

## The complaint

Mr L complains that FUND OURSELVES LIMITED, trading as Fund Ourselves, lent to him when it had not carried out good enough checks to recognise that he could not afford the loans.

## What happened

Using information Fund Ourselves has provided, here is a brief loan table.

Loan	Approved	Amount	Instalments	Repaid
1	12 November 2020	£300	4 x £142.80	9 December 2020
2	10 December 2020	£250	4 x £118 Three of four instalments paid late	31 December 2020, 26 February 2021, 1 and 30 April 2021.
3	5 May 2021	£120	4 x £58.32 Repaid early	31 May 2021, 30 June 2021, 1 July 2021
4	17 July 2021	£100	4 x £46.20	20 July 2021
5	23 July 2021	£100	4 x £44.80	26 July 2021
Almost three month gap in lending				
6	22 October 2021	£100	4 x £44.80	29 October 2021
7	8 November 2021	£250	4 x £118.50	8 November 2021
8	12 November 2021	£210	4 x £97.86	17 November 2021
9	21 December 2021	£100	4 x £45	21 December 2021

Fund Ourselves' final response letter (FRL) to Mr L on 31 March 2022, after he had complained, did not uphold his complaint. Fund Ourselves explained that it had checked his income using the credit reference agencies (CRAs).

For loans 1 to 8 it satisfied itself that Mr L's declared monthly income of £1,400 was about right and he had told them that with travel, rent and other debt his outgoings were £170. It carried out credit searches for most of the months that he applied to them.

For loan 9 Mr L had informed Fund Ourselves that he earned £1,700 and it had satisfied itself with the CRAs that this was likely correct. Mr L had told it that he spent £170 a month. So, Fund Ourselves said it had carried out proportionate checks and it was satisfied Mr L could afford the loans.

Mr L referred the complaint to the Financial Ombudsman Service. One of our adjudicators looked at it and considered that due to the nature of the lending – the repetitive nature – that Fund Ourselves ought to have ceased lending from loan 6. So, the outcome was that he upheld the complaint for Mr L for loans 6 to 9.

Fund Ourselves agreed and sent over the likely refund sums. As Mr L had repaid loans 6 to 9 so quickly then there was very little in the way of refunded money due to Mr L.

Mr L was not content and said, *'I believe the earlier loans to be irresponsible too due to details on my credit file and bank statements which they had too.'*

Our adjudicator issued a second view in which he explained:

*'Fund Ourselves did not carry out such extensive searches to have your bank statements at the time, I'd like to add this was not a requirement. Furthermore the Credit Searches undertaken didn't show anything significantly adverse which is the reason I could not uphold on your earlier loans either. You had no active County Court Judgments (CCJ's), insolvencies, and had not defaults in the last 12 months of the start of your borrowing. The reason I upheld from loan 6 onward is because of the pattern which emerged in lending.'*

The unresolved complaint was passed to me to decide.

As Fund Ourselves has agreed with the outcome for loans 6 to 9 then I consider those resolved and I do not plan to review them. This decision focusses on loans 1 to 5 as requested by Mr L.

### **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 have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Fund Ourselves needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr L could repay the loans in a sustainable manner. These checks could include several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

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 Fund Ourselves should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These factors include:

- having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a level of income);
- having many loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable. Our adjudicator thought this was the case for Mr L for loans 6 to 9.

Fund Ourselves was required to establish whether Mr L 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 the Consumer Credit Sourcebook ("CONC") defines 'sustainable' as being the ability to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and without having to borrow to meet the repayments.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower will not be able to make their repayments sustainably if they need to borrow further to do that.

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

As I have said, this decision focusses on loans 1 to 5. Loans 6 to 9 have been resolved and for completeness I have included them in the redress section at the end of the decision.

Mr L has provided us with some context (his email to us in April 2022) and it is useful to set out some of that here. I was sorry to read that Mr L had suffered a bad time in 2020. For privacy I do not say more, and he has explained that it precipitated a behaviour which seems to have been one he was having difficulty stopping. Again, I say no more than that but I mention it so that Mr L knows I am aware of it.

