

The complaint

Mr M complains Loanchoice Limited provided him with loans that he couldn't afford to repay them. He also says these loans put him in a debt cycle.

What happened

Mr M initially complaint about 10 home collected loans advanced between September 2018 and December 2020. Some of these 10 loans were held jointly with another third party – but the Financial Ombudsman Service has been asked not to investigate these.

So, the only loans that I'm considering in the table below are loan 6 and loans 8 – 10 (in bold). A summary of Mr M's borrowing, based on the information provided to us from Loanchoice, can be found below.

loan number	loan amount	agreement date
1	£200.00	04/09/2018
2	£400.00	26/11/2018
3	£500.00	18/02/2019
4	£300.00	29/04/2019
5	£600.00	01/07/2019
6	£350.00	02/09/2019
7	£750.00	11/11/2019
8	£350.00	03/02/2020
9	£300.00	26/10/2020
10	£500.00	07/12/2020

The loan terms appear to have arranged from 12 to 26 weeks. However, all of Mr M's sole loans were due to be repaid over a period of 26 weeks.

Mr M has had some problems repaying loans 9 and 10 and outstanding balances remain due to Loanchoice. All the other loans have been settled.

After Mr M complained to Loanchoice it issued its final response letter (FRL) in November 2021. It didn't uphold Mr M's complaint. Unhappy with this response he referred his complaint to the Financial Ombudsman Service.

An adjudicator reviewed Mr M's irresponsible lending complaint and he thought the complaint should be upheld in full for all of the loans that he was considering (sole).

The adjudicator explained that Loanchoice had an obligation to make sure the lending wasn't unsustainable or harmful for Mr M. Thinking about that, and looking at the overall lending pattern the adjudicator was satisfied the lending was harmful for Mr M by the time loan 6 was advanced. So, this loan as well as loans 8 – 10 shouldn't have been granted to him.

Mr M appears to have accepted the adjudicator's findings.

Loanchoice didn't fully agree with the adjudicator's assessment. Firstly, Loanchoice accepted the adjudicator's findings about loans 9 and 10 and agreed to put things right for Mr M as outlined in his assessment. It said that Mr M had taken longer to repay loan 8 and while payments had been erratic, the agent suggested this may have been due to the COVID-19 pandemic.

Secondly, I've summarised its comments as to why it wasn't going to offer to put things right for Mr M for loans 6 and 8;

- Proportionate checks were carried out for each loan which included looking at Mr M's bank statements and Loanchoice said given the amount it could see being spent on fuel it was confident in his earnings as a taxi driver.
- Not all loans granted to Mr M were increasing in value.
- Mr M paid on time and historically didn't have any arrears.
- The reasons Mr M gave for needing the loans – such as Christmas was credible.
- Loanchoice's products aren't for short term cash flow problems but generally for one off purchases.
- Many of the loans were repaid early for example loan 6 was for a holiday and repaid after 22 weeks and an interest rebate was provided. Loanchoice says this demonstrates the loans were affordable.

The adjudicator responded to Loanchoice to explain why in his views its comments hadn't changed his mind about loans 6 and 8.

Loanchoice provided further submissions to the Financial Ombudsman Service, I've summarised these comments below;

- Rigorous affordability checks were carried out.
- The bank statements Loanchoice saw before approving each loan showed his commitments were sustainable.
- The bank statements only showed small fees for the overdraft and there were no other significant issues that Loanchoice was aware of.
- Loanchoice says a credit search was carried out and showed no County Court Judgements since October 2015 and no further lending enquires.
- All of Mr M's loans were repaid early apart from loans 9 and 10.
- Loans were granted for one off expenses.
- The amounts Mr M was advanced went up and down.
- Loanchoice had complied with the industry regulator when considering these loans.
- Loanchoice provided a copy of the August 2020 Repeat lending report and a copy of a 2021 review into the unsecured lending market undertaken by the Financial Conduct Authority.
- In Loanchoice's view – Mr M hasn't been caused harm.

As no agreement could be reached the case was passed to me to decide on the lending.

