

The complaint

Mr M complains that East End Fair Finance Limited trading as Fair Finance was irresponsible to lend to him.

What happened

Fair Finance agreed three loans for Mr M in 2021. The first was for £230 agreed in January, to be repaid over 6 months at £46 a month. The second was for £320 agreed in April, to be repaid over nine months at £49, and the third was for £800 agreed in July. This was to be repaid over 12 months with repayments of £101. (all figures rounded)

Mr M said that Fair Finance wouldn't have agreed to lend to him had it carried out correct checks before agreeing his second and third loans. He says he had financial issues for some time and had taken out several loans as a result of spending money on gambling. Mr M also says that Fair Finance reported missing payments on his credit file when he'd arranged a repayment plan with it, and he's concerned about a default notice he received.

Fair Finance said that it asked Mr M about his income and expenses when he applied for each loan, and it checked his credit file. It considered that the loans would be affordable for him and so it didn't uphold his complaint. Fair Finance also told Mr M that it couldn't retrospectively change any adverse information it had reported to the credit reference agencies.

Mr M referred his complaint to us. Our investigator found that, while Fair Finance should have carried out a more thorough check when Mr M applied for a third loan, it was unlikely to have declined to lend to him and so hadn't been irresponsible to do so. They didn't recommend that his complaint be upheld.

Mr M didn't agree with this recommendation and asked for his complaint to come to an ombudsman for a review and it came to me. I looked into Mr M's complaint about his second and third loans only as I understood that he was not complaining about his first. I sent out a provisional decision on 6 December 2022 explaining why I thought Mr M's complaint about his third loan should be upheld. I allowed some time for both parties to respond and provide any further arguments or new information they wished me to consider when making my final decision.

Mr M accepted my provisional findings but Fair Finance did not. This is my final decision on the matter and will be legally binding on both parties should Mr M accept it.

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.

Having reconsidered everything, including the response I've had from Fair Finance, I remain of the view that Mr M's complaint about his third loan should succeed. I appreciate that this will be very disappointing for Fair Finance and I want to reassure it that I have carefully

considered its response. I'll set out my reasons again in this final decision, and address Fair Finance's response where appropriate.

As I'd said in my provisional decision, when considering this case I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Fair Finance, need to abide by. Fair Finance will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise and refer to them where appropriate.

Before entering into a credit agreement, Fair Finance needed to check that Mr M could afford to meet his repayments out of his usual means for the term of the loan. This means he should be able to make his repayments without having to borrow further, while meeting existing commitments and without experiencing adverse consequences. The checks Fair Finance carried out needed to be proportionate to the nature of the credit (the amount borrowed or the term, for example) and to Mr M's particular circumstances.

The overarching requirement was that Fair Finance needed to pay due regard to Mr M's interests and treat him fairly. CONC 2.2.2G(1) gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did Fair Finance complete reasonable and proportionate checks when assessing Mr M's applications to satisfy itself that he would be able to make his repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did Fair Finance make fair lending decisions?

Fair Finance said that when Mr M applied for his loans, it asked him about his income and expenses. It confirmed his income by checking his bank statements and considered how he was managing his finances by checking his credit file.

I understand that Mr M didn't meet his repayments for his first loan. He'd told Fair Finance that he was having trouble with his repayments because he'd been contributing more than usual to the household expenses, as the pandemic had impacted on the household income. After a payment holiday, Mr M repaid the loan in full in late March 2021.

I appreciate that Mr M didn't make his loan payments as initially agreed for his first loan, but he'd told Fair Finance that he was experiencing exceptional circumstances which it responded to. So I don't think the management of this loan should have raised concerns for Fair Finance.

Fair Finance said that when Mr M applied for his second loan he gave his income as £1,700, which it verified against his last three months' bank statements noting his average income was about £1,755. Mr M gave his expenses as £740, and Fair Finance said that its affordability checks indicated that he had the surplus income to repay this amount.

It seems inconsistent to me that Mr M would wish to borrow £320 given this level of surplus income and this might warrant further investigation. However, I don't have copies of the bank statements or any of the other information Fair Finance relied on when agreeing this second loan for Mr M. I also have no information from Mr M, such as statements for any of his bank accounts, which cover early 2021. The repayments for this loan weren't so large relative to his stated income that there was an obvious risk of it being unaffordable. So I haven't concluded that that Fair Finance was irresponsible to agree a second loan for Mr M, either on the basis of the information it had or ought to have seen.

I understand that Mr M made five payments towards his second loan before paying an early settlement amount of £160 in late July. Within a week Mr M had applied for a third loan, and I've concluded that Fair Finance was irresponsible when it agreed to lend to him on this occasion.

When Mr M applied for his third loan he told Fair Finance that his monthly income was £1,700, his expenses came to £720 and that he was living with his parents. The purpose of the loan was 'debt'. Fair Finance provided the credit file information it relied on along with a copy of Mr M's bank statements.

Mr M's credit file shows he had £4,600 of existing debt and a defaulted credit card account from 2018 with a balance of £102. The customer notes say that Mr M had an arrangement to pay on one of his loans and when asked about this he told Fair Finance that he was going to pay it off that day.

However, I think Fair Finance should have realised that it didn't have the full picture of Mr M's finances. He'd said he had almost £1,000 disposable income each month yet he was borrowing less than this and it was the third loan he'd applied for in the space of seven months. He had three credit cards and had spent his combined limit of £1,600 and had missed a recent payment. Mr M held three bank accounts and was up to his overdraft limit of £250 on one.

