

The complaint

Miss W complains Quidie Limited trading as Fernovo (Fernovo) gave her a loan she couldn't afford to repay because at the time she had at least seven outstanding loans. She also explained, she can't afford the repayments now due to the increased costs of living.

In order to put things right, she wants the negative information removed from her credit file, an affordable repayment plan to be set up and the interest removed from the outstanding balance.

What happened

Miss W took one loan from Fernovo. She borrowed £250, on 26 April 2022. She was due to make a total of three-monthly repayments. The payments due on 20 May 2022 and 20 June 2022 were for £121.38 and the final payment due on 20 July 2022 was £122.65. Had Miss W paid the loan in line with the credit agreement, she would've repaid a total of £365.41.

Fernovo, at the end of December 2022, provided a copy of the statement of account. The statement shows that Miss W successfully made her repayment which was due in May 2022. However, the June 2022 payment was declined. A final repayment has been recorded of £5 on 26 September 2022. Fernovo appears to have stopped applying interest to the outstanding balance from 30 September 2022. The total outstanding balance due, according to Fernovo is £373.62.

Following Miss W's complaint Fernovo wrote to her with a final response letter on 9 August 2022, outlining why it wasn't going to uphold the complaint. However, it did say, that it would be willing to remove the default interest, as a gesture of goodwill, should the complaint but only if the complaint wasn't progressed to the Financial Ombudsman. But it concluded, it had made a fair lending decision, based on the information supplied to it by Miss W as well as the credit report.

Unhappy with this response, Miss W referred her complaint to the Financial Ombudsman. Our adjudicator reviewed Miss W's complaint and he didn't uphold it. He said the checks carried out by Fernovo were proportionate before the loan was approved and there was no indication the loan was unsustainable for Miss W.

Miss W didn't agree with the outcome, and she sent several emails with her reasons, and I've summarised these below.

- Miss W had multiple other loans open at the time this Fernovo loan was granted.
- Miss W told Fernovo about her financial difficulties and it refused to set up a repayment plan. She doesn't think she has been treated fairly.
- Miss W provided copies of the emails she had sent to Fernovo at the end of September 2022 outlining why she didn't think she had been treated fairly.

The adjudicator went back to Miss W to clarify his assessment. In response, Miss W said Fernovo had treated her poorly.

Fernovo didn't respond to the adjudicator's assessment.

As no agreement was reached, the case was passed to me for a decision. In the provisional decision I explained why I thought Fernovo had made a reasonable decision to provide Miss W with her loan. But I thought Fernovo ought to have done more after it became aware of Miss W's financial difficulties.

Both Miss W and Fernovo were asked to provide anything further for consideration, in response to the provisional decision, as soon as possible, but no later than 27 January 2023.

Fernovo responded by email and confirmed it accepted the findings as outlined in the provisional decision.

Miss W also responded by email, agreeing with the findings of the provisional decision.

Both parties have now responded, so to bring this matter to a close, I am issuing the final decision. A copy of the provisional findings follows this in smaller font 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.

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

Fernovo had to assess the lending to check if Miss W could afford to pay back the amount she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Fernovo's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss W's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Fernovo should have done more to establish that any lending was sustainable for Miss W. These factors include:

- *Miss W 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 particular level of income);*
- *Miss W having a large number of 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);*
- *Miss W 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 for Miss W.

Fernovo was required to establish whether Miss W could sustainably repay the loan – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss W was able to repay her loan sustainably. But it doesn't automatically follow that this is the case.

The Financial Conduct Authority's (the industry regulatory) in the Consumer Credit Sourcebook ("CONC") states payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

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

Miss W's complaint has been dealt with in two parts, firstly dealing with what happened when the loan was issued and secondly what happened after Miss W raised her complaint and the help and support provided by Fernovo.

Unaffordable Lending

For her loan, Fernovo asked Miss W to declare her income and expenditure. Miss W declared her monthly income was £1,986. Fernovo says this amount was verified but hasn't said how. But it has said, Miss W had worked for her employer for a significant period of time, and so had no concerns about what she had declared.

