

The complaint

Mrs B complains that Novaloans Ltd, trading as cash4unow, lent to her when she could not afford it. And afterwards the Novaloans representatives were harassing her with a lot of telephone calls about the debt.

What happened

Mrs B was approved for two loans with Novaloans and the brief table summarises them.

Loan	Approved	Amount	Term and repayments	Repaid
1	29 May 2019	£150	£61.41 x 4 months	20 September 2019
2	25 September 2019	£500	£154.16 x 6 months	sold

Mrs B complained to Novaloans in February 2022 and received a final response letter (FRL) dated 22 March 2022 in which it said that it did not consider it had done anything wrong in relation to the funding of the loans. But it offered Mrs B £15 as a goodwill offer to close the complaint.

In relation to the allegation of being harassed, Novaloans pointed out in the same FRL that the debt has been with a third party for years and the calls were not from it. Novaloans also said:

‘Cash4unow is required by law to provide customers with certain post-contractual information about the status of their account when certain triggers are reached. These may include a Notice of Default Sums, a Notice of Sums in Arrears and an annual statement of account.

As we are required by law to send these documents you will continue to receive them whilst you meet the threshold conditions for each of these documents and whilst we investigate your complaint. You should not consider these documents as “threatening” or “harassing” and we will not accept any such claims as we are required to provide you with this information.’

Novaloans also said that:

‘We can confirm that due to persistent non-payment, your account was sent to a third-party debt collector...and the calls you are receiving are from them and not Cash4unow, therefore, we would suggest you contact them with regards to the calls you are receiving.’

Mrs B did not accept this as she said in 2022 that these calls were being made around that time – in 2022 – and that she was getting up to six a day. She also said that she was receiving them from both Novaloans and the third party debt collector.

And she considered the £15 offered in the FRL inadequate so she referred her complaint to the Financial Ombudsman Service in March 2022.

One of our adjudicators reviewed it as an irresponsible lending complaint and did not uphold it. The issues surrounding the allegation of excessive contact with Mrs B were not addressed.

So, Mrs B rejected that view and asked for the irresponsible lending to be reviewed and requested, again, that the 'harassment' and nuisance calls part of the complaint be investigated.

After it was referred to me I asked Novaloans for more information about the FRL and the contact notes between it and Mrs B. Having reviewed that evidence about both parts of the complaint, on 16 February 2023 I issued a provisional decision in which I did not uphold the irresponsible lending part of the complaint.

On the main part about which Mrs B was complaining I had asked for and had received a lot of information from Novaloans relating to emails and calls and account notes which I pieced together. It did not cover the whole lending relationship.

On 16 February 2023 I came to a provisional decision that what Novaloans had got wrong was it had failed to set up the repayment plan arrangement after a call on 31 January 2020. And so, I thought that was something it ought to compensate Mrs B for. I was planning to award Mrs B £250.

Both parties responded and that prompted my change of view.

The current position

I issued a second provisional decision on 28 March 2023 as I'd received additional evidence which demonstrated to me that the foundation for my deciding that Novaloans had done something wrong (set out in part of the first provisional decision) was not the case. And so my second provisional decision was that I did not plan to uphold Mrs B's complaint, either about the irresponsible lending – or about the other issues she had raised.

To keep this decision straightforward, I set out in sequence in the next section the introductory parts of this final decision, then the two provisional decisions (in smaller type), then Mrs B's reply to that second one followed by my final determination.

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.

What this decision does not cover

Mrs B is concerned about the level of contact from the third party and as Novaloans is the respondent I'm not going to be able to decide anything in relation to a business which is not a respondent to this complaint. So, Mrs B can complain to that third party but I'll only be looking at the activity log I've been sent between Mrs B and Novaloans.

Mrs B has said this in her complaint form addressed to us:

'...I do not know where I stand, the way they are behaving over such a small debt is appalling and I do not think I deserve to be treated like this, so I think this needed to be taken further which is why I have contacted you, companies such as these need to be investigated with their lending and aftercare service.'

I will not be reviewing any policies of Novaloans – that’s a matter for the regulator. I will consider the customer service, account management and compliance with any regulations relating to treating their customer fairly.

And now I know that Novaloans sold the debt to a third party – and therefore had no ownership of it. It has told me that was done in late December 2021 or early January 2022 but I have evidence which shows me the debt was assigned – which could mean legally sold – on 17 August 2021.