Mr M's bank statements confirm his income but also show an unusual spending pattern. He made many relatively low value transfers out of his account to the extent that he spent his wages within days. In May 2021, for example, Mr M had no money left in his account the day after being paid and borrowed £250 from a short term lender. This was repeated in June where it seems he borrowed from a family member and in July, when he applied for his third loan with Fair Finance the day he was paid.

Irrespective of what Mr M was spending his money on, it seems to me it left him reliant on credit and so he wasn't likely to be able to meet his repayments for this loan without borrowing further or experiencing adverse impacts on his finances. Fair Finance should have seen this from the information it had. I've concluded that it treated Mr M unfairly and without regard to his interests by lending to him on this occasion.

In response to my provisional decision Fair Finance said that it wasn't relevant that Mr M applied to borrow an amount that was less than his disposable income and that *"if a customer does not have sufficient disposable income to cover a large expense, for example, then it is reasonable for them to request a loan to cover the outstanding amount not covered by their income."*

I can agree that the amount a borrower might request relative to their declared disposable income isn't always relevant, however I think it is in this case. Mr M said he had a disposable income of about £1,000, more than three times the amount he wanted to borrow, when he applied for his second loan. I didn't have enough information to find that this, what I called an inconsistency, ought to have prompted Fair Finance to investigate Mr M's circumstances further, and so I didn't conclude it had been irresponsible to agree a second loan for him.

Mr M's third loan was for £800, again he'd said he had a disposable income of about £1,000. There wasn't such a difference between what Mr M had said about his disposable income and the amount he wished to borrow on this occasion. But, as I explained above, the weight of evidence led me to find that Fair Finance should not have agreed to a third loan with the information it had available.

Fair Finance also said that:

- It wasn't uncommon for people to transfer money immediately after receipt as a way to manage their finances. This isn't inherently indicative of being reliant on credit, and it would not be reasonable to assume this to be the case.
- From the evidence available to it, Mr [M] was repaying his debts, not increasing them (including making early repayments). This would not indicate a spiral of debt, so it couldn't agree that the fact that Mr [M] was applying for a third loan in a relatively short time period was indicative of financial difficulty.
- I'd raised concerns regarding Mr [M] holding three credit cards, having spent his combined limit of £1,600 and that he'd missed a recent payment. I'd also noted that Mr [M] held three bank accounts and was up to his overdraft limit of £250 on one of these. The limit is typical for the customer's level of income, and one missed payment would not be considered cause for concern... treating these as red flags would mean it could not lend to anyone, given its customers' usual circumstances.

I agree with Fair Finance that the above points, taken separately, don't of themselves automatically indicate that Mr M was in financial difficulty. However, what I'd highlighted in Mr M's bank account statements was a pattern of spending which suggested to me that he was reliant on credit: many small transfers out of his account, lack of transfers back in when it seems he needed money, and subsequent borrowing, for example from a high cost short term lender. And this, combined with having used almost all his available credit and it being his third loan of increasing value in seven months, led me to conclude that Fair Finance hadn't treated Mr M fairly by lending to him when it should have seen that there was a risk to him of not managing to meet his repayments without borrowing again.

As I then explained in my provisional decision, a more in depth check of Mr M's circumstances at the time wouldn't have provided any reassurance to Fair Finance that he would be able to meet his repayments out of his usual means without borrowing. As Mr M has told us, and as is clear from the bank statements for one of his other current accounts, he was spending relatively large amounts of money on gambling, on average more than £2,500 a month in April to July 2021. This would have confirmed for Fair Finance that the loan was unsuitable, and that a decline was the responsible decision.

Fair Finance said that we have had sight of bank statements that it hadn't seen, and did not believe it was necessary to request from Mr M. To be clear, I have not found that Fair Finance ought to have requested more bank statements from Mr M. The bank statements Fair Finance did see showed frequent transactions to another bank account and very little returned from that bank account. As I'd said in my provisional decision, irrespective of what Mr M was spending his money on, it seems this pattern of spending left him reliant on credit. Any further information wouldn't have led to the conclusion that Mr M would have enough disposable income to cover his repayments for this loan without borrowing again.

In summary, I don't think Fair Finance treated Mr M fairly or with due regard to his interests when it agreed to lend to him a third time on the basis of the information it had. I think further information would have confirmed that Mr M was spending beyond his means and wasn't likely to be able to meet his repayments for this loan without borrowing further. I've concluded that Fair Finance was irresponsible to have agreed to lend to Mr M on this occasion and it needs to put things right for him as I've set out below.

Putting things right

I've concluded that Fair Finance was irresponsible to have agreed to lend to Mr M in July 2021. So he shouldn't have to pay any interest, fees or charges associated with this loan. Fair Finance should:

- Cap the amount Mr M has to repay on the loan agreed in July 2021 to the capital he borrowed, in other words £800; and
- If Mr M has paid more than this then Fair Finance needs to refund these overpayments to him along with 8% simple interest per annum* from the date of payment to the date of settlement of this complaint. In this case Fair Finance needs to remove any negative information about this loan from Mr M's credit file; or
- If Mr M has not yet repaid the capital, then Fair Finance needs to treat Mr M fairly and with forbearance and due consideration regarding his outstanding capital balance. This may mean coming to an affordable repayment plan with him. Once the loan capital has been repaid, then Fair Finance should remove any negative information about this loan from Mr M's credit file.

* HM Revenue & Customs requires Fair Finance to take off tax from this interest. Fair Finance must give Mr M a certificate showing how much tax it's taken off if he asks for one

My final decision

For the reasons given above, I am upholding Mr M's complaint about East End Fair Finance Limited trading as Fair Finance and it now needs to take the above steps to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 February 2023.

Michelle Boundy
Ombudsman