I issued my provisional decision explaining the reasons why I was intending to partially uphold Mr M's complaint. A copy of my provisional findings follows this in smaller font and italics and forms part of this final decision.

What I said in my provisional decision

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

It may help, and for clarity for all parties concerned, that I outline the legal and regulatory environment when the lending was approved. So below I've outlined what I consider to be the key regulatory requirements on the part of Loanchoice before providing the lending.

The legal and regulatory framework and other publications

Prior to these loans, regulation was held by the Office of Fair Trading (OFT) (up to 31 March 2014). And from 1 April 2014, regulation was passed to the Financial Conduct Authority ("FCA").

In the FCA's guidance there are references made to the OFT guidance which is called the Irresponsible lending Guidance (ILG). What this shows, in effect, is a continuity of regulation and continuity of requirements for what Loanchoice needed to do before each loan was approved. In November 2018 the FCA rules were reworded but this didn't significantly change the meaning of what Loanchoice was required to do before lending was granted.

Regulation by the Financial Conduct Authority (from 1 April 2014)

Loanchoice gave Mr M all the above loans after the regulation of Consumer Credit Licensees had transferred from the OFT to the FCA on 1 April 2014.

The FCA's Principles for Business set out the overarching requirements which all authorised Firms are required to comply with. The Principles themselves are set out in PRIN 2.1.1R. And the most relevant overarching principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

The FCA's Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit related regulated activities. It sets out the rules and guidance specific to consumer credit providers, such as Loanchoice. CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

The starting point for the relevant rules in this case is Section 5.2.1R(2) of CONC which sets out what a lender needs to do before agreeing to give a consumer credit of this type. These rules were subsequently updated into CONC 5.2A but this didn't occur until November 2018, which is after the lending had started. So the wording of the rules applicable to the lending for Mr M is: a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

CONC 5.2.3 then details and outlines some of the factors that may be relevant to a lender when deciding what a proportionate check may look like for each loan application.

The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

- (1) the type of credit;*
- (2) the amount of the credit;*
- (3) the cost of the credit;*
- (4) the financial position of the customer at the time of seeking the credit;*

- (5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;
- (6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;
- (7) any future financial commitments of the customer;
- (8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;
- (9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R(1), a firm should take into account more than assessing the customer's ability to repay the credit.

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) states:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer

CONC 5.3.1G(6) also provides guidance, that beyond the loan being pounds and pence affordable the loan also has to be sustainable.

- (6) For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:
 - (a) without undue difficulties, in particular:
 - (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and
 - (ii) without having to borrow to meet the repayments;
 - (b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and
 - (c) out of income and savings without having to realise security or assets; and
- "unsustainable" has the opposite meaning

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

From November 2018, the FCA re-wording some of CONC 5, and so this became CONC5.2A. I've not included all sections of it, but instead, the below is to demonstrate a continuity of regulation around what was expected of Loanchoice.

CONC 5.2.A.4 says

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

- (1) entering into a regulated credit agreement; or*
- (2) significantly increasing the amount of credit provided under a regulated credit agreement; or*
- (3) significantly increasing a credit limit for running-account credit under a regulated credit agreement.*

CONC 5.2A.7 then goes on to explain that the creditworthiness assessment should be based on sufficient information that Loanchoice is aware of at the time the assessment was carried out or obtained, where appropriate from the customer or the credit reference agencies. Importantly, CONC 5.2A.10 says The firm must consider:

- (1) the risk that the customer will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and*
- (2) the risk to the customer of not being able to make repayments under the agreement in accordance with CONC 5.2A.12R (referred to as 'affordability risk' in this section).*

And 5.2A.12 provide some examples must also consider Mr M's ability to afford the repayments over the lifetime of the agreement, considering a number of different factors and examples are provided – such as his income. Finally, CONC 5.2A.20 and it then goes on to provide some examples.