Miss W then confirmed she had monthly expenditure of £1,166. However, as part of its affordability assessment Fernovo considered Office of National Statistics (ONS) averages for people of a similar, age, income and postcode as Miss W. As a result, it increased her monthly expenditure to £1,630. It was this sum, that was used in deciding whether the loan was affordable.

Fernovo, calculated Miss W had a disposable monthly income of £356, which was more than enough for Miss W to be able to afford her repayment of no more than £122.65. Therefore, based solely on the information Miss W declared to Fernovo, it was reasonable for Fernovo to have concluded Miss W would be able to afford to repay this loan.

Fernovo has also said for this loan, it carried out a credit search and it has provided the Financial Ombudsman Service with the results. It is worth saying here that although Fernovo carried out a credit search there isn't a regulatory requirement for it to do one, let alone one to a specific standard.

Therefore, it's entirely possible that the information Fernovo received may not have entirely reflected the information Miss W may be able to view in her own credit report. There could be several reasons for this, such as Fernovo only asking for certain pieces of information such as the number of active credit accounts. But what Fernovo can't do is carry out a credit search and then not react to the to the information it received.

This means, I don't think it would be right to consider the credit report Miss W has provided. I say this because Fernovo carried out its own credit search and received the results. In that situation I think it's entirely fair and reasonable to see what Fernovo was told and whether the information it received ought to have led it to carry out further checks. So, while I thank Miss W for sending in her full credit file I'm only considered in this case, the results of the credit search which we know Fernovo saw.

Looking at the credit file data provided by Fernovo I'm satisfied it was aware of some adverse information. For example, it was aware that Miss W had defaulted on three accounts between 12 and 36 months before this loan was approved. Finally, Fernovo knew that none of Miss W's credit accounts had entered delinquency within the year before this loan was approved.

In my view, this isn't enough, on its own to uphold the complaint because the defaults suggest that in the past Miss W had financial difficulties but there weren't any obvious signs that she was experiencing difficulties in the lead up to the loan being approved.

The credit report provided to Fernovo also showed Miss W had some outstanding loans, these have been recorded as "Finance House" – Fernovo knew of two such accounts one having been opened within the month before this loan was approved. The total monthly repayment due for these accounts was £136. The remaining active credit accounts seem to be utilities, current accounts, credit cards and mail order accounts.

Fernovo also knew Miss W had opened two new accounts in the last six months preceding this loan – I believe these to be the two finance house loans I've mentioned above. So, it doesn't seem, based on what Fernovo was told that Miss W was opening lots of new credit accounts, which could be a sign of someone struggling to repay existing loans or was reliant on payday loans.

Overall, while there are some negative indicators in Miss W's credit check such as the defaults but there doesn't seem to me, enough to indicate that Miss W was reliant on credit and / or payday loans. Of course, the information Fernovo was told about may not be correct, but it was entitled to rely on the information it was given.

Given it was early on in the lending relationship and there was also nothing else in the information that I've seen that would've led Fernovo to believe that it needed to go further with its checks – such as verifying the information Miss W had provided. In addition, there wasn't anything, as far as I can see which would've suggested the loan was unsustainable for her.

I'm therefore intending to not uphold Miss W's complaint about Fernovo's decision to provide the loan.

Repayment of the loan

Miss W says that she asked Fernovo for help and support and none was provided. Overall, she says she was treated unfairly by Fernovo when trying to discuss with it a way forward to repay this loan.

Although, this part of the complaint wasn't explicitly dealt with by the adjudicator as part of his assessment, Miss W is clearly unhappy and believes that Fernovo continued to charge interest, fees and charges during a time when she was having difficulties, and this was mentioned as part of her complaint submission.

This element of the complaint is explicitly linked to the irresponsible lending complaint which Miss W has made and which I don't think should be successful. But, as part of that, Fernovo had an obligation to treat Miss W fairly and with forbearance.

