. The amount of interest that will accrue per day is £6.4.'*

I think that last figure is meant to read '£6.40'.

So, it does seem correct that Mr G did have to pay the interest plus the principal sum borrowed.

I am planning not to uphold this part of Mr G's complaint.

### **My provisional decision**

My provisional decision is that I am planning not to uphold Mr G's complaint.

### ***The second provisional decision dated 14 March 2022***

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

#### **Preliminary finding on some recordings**

I have altered my view from my first provisional decision. The recording Mr G sent to us on 11 February 2022 does appear to have been one made by FOL and not Mr G. FOL responded to Mr G's request for Subject Access Request (SAR) in record time and sent all Mr G wanted, including all telephone recordings, on the same day.

#### **New evidence received**

All the call recordings requested by us have been sent to us by FOL and I have reviewed them all.

FOL has now confirmed that Mr G did apply for the loan online and did not speak to any of its customer services personnel on that day. When Mr G applied on-line he gave a card number ending \*8318.

FOL has informed us that its records show that he repaid the first loan on 1 February 2022. Mr G repaid £998.40 using a card ending \*6580 and paid £198.40 in interest. FOL repeated what it has made clear before that, where a customer has elected to withdraw from a loan, interest is still chargeable up until the loan has been repaid in full and was confirmed in the loan agreement.

FOL has said that Mr G applied for a second loan which was denied on 5 February 2022.

#### **Additional complaint point raised after adjudicator's view**

This is what I said in my first provisional decision. I have duplicated it in smaller type to differentiate it with my second provisional decision on this part issued today.

*'After Mr G had received our adjudicator's first letter of opinion, in which she did not uphold his complaint, he made an additional point. Mr G's view was that FOL has failed in what he*

describes as its '*duty of care*' towards him as he felt that when he telephoned the FOL representatives they did not treat him correctly and offered no help.

This has not been investigated by FOL and it is not fair or reasonable for me to proceed on this point without giving FOL time to investigate that element. I am aware Mr G is keen to get this complaint resolved. But it is not appropriate for me to make any findings on this '*duty of care*' element without evidence.

So, I have had to balance the request by Mr G for this complaint to be moved forward to an ombudsman promptly, with the knowledge that investigation and gathering of evidence for the additional complaint point will cause delay. If I had paused and asked FOL for all its call recordings (which it may not have retained) then that would have taken time.

It's a matter for Mr G to respond to this part and if he wishes this to be investigated – either as part of this complaint or as a new complaint altogether – FOL needs to be given time to investigate and for the call recordings (if they have retained them) to be sent to us.

Without more, I am making no findings on this part.'

Mr G responded to say that he did want the complaint looked into further.

Now I have received and listened to eight call recordings between Mr G and the various FOL Customer Services representatives in January 2022 (of which two either did not connect or the FOL representative could not hear Mr G). So, I heard full conversations on six calls in January 2022. And I listened to two recordings in February 2022 – one was where Mr G called to pay the full balance and the other was when he telephoned to make the SAR request.

Having reviewed them all I have to agree with Mr G that the customer service he experienced during some of those calls in January 2022 were not to the standard of what I'd expect. Nothing in the February 2022 calls caused me a concern. But two or three in January 2022 did (one of which was a 22 minute call) and I am planning to make an award to Mr G for the distress and inconvenience caused to him. I explain here.

There were occasions when it was clear Mr G was distressed and he used words and sentences to describe the extreme state of anxiety he was in. Often – not always – those deeply concerning parts of what Mr G was saying were met with phrases from the FOL representatives such as '*this is the process*' or '*you have to contact complaints team by email*' and '*we do not receive complaints over the phone*'.

On one call Mr G asked if there was a manager who could help him or assist him to sort out the concern he had about having to pay interest, but this request was not acceded to and met with '*the manager is not available*'. I would at least have expected that the FOL representative could have arranged for a manager to call Mr G back. Or for him to be passed to another more senior person, especially having heard what Mr G had been saying during the call leading up to that point.

And the import of the conversations were that Mr G wanted to pay off the loan to keep the cost down as he was upset about the interest being added despite having cancelled it. And he was not able to pay the loan down, because his card had been cancelled and he had to wait for a new one. So again, it may have been possible for Mr G to have paid in a different way and this was never discussed or offered to Mr G.

Added to which, I think that some of the FOL representatives showed a lack of preparedness as to what to do when a customer called into the FOL customer services line and said the sorts of distressing things Mr G was saying relating to his personal welfare. And so, I do agree that Mr G's concerns were not met and this added to his distress and anxiety.

I am planning to award a distress and inconvenience payment of £200.

Other elements addressed in my first provisional decision



The other parts of my provisional decision remain unchanged and I am planning not to uphold those parts which are listed here:

- Mr G *'did not agree with this loan' and 'did not understand why the loan was issued' to him and he did not understand the terms of the loan agreement.*
- *Mental capacity*
- *Mr G's request to freeze and/or remove interest and charges during the withdrawal notice period*
- *Avoiding the agreement*

### **My second provisional decision**

My second provisional decision is that I am planning not to uphold Mr G's complaint for most of the elements he has raised, but I am planning to award a distress and inconvenience award of £200 for that part where he says he was not treated correctly when he telephoned FOL.

### **What I've decided – and why – 28 March 2022**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr G has responded to say that he agrees with the second provisional decision and FOL has acknowledged receipt but has said no more. Therefore, I see no reason to depart from the outcome I came to following my second provisional decision. The findings for both provisional decisions together are repeated here.

For the same reasons given above, Fund Ourselves Limited needs to pay to Mr G a £200 sum to cover the distress and inconvenience for that part of his complaint where he says he was not treated correctly when he telephoned FOL.

### **My final decision**

I uphold Mr G's complaint in part and I direct that Fund Ourselves Limited do as I have directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 April 2022.

Rachael Williams  
**Ombudsman**