- (1) The extent and scope of the creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.*

On 6 March 2019, The FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all firms allocated to the 'High Cost Lenders' portfolio, which Loanchoice is part of. This letter was published after Mr M's started borrowing. However, this letter didn't include any new rules but deals with how firms ought to be handling complaints about whether their previous lending was unaffordable. I do think that this offers some insight on the FCA's approach on its rules and guidance. So, I consider it to be of relevance in this case.

The letter sets out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in. On page two of this letter, the FCA sets out its view of the key causes of harm. It says:

"To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.

Following our analysis, we see two keyways that consumers may be harmed across the High Cost

Lenders portfolio:

- *a high volume of relending, which may be symptomatic of unsustainable lending patterns*
- *firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".*

The FCA sets out its areas of focus for all firms in the portfolio on page three of the letter. The section entitled 'Relending' says:

"Relending: We have seen a high volume of relending across all credit products in the portfolio. We aim to carry out diagnostic work across the portfolio so that we can better understand the motivation for, and impact of, relending on both consumers and firms. This work will examine aspects of relending such as customers' borrowing journeys, firms' marketing strategies for offering additional credit and the costs of relending for consumers. We want to understand what harm, if any, relending may cause consumers. As part of this work, we will proactively engage with home-collected credit firms to ensure they understand our expectations. We will also discuss any changes to their processes as a result of the new rules and guidance on relending which we issued in our December 2018 Policy Statement on high-cost credit".

The section entitled 'Affordability' says:

Affordability: We recognise that there is an inherent challenge for these firms in assessing affordability for both new loans and repeat borrowing. High-cost credit customers' finances are often squeezed and they may have poor credit histories and low financial resilience. Nevertheless, firms must ensure that they are complying with all our affordability requirements. We gave an outline of these requirements in the Dear CEO letter we sent to HCSTC firms in October 2018. While this letter was aimed at HCSTC firms, the main principles are relevant to all firms in this portfolio.

Finally, under the section entitled 'Complaints' it says:

"Complaints: We know that there have been increasing numbers of complaints about many of the products in this portfolio. Firms should ensure that they are handling complaints appropriately. We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service's relevant decisions. We gave further detail about what we expect from firms' complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio".

I accept that this letter, refers to high cost short term lenders, which Loanchoice isn't one. But I think it is useful to see how the FCA looked at some of the issues. Turning to the 'Dear CEO' letter issued by the FCA on 15 October 2018, which was mentioned in the 'Affordability' section of the March 2019 FCA letter.

"We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: <https://www.financialombudsman.org.uk/publications/technical.htm>). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)".

Paragraph eight of the letter went on to say:

"We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible assessments of the sustainability of borrowing".

Finally, in August 2020 the FCA released a report into “Relending by high-cost lenders”. This report does apply to Loanchoice as its part of the FCA’s high-cost credit portfolio. Again this was released after Mr M’s borrowing relationship started, but Loanchoice has raised this report in its response to the adjudicator so its worth looking at and considering the conclusions.

There are a number of points raised by the FCA, and I consider the below most pertinent when thinking about this case – I have bullet pointed them below (taken from the report);

- We have significant concerns that repeat borrowing could be a strong indicator of a pattern of dependency on high-cost credit and levels of debt that are harmful to the customer.
- But we are concerned that relending can move from a positive customer experience into one which causes harm.
- We remind firms of our Dear CEO letter from October 2018, sent to all HCSTC firms (but which equally applies to other firms in the high-cost lenders portfolio). In that, we highlighted the risks in relation to repeat borrowing given that it could indicate a pattern of dependency on credit that is harmful to the borrower. Rigorous affordability assessments are key to avoiding harm in this area, and firms should ensure they are making proportionate and responsible assessments of the sustainability of borrowing.
- At some point, rising levels of overall debt and repayments will become unsustainable for customers.

The above, are the rules and guidance that I’m considering when thinking about whether Loanchoice did anything wrong when it lent to Mr M. To be clear, I am not retrospectively applying the rules, I am applying the rules that were relevant to Loanchoice at the time it lent to Mr M.

Questions for me to consider before deciding whether Loanchoice did anything wrong when it provided Mr M with his loans.

