DRN-3613302

The complaint

Mrs S complains that she was approved for loans by Fund Ourselves Limited when she could not afford them.

What happened

Using information from Fund Ourselves, then here is a brief loan table:

Loan	Date	Amount	Given or refused?	If given – repaid when?	
The 2019 loan	6 April 2019	£200	Refused		Credit score too low
Pre-loan 1	16 October 2021	£500	Refused		ID check requirements
Loan 1	5 Nov 2021	£200 4 instalments & repaid early	Approved	9 December 2021	
	10 Dec 2021	£500	Refused		ID check requirements
	10 Dec 2021	£400	Refused		ID check requirements
Loan 2	10 Dec 2021	£300 4 instalments & repaid early	Approved	8 January 2022	
Loan 3	9 Jan 2022	£500 4 instalments & repaid early	Approved	3 February 2022	
Loan 4	3 Feb 2022**	£300 4 instalments starting 28 Feb – arrears	Approved	Defaulted 7 June 2022 having paid nothing to it	

Mrs S' lists in her complaint form, the loans taken and those she thought had been refused, was partially correct. Fund Ourselves has clarified some of the details for the loans and so for clarity for Mrs S I have included those loans she applied for which did not proceed. One in 2019 was declined but others were not completed because Fund Ourselves say that Mrs S failed to complete its 'Onfido' requirements - the company it was using for identity verification.

Fund Ourselves sent Mrs S its final response letter (FRL) to her in March 2022 in which it outlined the information about each of the four approved loans and said that it did not uphold her complaint.

Mrs S had sent to it details of her medical issues and a form completed to demonstrate that part of her condition mean that she had trouble managing her finances. So, in the FRL Fund Ourselves cited the Financial Conduct Authority (FCA) Consumer Credit Sourcebook

(CONC) chapter 2.10.3 and said that Mrs S had not made it aware of her mental health issues at the time and the so did not accept this part of her complaint.

One of our adjudicators did not think that Fund Ourselves had done anything wrong. Mrs S disagreed and the unresolved complaint was passed to me to decide.

On 11 August 2022 I issued a provisional decision giving reasons why I considered that loans 3 and 4 ought to be upheld and I gave time to both of the parties to come back to me with additional comments, thoughts and evidence.

Mrs S has agreed with my provisional decision. Fund Ourselves has not responded.

The full text of the provisional decision is set out here (in smaller type) and is repeated as part of this final determination.

My provisional decision dated 11 August 2022

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 unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether Fund Ourselves completed reasonable and proportionate checks to satisfy itself that Mrs S would be able to repay in a sustainable way? And, if not, would those checks have shown that Mrs S would've been able to do so?

If I determine that Fund Ourselves did not act fairly and reasonably in its dealings with Mrs S and that she has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required Fund Ourselves to carry out a reasonable and proportionate assessment of Mrs S' ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Fund Ourselves had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Mrs S. In practice this meant that Fund Ourselves had to ensure that making the payments to the loan wouldn't cause Mrs S undue difficulty or significant adverse consequences.

In other words, it wasn't enough for Fund Ourselves to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mrs S. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a consumer'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 the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

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

Dealing with the loans in chronological order, there was a declined loan in 2019 and because of her low credit score. But I think that was far enough away from the loan Mrs S applied for in November 2021 which was two and a half years later. And so, the significance of that refusal is not one that would likely have influenced Fund Ourselves when it approved Mrs S' loan 1 in November 2021.

The applications which did not proceed because Fund Ourselves say that Mrs S did not complete the ID process is an altogether different reason for a decline. From the brief details given to me those sounded more like an administrative error rather than a decline due to affordability. And as such I don't consider them particularly relevant.

Loans 1 and 2 were approved. Mrs S was a new customer and the sums she was applying for were relatively modest and to be repaid over four months which is a relatively short length for a loan agreement. Mrs S repaid them both early so when she applied for loan 2 after repaying loan 1 early then Fund Ourselves was not likely to have been alerted to any issues.

I have seen the loan application details and that Mrs S had told Fund Ourselves that she received around £1,600 a month and that her outgoings were £250 for food and drink, £75 leisure commitment costs, £400 for rent and £165 for bills. So, I think that in these early stages of the lending relationship and for the repayments of £96 and just over £140 respectively for loans 1 and 2, then Fund Ourselves would have thought that Mrs S was able to afford the loans.

I appreciate that credit searches were carried out and copies of the results have been sent to me. But for loans 1 and 2 they were not likely to have been enough to cause concern such that a loan refusal was warranted. Those searches showed Mrs S had credit card debt of around £5,000 but that likely was considered not unusual for an applicant to Fund Ourselves and on the figures Mrs S gave to them, still affordable.