Fernovo has shown that after the scheduled June and July 2022 repayments were missed, it emailed Miss W to tell her the account was in arrears, by how much and what she needed to do in order to speak to Fernovo about this balance (or to correct the account balance). At this point in time, these notices were fair and entirely reasonable for Fernovo to have sent them.

On 1 August 2022, Miss W told Fernovo "...I am unable to afford all the repayment and have not received any support other than default notification or offer to reduce monthly payments.."

A further email was sent on 9 August 2022, when Miss W said the following;

"I have multiple loans open at once and should have been considered on the application. If the loan was 250 originally and you still expect me to pay 244. Then you are charging interest I that respect as 250 less 128.38 would be a 128.62.

I have over 7 payday loan accounts open you all have leant irresponsibly at the same time. I need a (sic) interest frozen repayment plan but for it to be what your response letter is describing my final amount"

So, I'm satisfied, that as of 9 August 2022, Fernovo was put on notice, that Miss W had a number of outstanding payday loans that needed servicing and she needed help to repay what was outstanding with it. Bearing in mind at this point, the loan account was already in arrears because Miss W hadn't made her June or July 2022 payment.

Miss W has provided a copy of an email received from Fernovo entitled "Confirmation of repayment plan". Unfortunately, this email is undated, so I do not know when this was sent. However, given the date of the first proposed repayment plan and the other emails I've seen, it must have been sent between 9 August 2022 and 14 August 2022.

But what this does show is that Fernovo was willing to work with Miss W to set up an affordable plan – which, at this time, was a reasonable course of action. We know from the statement of account, that the first payment due under this plan of £50 wasn't made.

Miss W then emailed on 14 August 2022, letting Fernovo that she wasn't happy with the repayment plan, because the amount Fernovo was asking her to repay was incorrect because the outstanding interest and charges hadn't been removed.

Miss W reinforced her position on the 27 August 2022, when she told Fernovo

"I will make a small payment on 2nd September for 5. I can't afford all the loans out its not possible on my income hence why I complained these have been missold (sic). I can't afford them and living costs I can't pay money I do not have."

There were then further emails between the two parties to do with the repayment plan and the outstanding balance that was due to be paid. On 1 September 2022, Miss W told Fernovo:

I would like to know the reasoning for why I have to withdraw a complaint to make an an-angement (sic) with yourselves.

I can only agree to arrangements once I've dealt with the other loans lenders which I am still in escalated complaint to the ombudsman service currently.

... I am single parent family with one income. I have mental health difficulties and the impact this is having on my life and health is not acceptable. To pressure a customer to withdraw a complaint to make a fair arrangement does not sound right to me.

As far as I can see, this is the first time that Miss W's mental health difficulties were mentioned to Fernovo. As part of her complaint, Miss W has given the Financial Ombudsman details of these problems and the treatment she has sought. I do hope things have now improved for her.

However, what this email did do, is further reinforce to Fernovo that Miss W was having financial difficulties and had other vulnerabilities that it needed to consider. It also, isn't clear what additional help and support (if any) was given to Miss W after Fernovo was told about her health problems.

On 6 September, Fernovo sent another email to Miss W outlining the terms of a new plan, this time, the payments were to be £30 per month. Again, it seems this plan wasn't successful, likely because Miss W had already told Fernovo that she could in effect only afford token amounts.

According to the statement of account provided, Miss W will now have to repay Fernovo a total of £500 (interest and capital). This is the maximum she could've been charged under the industry regulators cost cap which has been put in place for this type of product.

This is also likely, why Fernovo, according to the statement of account stopped adding interest fees and charges after the end of September 2022, because if it had continued to charge interest, it would've been in breach of the relevant cost cap guidance.

In order to see whether this extra interest was fairly charged, I have also considered the industry guidance and I'd have expected Fernovo to follow the guidance when treating a customer with forbearance. The relevant section is CONC 7.3.4 at the time of these loans says:

A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

CONC then goes on to provide some examples of what treating a customer with forbearance may look like. CONC 7.3.5 says:

Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

(1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);

[Note: paragraph 7.4 (box) of ILG]

(2) allowing deferment of payment of arrears:

(a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or

(b) provided that doing so does not make the term for the repayments unreasonably excessive;

(3) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).