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

Bearing in mind everything that I’ve set out above and our long-established approach to considering these types of complaints (which is also set out on our website), I think the overarching questions I need to consider in deciding what’s fair and reasonable in the circumstances of this complaint are:

- Did Loanchoice, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay in a sustainable way? If not, would those checks have shown that Mr M would’ve been able to do so?
- Bearing in mind the circumstances, at the time of each application, was there a point where Loanchoice ought reasonably to have realised it was increasing Mr M’s indebtedness in a way that was unsustainable or otherwise harmful and so shouldn’t have provided further credit?
- Did Loanchoice act unfairly or unreasonably in some other way?

If I determine that Loanchoice did not act fairly and reasonably in its dealings with Mr M and that he has lost out as a result, I will go on to consider what is fair compensation.

Did Loanchoice, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the credit in a sustainable way?

It is important to note the FCA at the time, didn’t, and doesn’t, specify exactly how an assessment of affordability is to be carried out but the “extent and scope” and the “types and sources of information to use” needed to be enough to be able to reasonably assess the sustainability of the arrangement for the consumer.

In other words, the assessment needs to be consumer-focussed. It is not an assessment of the risk to the lender of not recovering the credit but of the risk to the consumer of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend.

As set out in CONC, the risk to the consumer directly relates to the particulars of the lending and the circumstances of the consumer. Therefore, a lender's assessment of creditworthiness would likely need to be adaptable to the individual needs and circumstances of a consumer. That is to say, what is sufficient for one consumer might not be for another, or indeed what might be sufficient for a consumer in one circumstance might not be so for the same consumer in other circumstances.

Bearing the above in mind, I would expect an assessment of creditworthiness to vary with the circumstance of each request for credit. In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way.

But certain factors might point to the fact that Loanchoice should fairly and reasonably have done more to establish that any lending was sustainable for Mr M. These factors include, but are not limited to:

- the lower a customer's income (reflecting that it could be more difficult to repay 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 longer the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and*
- the greater the number and frequency of credit agreements, and the longer the period of time during which a customer has been given the credit (reflecting the risk that ongoing use of these agreements may signal that the borrowing had become, or was becoming, unsustainable).*

Loanchoice considers its checks were appropriate and complied with the regulations at all times when providing this lending.

It seems for each loan Loanchoice would've asked Mr M for details of his income and expenditure and it also says that it asked to review his bank statements.

Finally, in response to the adjudicator's assessment it said that a credit search was carried out but it hasn't said for which loan(s) this was for, how many of these searches were carried out and it hasn't provided either the full results or the summary of the results that it saw. So, it is difficult for me to be able to say what exactly it knew about other credit that Mr M may (or may not) have had at a certain point in his relationship with Loanchoice.

Loans 1 – 5 and loan 7

These loans aren't being considered because Mr M has asked the Financial Ombudsman to only look at loans that he was given solely – so I say no more about them.

Loan 6

The adjudicator upheld this loan because he concluded these loans were harmful for Mr M because it was now unsustainable to continue to lend to him. But I don't think, Loanchoice would've thought this given the reasons I've gone on to explain below.

Loanchoice has provided a copy of the income and expenditure form completed by the agent when the loan application was made. Mr M declared he had a weekly income of £500 as a taxi driver (after expenses for the vehicle such as insurance). He also declared his weekly

outgoings came to £249 for things such as rent and utilities.

Based solely on this income and expenditure information, it would've been reasonable for Loanchoice to have believed this loan was affordable for Mr M because Loanchoice was aware that he had £251 per week in disposable income, to pay his total weekly commitment to Loanchoice of £21.

Loanchoice has mentioned that one or more credit searches may have been carried out at some point in the lending relationship. But as I've said above copies of these results haven't been provided so I don't know what it saw and when. Equally, Mr M hasn't provided a copy of his credit file so I can't really comment on what Loanchoice may (or may not) have seen.

Loanchoice also provided copies of the screen shots of his bank statements which it saw when the loan application was completed – it had details of Mr M's bank statements from the end of July 2019 until 31 August 2019. I've looked at these bank statements to see whether there were any signs of either financial difficulties or anything else that Loanchoice needed to consider before it advanced this loan.