Whichever date it was – August 2021 or January 2022, then the upset Mrs B says she was experiencing from contact about the debt in 2022 cannot have been from Novaloans. It would likely have been about the Novaloans debt but as it no longer owned the debt then it had no grounds to chase her for it.

My first provisional decision dated 16 February 2023. Duplicated here.

Irresponsible lending

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.

Novaloans had to assess the lending to check if Mrs B 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. Novaloans checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mrs B’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 Novaloans should have done more to establish that any lending was sustainable for Mrs B. These factors include:

- Mrs B 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);
- Mrs B having a large number of loans and/or having these loans over a long period (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mrs B 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 Mrs B. There were only two loans here and so our adjudicator did not consider this applied.

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

Industry regulations say that payments are sustainable if they are made without undue difficulties and, 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 Mrs B’s complaint.

Mrs B was a new customer to Novaloans when she applied for loan 1 and it was for £150 which was a relatively modest sum. It was due to be repaid over four months. I consider that proportionate checks would mean that Novaloans was able to rely on the information she gave to it as part of her application. And I consider that Novaloans did that.

Mrs B told Novaloans that she was employed full time, paid every four weeks, and earned £1,350 'take home' pay. Mrs B told it she was married and was an 'owner/occupier'. Mrs B gave her outgoings as £495 and Novaloans added on a further £100 as what it described as a 'buffer'. She told it that she had another loan which was costing her £55 and this was included in the figures outlined earlier.

I can see from the repayment schedule that there were several issues when the payments failed to go through. Either it was 'insufficient funds' or the 'CPA limit was hit' which would have been a reference to the Continuous Payment Authority (CPA) she would have authorised as her method of payment.

So, for four relatively modest payments of £61 I consider that was an erratic repayment history. That may have a bearing in relation to loan 2, but for loan 1 I do not consider that there is evidence of irresponsible lending and I do not plan to uphold Mrs B's complaint about loan 1.

Mrs B applied for a larger loan of £500 a few days after repaying loan 1. It was scheduled to be repaid over six months. I've already covered the loan 1 repayment history which I think ought to have been relevant on this application for loan 2. So, I think it ought to have done more to check on Mrs B's ability to afford this loan. The monthly repayment was due to have been almost three times as much as the first loan repayments. Mrs B informed Novaloans of much the same information - £1,350 take home pay each four weeks, first payday due to be 18 October 2019 followed by 15 November 2019.

There was an account note dated 25 September 2019 to say that Novaloans needed to confirm how much Mrs B paid to her credit commitments to determine affordability. Followed by a note 'okay to fund'.

I have seen that the notes show Mrs B now had three times the amount of credit commitments to pay as it had been noted as £160 a month to pay in loans and home credit. But as her income figure less her household expenditure was still good then it would have looked as though the £500 loan was affordable to Mrs B. Novaloans had calculated that she had £715 'net DI' which means disposable income.

The same pattern of failed payments due to insufficient funds or reaching the CPA limit started almost immediately and one payment (late) on 22 October 2019 was taken. I think one more was made on 20 December 2019. Then the account notes I have seen show me that on 31 January 2020 a payment of £10 was taken over the phone during which it seemed that Mrs B informed Novaloans about her finances. And a payment arrangement was set up at £40 a month for three months.

The loan was passed to a third party debt collection agency around January 2020. The status of the account now is 'defaulted' but I do not have details as to when this occurred. Overall, I think that Novaloans had enough information to decide that loan 2 was affordable to Mrs B and I consider it carried out proportionate checks. So, I do not plan to uphold the complaint for loan 2.

Level of contact and allegations of harassment.

I have received and reviewed extensive account notes about the period after loan 2 was funded in September 2019 up to and beyond the date of the FRL in 2022.

One log is of the emails sent to Mrs B and received by Novaloans, and the other appears to be telephone calls and texts logged between the parties. So, I've had to piece together the chronology to obtain the full picture. It's too long to replicate here but I have chosen to pick

out the relevant entries in both logs.

Harassment is a criminal offence and not one that I am able to determine as criminal charges are prosecuted through the criminal courts. What I am interpreting Mrs B's complaint to mean is that she feels that Novaloans' contact was too much and unreasonable. There is a balance to be struck between a lender reasonably following up with its customer about missed and late payments and excessive contact such that the owner of the debt feels that this was too much to bear.

