DRN-3536320

The complaint

Miss L complains that My Finance Club Limited was irresponsible to lend to her.

What happened

Miss L had five loans from My Finance Club between June 2019 and October 2019:

Loan	Date	Amount	Term	Scheduled Repayment	Due	Repaid
1	10 Jun 2019	£100	30d	£124.40	10 Jul 2019	7 Jul 2019
2	15 Jul 2019	£100	18d	£114.40	2 Aug 2019	On time
3	4 Aug 2019	£200	28d	£244.80	1 Sep 2019	30 Aug 2019
4	15 Sep 2019	£100	28d	£122.40	13 Oct 2019	1 Oct 2019
5	1 Oct 2019	£200	28d	£244.80	29 Oct 2019	26 May 2020

Miss L says My Finance Club failed to carry out affordability checks after the first loan and that she had to re-borrow to make the repayments. She says she had multiple short-term loans with other companies and that she only managed to repay loan 5 with redundancy money. Miss L said the lending had a detrimental effect on her mental health and also contributed to a gambling problem.

My Finance Club says it asked Miss L for details of her employment, her income and expenditure and also checked her credit file. It says it asked for this information for every application and verified her income each time. My Finance Club says it also checked Miss L’s living arrangements and established she was living with parents and had no dependants. It adds that Miss L's credit file showed her existing credit was well-managed and it was satisfied the repayments were affordable.

Our adjudicator recommended the complaint should be upheld. She was not satisfied that My Finance Club had carried out proportionate checks for all the loans and found the information that My Finance Club had, or should have had, indicated the lending was unsustainable.

My Finance Club did not respond.

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 short-term 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 Miss L 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 including:

- 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 during which a customer has been given loans (reflecting a risk of repeated refinancing signalling 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.

I think that it is important for me to start by saying that My Finance Club was required to establish whether Miss L could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Loan payments being affordable on this basis might indicate a consumer could sustainably make repayments, but it doesn't automatically follow this is the case. The Consumer Credit Sourcebook defines sustainable as being without undue difficulties and says a customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet them. And it follows that a lender should realise, or ought fairly and reasonably to realise, that a borrower won't be able to make repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss L's complaint.

<u>Loans 1 and 2</u>

When Miss L applied for these loans, I can see My Finance Club asked her about her income and expenditure and conducted a credit check. I'm satisfied these checks went far enough because:

- These were the first two loans Miss L had requested;
- Miss L's scheduled repayments were less than 9% of her income;
- Her declared expenditure seemed reasonable given she lived at home with her parents and had no dependants;

However, the credit check showed Miss L already had four short-term loans (and a fifth one that wasn't labelled as such) and an overdraft of almost £500 at the time of loan 1. This should have indicated to My Finance Club that Miss L was already struggling to manage her money and that its calculated disposable income of almost £800 was unlikely to be correct.

So I find it was irresponsible to have approved loans 1 and 2.

Loan 3

Miss L applied for loan 3 within two days of repaying loan 2. This time it was for twice the amount and I find proportionate checks should have included asking Miss L about her income and expenditure. I'm satisfied My Finance Club did that but, again its credit check showed four outstanding short-term loans which should have indicated that further lending was likely to be unsustainable.

So, again, I find My Finance Club was irresponsible to have approved loan 3.

Loan 4

Although there was a two-week break before Miss L applied for loan 4, this was her fourth loan in three months and I consider that should have prompted My Finance Club to ask her specifically about other short-term loans, in additional to its usual checks. Although the credit report for loan 4 shows no short-term loans, in fact, Miss L was still repaying the four loans that showed on her previous reports.

So I'm satisfied that proportionate checks for loan 4 would have shown My Finance Club that further lending was unsustainable.

Loan 5

By loan 5, I find My Finance Club should have ensured it fully understood Miss L's financial situation as five loans in fewer than four months could have been an indication that Miss L was becoming dependent on the lending. If My Finance Club had carried out proportionate checks, it would have found that Miss L was spending significant amounts of money on gambling and was using short-term loans to finance her addiction.

I find, therefore, that My Finance Club was wrong to have approved all of the loans.

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 refused to lend to Miss L, 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 Miss L may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between her and this particular lender which she may not have had with others. If this wasn't a viable option, she may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, she 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 she 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 Miss L 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 Miss L 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 final decision

My decision is that I uphold this complaint. My Finance Club Limited should:

A. Add together the total of the repayments made by Miss L towards interest, fees and charges on the loans;
B. Calculate 8% simple interest* on the individual payments made by Miss L which were considered as part of "A", calculated from the date Miss L originally made the payments, to the date the complaint is settled;
C. Pay Miss L the total of "A" plus "B";
D. Remove any adverse information recorded on Miss L's credit file in relation to loans 1 to 4. The overall pattern of Miss L's borrowing for loan 5 means any information recorded about it is adverse, so loan 5 should be removed entirely from Miss L's credit file.

*HM Revenue & Customs requires My Finance Club to deduct tax from this interest. My Finance Club should give Miss L a certificate showing how much tax it's deducted if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 16 August 2022.
Amanda Williams
Ombudsman