It does seem that Fernovo was on notice, fairly early on that Miss W would need a repayment plan to assist her repaying the balance. It does seem initially that plans were offered, but by the end of August 2022, Fernovo knew that in effect Miss W could only afford token repayments.

I am also not clear, why given what it knew about Miss W's financial position, that it continued to charge interest to the point where Miss W's balance went up to the cost cap limit.

Initially, Fernovo was unaware that Miss W was having difficulties repaying her loan. I accept that two payments had been missed, but I don't think that means, it had to automatically prevent further charges and interest being applied, as it hadn't had any contact from Miss W. It wasn't until the end of August 2022 that Miss W told Fernovo about the extent of the difficulties she was having, and it was clear given the emails that Fernovo was willing to work with and agree a repayment plan with Miss W – which is in my view a reasonable course of action to take.

While Fernovo, fairly in its view, provided Miss W with a loan that needed to be repaid, it had to do so in a manner that was treating Miss W "fairly". And the guidance is quite clear that Fernovo needs to take steps to help Miss W and as part of that, I think it's fair that the interest, fees and charges be frozen.

In summary, Fernovo wasn't fully aware of Miss W's financial problems until after the loan was already due to have been repaid. And over the course of August 2022, further information was given to it about Miss W's position.

Having thought about what CONC says about the requirement to treat Miss W fairly and with forbearance I don't consider the extra interest to be fair or in any way helpful to Miss W – the extra charges have increased her overall indebtedness during a time of financial hardship. So, I think that Fernovo ought to have fairly stopped any new interest being added to the balance from 27 August 2022.

I'm intending to partly uphold Miss W's complaint about this element of it and I've outlined below what Fernovo needs to do in order to put things right for her.

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 both Fernovo and Miss W agreed with the provisional decision, I've reached the same conclusions I reached before, for the same reasons and I don't think Fernovo made an error when it granted the loan because it carried out proportionate checks which demonstrated Miss W would likely be able to afford the loan repayments.

However, for the reasons outlined in the provisional decision, I do think Fernovo ought to have done more once it became aware of the extent of Miss W's financial difficulties – which ought to have included stopping any further, interest fees and charges from being added to the account from 27 August 2022. So, I am upholding this element of Miss W's complaint.

I've outlined below, what Fernovo needs to do in order to put things right for Miss W.

Putting things right

As both parties accepted the findings of the provisional decision, I wasn't provided with any information about whether a default has or hasn't not been applied.

As part of putting things right, if a default has been added to Miss W's credit file then it should be removed. But Fernovo is entitled to record on the credit file the fact that Miss W missed payments in June and July 2022. However, from August 2022, it ought to record that a payment arrangement has been in place.

But, what Miss W does need to aware off, is that if she agrees a new plan and doesn't stick to it, it may not be unreasonable for Fernovo to take any action it deems necessary – which may or may not include re-reporting the default subject to relevant notification being provided. But to be clear, I am making no finding on whether any possible future default would be fair.

If a default hasn't yet been applied, then it shouldn't be recorded (at least at this time) and the adverse information updated to reflect the fact that payments were missed but then Miss W was on a payment plan.

In order to put things right Fernovo should do the following:

- Rework the outstanding balance on the loan account as if interest, fees and charges had been stopped from 27 August 2022.
- A new balance should then be re-calculated taking account of any payments Miss W has made.
- If an outstanding balance remains Fernovo and Miss W should try and come to a mutually agreeable repayment plan to repay what is owed.

Finally, I would remind Fernovo of its regulatory obligation to treat Miss W fairly and with forbearance.

My final decision

For the reasons I've explained, above and in the provisional decision, I'm upholding Miss W's complaint in part.

Quidie Limited trading as Fernovo should put things right for Miss W as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 23 February 2023.

Robert Walker
Ombudsman