There are a couple of bills that I can see including an energy company, a telephone communication company and what looks like council tax. There are also payments for things such as petrol. However, everything else is either cash withdrawals or transfers to other third parties. I would add, that there was a sizable cheque deposit made at the end of July 2019, and this isn't clear whether it was Mr M's wages or something else.

Whatever the cheque was for, the account remained in credit for the whole time that Loanchoice reviewed the bank statements. I can't see any evidence of other lending, returned payment fees or anything else that may have given Loanchoice cause for concern. Based on the bank statements the loan would've looked affordable and sustainable.

I've also considered that this was Mr M's first solo loan but as far as I can see there hadn't been any obvious repayment problems with his previous joint loans. He had also been indebted to Loanchoice for around a year, which could've been a sign that he was using credit to cover a short-term need, rather than one off items and so could've been a sign that there was more going on in the background.

However, I also can't ignore that Mr M's lending wasn't always increasing for example, this loan was smaller than loans 2, 3 and 5. So it can't even, in my view, be argued that Mr M's loans were increasing in a manner that was unsustainable.

Also, in this case given what Loanchoice has noted on the application form it doesn't seem to have taken any evidence of Mr M's income, it just seems to have relied on that he received around £500 cash each week – which would've been self-declared. Mr M says his income was much less than this – around £850 a month so around £212 per week. However, no evidence of what Mr M's actual income was at the time has been provided.

If further information could be provided to show that Mr M's income was as low as he said it was, then I'd be minded to conclude that this loan ought to not have been granted because at this point in the lending relationship I think it would've been fair for Loanchoice to have a full and complete picture of Mr M's circumstances. While it has done that as part of its review of the bank statements, I can't see anywhere in the bank statements anything to show confirmation of his income.

So, while I accept the adjudicator says this loan was unsustainable for Mr M I don't think in this case I can argue that for the reasons I've outlined above. Overall, based on the evidence that I have I think it was reasonable and proportionate for Loanchoice to carry out the types of checks that it did and these checks showed it that Mr M was in a position to afford the loan. Therefore, I'm intending to not uphold Mr M's complaint about this loan.

Loan 8

Again, the adjudicator thought this loan ought to have been upheld because the lending was now unsustainable for Mr M. I've thought about this carefully but in this case, I don't think I can fairly conclude this.

This loan was taken out after loan 7 had been repaid and was Mr M's second sole loan and it was for the same amount as loan 6. I accept, that Mr M had been indebted with Loanchoice (by loan 8) for around 17 months and in that time had taken seven previous loans – but none of these loans overlapped and as I've said above there weren't any obvious repayment problems.

In some situations, this could be a sign that he was now reliant on these loans or at the very least having longer term money management problems. But I also must keep in mind that, on the evidence I have now, these loans were being repaid without any obvious repayment problems and Mr M's overall indebtedness didn't now seem to be increasing.

So, taking everything together, I don't think Loanchoice would've or ought to have realised these loans were unsustainable for Mr M, but that doesn't mean Loanchoice did all it should've done before advancing these loans.

Mr M was committed to making 26 weekly repayments of £21, and I've thought about that when considering what checks Loanchoice did (or likely did) before this loan was approved. For this loan, it seems it did the same sort of checks that it did for loan 6. It completed an application form which ought to contain details of Mr M's income and expenditure. However, the form that has been signed by Mr M on 3 February 2020 is blank. No income or expenditure is noted. I find this highly unlikely that Mr M had no expenditure and or no income, so Loanchoice may have thought that Mr M's situation was similar to that at the time of loan 6 – if it did think that it hasn't said so. But based on the information it gathered at loan 6 it may have thought it was reasonable to lend.

For this loan, Loanchoice had seen screen shots of Mr M's online banking transactions, it saw these from 17 December 2019 to 31 January 2020 – so shortly before this loan was approved. Again, I can't see any evidence of a salary, but the outgoings are broadly similar, there are numerous transfers into and out of the account to at least four other third parties. But no further explanation has been provided as to what these transfers were for.

