

## **The complaint**

Mr W is unhappy that East End Fair Finance Limited trading as Fair Finance (FF) provided him with a loan that he couldn't afford to repay.

## **What happened**

In August 2020, Mr W took out a loan with FF of £500, repayable over 12 months. The APR was 188%, the monthly repayment amount £64.06 and the total amount repayable (if the loan ran to the intended term) £798.72.

According to FF, Mr W settled the loan early after making just one monthly repayment.

In April 2021, Mr W complained to FF that it shouldn't have provided him with the loan. In summary, he said that FF could see his credit score and that he had taken out repeated loans with other providers. He said that he had been struggling financially and that the granting of this loan made things worse.

FF didn't uphold the complaint. In summary, it said that it had assessed affordability by taking account of information about Mr W's credit history and outstanding debt. It also said it had calculated that Mr W had enough disposable income to meet the loan repayments, given his stated income (which it verified by asking for three months' worth of bank statements) and his stated expenditure.

Mr W remained unhappy and referred his concerns to this Service. We asked FF for its file papers but after not receiving anything, an investigator here reached a view upholding the complaint based on the information provided by Mr W only (which included the final response letter and bank statements leading up to the loan).

In summary, she said that FF ought to have known from the information it gathered before agreeing to lend, that Mr W was having difficulty managing his finances. The information showed that he had missed some payments on existing credit commitments and was regularly taking out short term loans.

The investigator suggested that FF refund the interest and charges Mr W had paid and remove any adverse information on his credit file as a result of those interest and charges.

FF disagreed with the outcome. In summary, it said that it didn't think Mr W had been reliant on credit and that the adverse credit file information was largely historical and insignificant. It provided us with its file of papers.

After reviewing this information and considering what FF had said, the investigator still thought the complaint should be upheld, for largely the same reasons.

As the matter couldn't be resolved, it was passed to me to decide. I shared some provisional thoughts with both parties. I said:

*"I'm currently minded to reach the same overall outcome that the investigator reached – which is to say that FF ought to have realised, based on the information it received ahead of*

*agreeing to lend, that Mr W would be unlikely to be able to meet the loan repayments on a sustainable basis.*

*I note that it appears the checks FF carried out ahead of granting the loan, were centred around an income and expenditure check and having regard to some credit file information. FF also appeared to carry out a debt to income calculation. FF says it requested and then used three months' work of bank statements to verify income. Based on this and Mr W's stated expenditure, it calculated that the £64.06 monthly loan repayment was affordable.*

*I note that the amount being borrowed wasn't particularly large nor was the duration particularly long. But even taking this into account, I think the combination of the implausible disposable income figure derived from Mr W's stated income and expenditure (around £800, when he was looking to borrow only £500) and the signs from the credit file information FF received about him (fairly recent financial difficulties), should have indicated to FF that it probably ought to take a closer look at his actual expenditure, to check that the loan repayments would be sustainable. But regardless, based on the information contained within Mr W's bank statements, I think that FF ought to have realised that he would struggle to afford the new loan.*

*I say this because the statements show that Mr W appeared to be reliant on high cost short term credit to make ends meet. He had taken on new borrowing in every month leading up to this loan application. The statements also indicate that he was spending around 40% of his typical net income on loan repayments (factoring in the high cost short term credit repayments and what appear to be loan repayments to a family member). In addition, the June/July statements showed a returned direct debit payment.*

*Bearing in mind that the £500 was additional borrowing and not for consolidation, I consider that FF ought to have realised that any additional borrowing was unlikely to be sustainable. As FF points out, Mr W repaid the loan well within the original intended term. However, Mr W says this was from additional borrowing. And, bearing in mind the further difficulties he describes having with his finances afterward, I consider that the decision to lend did have an adverse impact.*

*With that being the case, I consider that something has gone wrong that needs to be put right. Given the loan was repaid shortly after it was taken out, FF should simply refund the interest and any charges paid by Mr W on the loan, plus 8% simple interest per annum. And remove any adverse information from Mr W's credit file, in relation to those interest and charges."*

I asked FF to let me know if it was prepared to settle the case on that basis and, if not, to re-supply a document it had provided as part of its file, which wasn't viewable on our systems. FF didn't provide a response. The investigator provided a deadline of 16 August, saying that if a response wasn't received by then, I would proceed with the case based on what I already have.

