

## The complaint

Mr L complains that FUND OURSELVES LIMITED (FOL) lent to him when he was not *'in the right frame of mind'* and that his illness means that it should not have been lent to him.

## What happened

Mr L has explained that he applied for a loan on-line on 31 December 2021. It was approved for £400 repayable in four instalments of £193.60 a month each starting 26 January 2022.

Mr L did not make any repayments and did not enter an arrangement to pay successfully and so the loan debt defaulted in June 2022.

Mr L complained to FOL in December 2022 and received the final response letter in that same month. It did not uphold his complaint. It said:

*'During the loan application process, we carried out sufficient checks to ensure you could repay the loan.'*

*However, with regard to mental health, the Financial Conduct Authority (FCA) which regulates the financial services industry has stated the following:*

*"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."*

Mr L referred his complaint to the Financial Ombudsman Service and one of our adjudicators looked at it. She did not think that FOL had done anything wrong and so did not uphold Mr L's complaint.

Our adjudicator approached it as an irresponsible lending complaint and did not uphold that part. And she considered the medical evidence Mr L has sent to us, but she did not think that FOL would have, or ought to have known, of this element of Mr L's personal life when he applied for the loan on-line. Our adjudicator expressed concern at Mr L's circumstances but it was not likely to alter the outcome.

Mr L disagreed. He thinks that the medical note from his doctor and his explanations about the way this loan approval, the collection payments and the default were done and has made him feel were enough for the complaint to be upheld.

At first Mr L wanted the loan to be set aside in some way. Now he appreciates that he needs to repay the debt and all he wants is the adverse information and default removed from his credit file. He has said he will take FOL to court if the late mark and the default records are

not removed from his personal credit file.

The unresolved complaint was passed to me to decide.

### **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.

FOL 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 loan 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 FOL 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. But that's not applicable here as Mr L took only one loan.

FOL 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. And Mr L's complaint is not purely

about irresponsible lending but I have addressed that for completeness. Mr L's complaint is that he acted 'out of character' and when he was 'not in his right mind' and so he wants the loan to be removed from his credit file records or for the adverse information to be removed from his credit file.

Records sent to us from FOL show that he did apply twice on 31 December 2021 at 7 am and 1 pm on 31 December 2021. In both applications he had given FOL a monthly income figure of £2,500 and that he worked for a company which he had named and he was a tenant.

Mr L inputted no other information which registered as £0 to show he had no outgoings or other debts or other credit commitments. Mr L must have given to FOL his home address and contact details as it knew he lived in certain city and was able to contact him later when Mr L was unable to make the payments.

FOL explained to us that

*'...when an applicant inputs zero for all financial commitments, there are minimum values we use, as zero is unrealistic, especially in this case where [Mr L] has stated that he is a tenant.'*

We asked them for details and it said that the minimum value applied to Mr L's application was £835 a month and that *'Our figures are worked out by our data scientist and are based on declared commitments of our customers from previous applications.'*

What happened after that appears to be that Mr L was not able to make the repayments. The account defaulted on 9 June 2022 and later was passed to a debt collector.

Mr L complained to FOL in December 2022 and received FOL's final response letter on 15 December 2022 in which it said

*'When you contacted us in April, June and July, we did inform you that we could set up a repayment plan to assist you. You said you would complete the income and expenditure form and also provide us with medical evidence. However, we did not receive these, and therefore no changes were made to your account.'*

I've seen email correspondence from FOL to Mr L dated 21 July 2022 which indicates that one planned arrangement was going to be £100 a month for 8 months from 21 August 2022. And another email of the same date in which it said:

*'If you need any help regarding your loan, you are going to have to send us any documents or doctor's prescriptions that you have regarding your mental health.'*

I have seen and read Mr L's complaint email to FOL on 14 December 2022 and it is at that point Mr L sent to FOL a letter from his doctor dated August 2022 (which I have seen and read).

*'I have attached my letter from my doctor explaining my condition, I would appreciate it if you could please remove the late marks on the default and if possible the debt'*

Overall, I have considered the loan application from an irresponsible lending perspective and although the information Mr L gave to FOL appears to have been thin, it was enough for it to carry out checks and utilise its own data analysis method to fill in the gaps and consider that Mr L was able to afford the loan. And as a new customer to FOL and for a relatively modest loan of £400 I'd not expect it to have done more. FOL was able to rely on the applicant's

details. Added to which Mr L has confirmed that he is content to repay the loan. And so, I do not consider affordability an issue here.

Mr L applied on-line and has expressed amazement in his complaint letter from December 2022 that the loan was approved so quickly. But that is the nature of the lending business FOL is involved in – quick and often high cost loans to applicants. The FCA regulates the lenders and we deal with complaints about them in a fair and impartial way.

It is not for the Financial Ombudsman Service to comment on or consider aspects of FOL's policies or procedures. I am being asked to consider whether the loan should have been approved. On the application process and for a first loan of £400 over a loan term of four months then I consider that the checks and procedures FOL did were proportionate.

I have carefully considered Mr L's very strong opinions and points surrounding his physical ailments and his doctor's explanation and opinion that he was not in the right frame of mind to apply for and obtain a loan on 31 December 2021.

For obvious privacy reasons I have not given any details in this decision. What I have done is consider what the FCA requires a regulated lender to do when an applicant presents with issues surrounding mental capacity. And FOL is correct to cite in its final response letter to Mr L and in its submissions to us the CONC provisions in chapter 2.10 which is the Mental Capacity Guidance. I am familiar with those regulations and I have reviewed them again within the context of Mr L's complaint.

Mr L says that he was not asked about his very specific health issues when he applied, so he says that his personal circumstances were not considered. Mr L says he was not in a fit mental state to be able to consider all the implications of the loans.

And reviewing the CONC Guidelines referred to by FOL, I do not consider that there was a breach. 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 having reviewed the sorts of flags and behavioural indicators the FCA has listed in CONC 2.10.8 then these were not going to be apparent when Mr L was making the on-line application on 31 December 2021.

And even if FOL 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.*'

So, on this element I find that FOL would not reasonably have known or been expected to have known that Mr L may need assistance before applying for on-line credit in the circumstances his doctor explained in his letter Mr L has provided. And I do not uphold this element of the complaint.

From my non-upholding of the complaint for both irresponsible lending and the part relating

to Mr L's health issues and the CONC 2.10 provisions then the logical extension is that the debt was due. It was unpaid and the outcome is that adverse markers were placed on Mr L's credit file.

The usual approach for the Financial Ombudsman Service is that where a complaint has not been upheld then there's no redress for the consumer and so that is the outcome here.

Having said that I note that in its final response letter to Mr L, FOL was content to reduce the debt owed to it by halving the interest due on the loan. And I endorse that approach and encourage FOL to honour that as it reiterated it to us in its email recently.

Mr L was advanced a loan of £400 and that – plus the reduced interest FOL has offered to accept from Mr L – needs to be repaid.

And I remind FOL to approach Mr L's situation and his debt in a positive manner and with sympathy especially as it does now know of his medical issues.

### **My final decision**

My final decision is that I do not uphold Mr L's complaint.

Rachael Williams  
**Ombudsman**