There isn't anything as far as I can see that would've led Loanchoice to conclude this loan wasn't affordable. There is only one overdraft fee of 9 pence and no evidence of any other lending or anything else that may have suggested financial difficulties.

I still have concerns about Mr M's actual income because I still think that Loanchoice needed to have checked and verified this. It doesn't look like it did this, but I don't have anything from Mr M to show what his income actually was at the time. Without this, given the bank statements and what else Loanchoice knew I think it was just about reasonable for it to believe that Mr M could afford the loan repayments. Therefore, I am intending to not uphold Mr M's complaint about this loan.

Bearing in mind the circumstances, at the time of each application, was there a point where Loanchoice ought reasonably to have realised it was increasing Mr M's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

In addition to assessing the circumstances behind each individual loan provided to Mr M by Loanchoice, I also think it's fair and reasonable to look at the overall pattern of lending and what unfolded during Mr M's lending history with Loanchoice. This is because, there may come a point where the lending history and pattern of lending itself demonstrates that the lending was unsustainable.

I've already concluded above, and the same goes for here, that the checks Loanchoice had carried out weren't by this time proportionate and so I can't fairly conclude that its checks were rigorous and so opens the door that Mr M may have been taking these loans in an

unsustainable manner.

So, referencing the relevant rules and guidance as summarised in the earlier part of my decision, Loanchoice was required to establish whether Mr M could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

The loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because CONC defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time and while meeting other reasonable commitments.

However, this point was likely reached around loans 9 and 10 because as Loanchoice pointed out Mr M had some problems repaying loan 8. So, I don't think I need to say anything further about these loans or the reasons why they uphold because Loanchoice already accepts something went wrong when loans 9 and 10 were granted.

Did Loanchoice act unfairly or unreasonably in some other way?

I've thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Loanchoice acted unfairly or unreasonably towards Mr M in some other way.

Response to the provisional decision

Both Mr M and Loanchoice were asked to provide anything further for consideration as soon as possible, but no later than 18 October 2022.

Mr M emailed the Financial Ombudsman Service confirming he agreed with the outcome in the provisional decision.

Loanchoice didn't acknowledge or provide any other response.

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 Mr M has accepted the findings of the provisional decision, I see no reason to depart from the findings that I previously made. I don't think Loanchoice made an unreasonable decision to provide loans six or eight. In addition, Loanchoice had already accepted, in response to the adjudicator's assessment that something went wrong when loans nine and ten were granted.

I've therefore outlined below what Loanchoice needs to do in order to put things right for Mr M in relation to loans nine and ten.

Putting things right

Loanchoice should put things right for the loans it has already accepted something went wrong with – loan 9 and 10.

- A. Loanchoice should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr M as though they had been repayments of the principal towards these loans. If this results in Mr M having made overpayments then Loanchoice 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. Loanchoice should then refund the amounts calculated in “A” and “B” and move to step “C”.

- B. If there is still an outstanding balance then the amounts calculated in “A” can be used to repay any balance that remains due. If this results in a surplus then the surplus should be paid to Mr M. However, if there is still an outstanding balance Loanchoice should try and come to a mutually agreeable repayment plan but I’d remind Loanchoice of its obligation to treat Mr M fairly and with forbearance.
- C. The overall pattern of Mr M’s borrowing for loans 9 and 10 means any information recorded about them is adverse, so it should remove these loans entirely from Mr M’s credit file once they have been repaid. Loanchoice doesn’t have to remove loans 9 and 10 from Mr M’s credit file until these have been repaid, but Loanchoice should still remove any adverse information recorded about them.

*HM Revenue & Customs requires Loanchoice to deduct tax from this interest. It should give Mr M a certificate showing how much tax it has deducted if he asks for one.

My final decision

For the reasons I’ve explained above and in the provisional decision, I’m upholding Mr M’s complaint in part.

Loanchoice Limited should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 18 November 2022.

Robert Walker
Ombudsman