I asked Mr W to provide answers to the following questions (the answers in italics were provided over the telephone):

- Your income was significantly higher (on the July/August statement) than in previous months - £2,438.50 instead of £1,588. Why was this? How often did you receive higher income like this?

*This was overtime and wasn't regular.*

- The bank statements indicate you were repaying a loan from a family member (“Name”). How much was the loan for and how much did you owe at the time of taking out the Fair Finance loan?

*The loan was for £6,000 and I had around £2,000 to £2,500 still to pay.*

- The July/August statements show two payment to someone titled “(name)”. What were these payments in relation to?

*These were payments to a relative, either repaying money borrowed or towards a birthday gift for another relative.*

## **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.

When evidence is incomplete, inconclusive, incongruent or contradictory, I’ve made my decision on the balance of probabilities – which, in other words, means I’ve based it on what I think is most likely to have happened given the available evidence and the wider circumstances.

Having done all of that, I uphold this complaint, for essentially the same reasons as set out in my provisional thoughts, which form part of this decision.

Before I explain why, I want to set out my role as an ombudsman. It isn’t to address every single point that’s been made to date. Instead, it’s to decide what’s fair and reasonable given the circumstances of this complaint. And for that reason, I’m only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having read all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint, when doing that.

Under the relevant regulatory framework (the Consumer Credit Sourcebook – ‘CONC’), FF was obliged to lend responsibly. This meant that it had to reasonably assess whether Mr W could afford to meet the loan repayments in a sustainable way over the term of the loan in question.

CONC didn’t specify what level of detail such an assessment might require – nor did it set out how such an assessment needed to be carried out in practice. Instead, it said that the necessary level of detail when carrying out a requisite assessment would depend on the relevant factors, such as the nature of the lending in question (e.g. size of loan, duration, total cost etc) as well as the applicant’s circumstances.

CONC defines the notion of sustainably repaying debt as being able to meet the repayments of a credit agreement without undue difficulty. And that includes being able to make repayments on time and without taking on additional borrowing to do so while also meeting other reasonable commitments.

I set out in my provisional thoughts that, notwithstanding the modest loan amount and duration. I thought FF probably needed to go further than it did to check Mr W could afford to repay the loan. This was due to Mr W’s credit file indicating recent financial difficulties and, in conjunction with this, the incongruous nature of his declared disposable income.

I went on to say that, regardless, FF ought to have realised from the bank statement information it requested and that was supplied by Mr W, that he would be unlikely to be able

to meet the loan repayments on a sustainable basis. This was mainly due to the statements indicating a reliance on credit and that Mr W was using a significant proportion of his typical net income, on loan repayments.

Nothing Mr W has said in response to my questions alters this analysis. Given that FF hasn't provided anything further in response to my provisional thoughts, I see no reason to depart from them.

Given the difficulty Mr W says he continued to have managing his finances after the loan was granted, I think the lending did serve to make things worse. As such, I think something went wrong that needs to be put right.

### **Putting things right**

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mr W in the position he would now be in if he hadn't been granted the loan.

However, this isn't straightforward when the complaint is about unaffordable lending because it isn't always possible to undo what's already been done. And with that being the case here, I have to consider if there's another way of putting the matter right fairly and reasonably given the circumstances of this complaint.

So, here's what FF needs to do:

1. Refund all the interest and charges Mr W has paid to date.
2. It seems the loan was settled shortly after it was taken out. However, if the borrowing is still in place, reduce any outstanding capital balance by the amount calculated at step 1.
3. If, after Step 2, any outstanding capital balance remains, ensure that it isn't subject to any historic or future interest and/or charges. And agree an affordable repayment plan with Mr W. But, if Step 2 leads to a positive balance, the amount in question should be given back to Mr W and 8% simple interest should be added to the surplus†.
4. Remove any adverse information recorded on Mr W's credit file as a result of the interest and charges.

†HM Revenue & Customs may require the business to take off tax from this interest. If that's the case, the Business must provide a certificate showing how much tax it's taken off if one is requested.

### **My final decision**

My final decision is that I uphold Mr W's complaint about East End Fair Finance Limited trading as Fair Finance and I direct it to do what I've set out above under 'putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 September 2022.

Ben Brewer  
**Ombudsman**