For Loan 3, the picture alters. Mrs S was applying for £500 in January 2022 and the credit search result carried out by Fund Ourselves showed a marked increase in overall debt which included credit card (revolving) debt in a short space of time. In December 2021 (for loan 2) Mrs S' credit card debt was around around £5,400 and total debt was £7,700. Then in January 2022 the credit card debt Fund Ourselves knew about was £6,500 and the overall debt had increased to almost £9,200.

Loan 3 was going to be over a short term and the monthly repayments were going to be £235 a month, which was a large increase for Mrs S to commit to.

Using just the credit card debt figure, then realistically it's reasonable to assume that Mrs S would need to pay 5% every month of the balances on all her credit cards, and the normal instalments due on the other loans. So, using the credit card debt balance of £6,500 and calculating 5% then that would translate into about £325 a month to repay. And Mrs S had other debt of £2,700 too which would need to have been serviced each month.

And so, on the figures Fund Ourselves had for her declared income and expenditure, together with this information from her credit search then I think it ought to have realised she was not able to afford £235 a month for this loan. She had declared her income as £1,600 and her total outgoings (excluding other credit commitments) as £890.

That leaves £710 'left over' on those figures. Reduce that £710 figure by £325 for the minimum credit card repayment figure I've calculated at 5% of total balances, plus the new loan figure of £235 and it would leave Mrs S with only £150 to use to repay the other debts of around £2,700 which I think would have been too tight. And I say this because there is a least one credit commitment revealed on her credit search – coded 'HC' – which started in October 2021 where the regular repayments were £129 with a repay code of 'W'.

And I have cross-referenced the information about Mrs S' financial situation with her copy bank statements. And although I would not have expected Fund Ourselves to have looked at Mrs S' bank account statements for loan 3, I did it myself to see how that dovetailed with the credit search results. And I can see that Mrs S was repaying her credit cards and other loans as well.

Considering my findings for loan 3 then I also make the same findings for loan 4. And I note that Mrs S applied for that loan the day she complained to Fund Ourselves. But I don't have any details of which came first in time on 3 February 2022 – the complaint or the loan application.

I am planning to uphold Loans 3 and 4.

<u>Mrs S' health issues and the impact on lending</u>

Reviewing the CONC Guidelines referred to by Fund Ourselves, I do not consider that there was a breach of that Guide set out in CONC 2.10. A firm 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 Guide 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.

And even if Fund Ourselves did have any grounds, 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.'*

The document Mrs S has sent to me being a document to demonstrate that her mental health is such that she has difficulty managing money is dated late February 2022 and after loan 4 was approved.

And reviewing the information I have I've not seen anything to indicate that Fund Ourselves knew of Mrs S' condition before approving loans 1 to 4.

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.

As I have said earlier in this decision, both parties have had time to respond. Mrs S has accepted my provisional decision. Fund Ourselves was reminded that the reply deadline was 25 August 2022 and has not replied.

In the circumstances, I see no reason to alter my findings as set out above in my provisional decision and so those findings become part of this final decision.

For the reasons given, I uphold Mrs S' complaint about loans 3 and 4.

Putting things right

I uphold loans 3 and 4, and I am direct that Fund Ourselves does as set out below.

In deciding what redress Fund Ourselves should fairly pay in this case I've thought about what might have happened had it stopped lending to Mrs S from loan 3, 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 Mrs S may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. 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 Mrs S in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mrs S would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce Fund Ourselves's liability in this case for what I'm satisfied it has done wrong and should put right.

I am aware that loan 3 has been repaid and loan 4 remains outstanding. Fund Ourselves is entitled to offset the refund sums due to Mrs S against the debt that she owes to it. This needs to be factored into the redress calculations.

And considering the information Fund Ourselves now knows of Mrs S' medical conditions and her difficulty in managing money then I'd expect that it would treat Mrs S with the forbearance and care due to her.

- remove all interest, fees and charges applied to loans 3 and 4,
- treat any payments made by Mrs S as payments towards the capital amounts,
- if Mrs S has paid more than the capital then any overpayments should be refunded to with 8%* simple interest from the date they were paid to the date of settlement,
- but if there's still an outstanding balance, Fund Ourselves should come to a reasonable repayment plan with Mrs S.
- remove any adverse payment information about the loans from Mrs S' credit file.

* HM Revenue and Customs requires Fund Ourselves to take off tax from this interest. It must give Mrs S a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold Mrs S' complaint in part and I direct that Fund Ourselves Limited does as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 September 2022.

Rachael Williams
Ombudsman