Mr L had said:

*'Prior to taking out these loans with Fundourselves I had hundreds of payday loans with late payments, defaults and even my phone bill had defaulted with [phone company]. I had a large amount of outstanding debt in which Fundourselves (should they have done their due diligence [sic]) would have been aware of.*

*After performing a hard credit check on my credit file and seeing multiple defaults, late payments, and large amount of payday loan and credit card debts. If they had monitored my spending they would have realised that I was taking large loans to pay for my [behaviour].'*

For loan 1, Mr L was a new customer and applying for a relatively modest sum of £300 repayable over four instalments. Fund Ourselves reviewed his declared income. It says that it looked at what he had declared as his outgoings.

I have been sent several copy credit search reports carried out by Fund Ourselves. The earliest one was dated December 2020 which would have coincided with loan 2. So, it seems that there was not a credit search carried out for loan 1 and the regulations do not require it. In the circumstances I consider that to rely on the verified income plus what Mr L had declared to it as his outgoings was a satisfactory and proportionate check for loan 1.

I do not uphold Mr L's complaint about loan 1.

For loan 2, then the information as to income and outgoings were much the same and Mr L had repaid loan 1 early and then had reapplied for a lesser sum than loan 1. So, there was unlikely to be anything that would have given Fund Ourselves cause for concern.

However, I have reviewed the credit search it carried out in December 2020. It showed that

Mr L had 13 active accounts, no CCJs nor recent defaults and although it may have seen that Mr L had had lots of accounts in the past, I would not have expected it to have reviewed closed accounts.

Loan 2 was repaid a little late. Three of the four instalments were repaid late by about a month. Overall, that is not particularly late but I think Fund Ourselves ought to have been alerted to a little extra care may have been needed. But when Mr L returned to apply for loan 3 he was asking only for £120. This is a very modest sum and much lower than loans 1 and 2. So I do not consider that it needed to do more before approving loan 3 for £120. Loan 3 was repaid early.

There was then a two week gap before Mr L applied to Fund Ourselves for £100 which was a small sum when placed in context. And this was repaid within days. It was followed by another of the same amount - £100 – and again repaid in days. So, I consider that Fund Ourselves carried out proportionate checks for loans 1 to 5. And I do not uphold Mr L's complaint about loans 1 to 5.

I know that Mr L has sent to me copies of his bank account statements for most of the period covering the lending but at this stage in the lending relationship, I would not have expected Fund Ourselves to have done more than it did.

To review bank account statements for a £300 first loan would have been disproportionate. And the loans after that were progressively smaller. And I add that the bank account copies sent to us appear to be one of his accounts and I say this because I can see transfers into it from another account which seems to have belonged to Mr L.

Plus, Mr L's salary does not appear to credit the bank account we have got copies of, and the Fund Ourselves credits do not appear on these bank account copy statements as credits either. So, there must be at least one other account used by Mr L which we have not seen. So even if I did consider that Fund Ourselves ought to have reviewed the bank accounts – which I do not – then the copies I have are not the full picture.

Fund Ourselves has not provided us with copy bank statements from Mr L at the time he applied to them. Mr L has suggested that Fund Ourselves had been given copy bank statements by him when he applied, but I've not seen any evidence of that either in the email explaining what it had done before lending or the business file copies Fund Ourselves have sent to us.

The part of Mr L's complaint relating to Fund Ourselves continuing to send him marketing material would depend on the marketing preferences to which he had agreed when he became its customer. I have no details on that aspect and can make no finding relating to that element of Mr L's complaint.

### **Putting things right for loans 6 to 9**

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 Mr L from loan 6 as Fund Ourselves has agreed 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 Mr L may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this 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 reconstruct now accurately.

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 Mr L 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 Mr L would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Fund Ourselves' liability in this case for what I'm satisfied it has done wrong and should put right.

Fund Ourselves ought to do as follows:

- refund all interest and charges Mr L paid on loans 6 to 9;
- pay interest of 8% simple a year\* on any refunded interest and charges from the date they were paid (if they were) to the date of settlement;
- the number of loans taken from loan 6 to 9 means any information recorded about them is adverse. So, all entries about loans 6 to 9 should be removed from Mr L's credit file.

\* HM Revenue & Customs requires Fund Ourselves to take off tax from this interest. It must give Mr L a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

My final decision is that I uphold Mr L's complaint in part – that part relating to loans 6 to 9 Fund Ourselves has agreed to put right for Mr L. I direct that FUND OURSELVES LIMITED does as I have outlined in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 January 2023.

Rachael Williams  
**Ombudsman**