Using some of the Guidance in the FCA's specialist Sourcebook - CONC 7.3.2

'When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.'

And PRIN 2.1.1. *'A firm must pay due regard to the interests of its customers and treat them fairly.'*

And the older Office of Fair Trading Debt Collection Guidance (referenced in CONC 7) in paragraph 3.7

'Examples of unfair or improper practices are as follows: a.) contacting debtors at unreasonable times and/or at unreasonable intervals'

I have seen that emails and texts were sent to Mrs B before the instalment payments were due. I do not consider that unusual. It's reasonable for the lender to remind the debtor to ensure he or she has sufficient funds in their account before the CPA is activated.

Mrs B's first instalment was declined on 18 October 2019 and after one of the emails sent to Mrs B that morning to tell her this, she replied to say that she'd make the payment on the following Monday. And she did. Mrs B did receive an email and a text each day the loan repayment was overdue but I'd not consider that excessive.

The same things took place the following repayment date. The CPA failed and she received emails to which she replied to explain she had a temporary cash flow problem.

The December 2019 payment failed as well and so by late December 2019 Mrs B was two payments behind. There's a telephone note to say that she *'paid her scheduled account'* on 20 December 2019.

The 10 January 2020 payment failed as well and by 26 January 2020 Mrs B was three months behind and so Novaloans sent her details of FCA leaflets to assist her and encouraged her to contact them by phone. She did reply by email on 28 January 2020 saying that its contact was *'borderline harassment'* and that she could not pay her priority bills at that moment and her husband had left her.

A telephone log note dated 31 January 2020 states that Mrs B had called in, she paid a token sum of £10 (which I have seen logged on the Statement of Account schedule I've seen) and then an arrangement to pay was set up for £40 for three months. It's also got *'will set up on acquired'* which suggests that the agent who spoke to her was going to put all of that in place for her.

The next account note I have is July 2020 and in between late January 2020 and July 2020 the Covid 19 pandemic had taken hold and there had been several FCA directives to ensure that people with loans were treated correctly.

The Novaloans July 2020 email does appear to have arrived without warning and after many months of no contact at all. The 28 July 2020 note says – *'*no payment rcvd sent customer an email and amended stage of account back into arrears.*'*

I've seen that 29 July 2020 email which states it was going to refer her account to an external debt collection agency within 14 days.

As an existing customer with payment problems before the pandemic, any special FCA Covid Guidance issued may not have applied as Mrs B's debt did not fall into the category for specialist treatment. But even if Novaloans was contacting Mrs B in line with the normal FCA CONC chapter 7 regulations I consider this to have been heavy-handed. And it seems that the £40 a month arrangement was not set up, to the detriment of Mrs B.

Mrs B noted this and responded. She had commented on the fact that she'd heard nothing from the company for months and suddenly she was being chased for the debt. Mrs B explained that times were hard and she was having trouble finding the money to pay. Her partner had left her.

Novaloans wrote back on 30 July 2020 with a reasonable response which was

'We write to advise you that we are a professional organisation and we take a sympathetic approach to all genuine cases of financial hardship and we will treat you with forbearance.

In order for us to consider your reduced offer of payment please furnish us with up to date details of your income and expenditure which outlines the change to your circumstances.'

The next telephone log I have been sent by Novaloans shows a gap until January 2022 when it called her home line and it was a 'silent line' which I am unsure what that means.

Then the complaint emails from Mrs B arrived on 15 and 18 February 2022 explaining that she was having a difficult time financially and emotionally, she cannot talk on the phone and that six or seven calls a day from it were excessive. This was logged and the FRL I have referred to earlier in this decision would have been sent later that month on 22 March 2022.

In the meantime, the log also shows me correspondence between Novaloans and the third party debt collector on 3 March 2020. I have listed them in chronological order for them to be easier to read. They state:

*ADMIN - Email received from [third party]
Customer has advised that they are being contacted by cash4unow, they are complaining that this is harassment. please can you confirm if cash4unow should be dealing in this matter.*

*Agent Note
Advised [third party] to hold account until complaint has been dealt with -
COMPLAINTS PLEASE INFORM BW WHEN COMPLAINT IS COMPLETED*

The log continues to explain what happens in March 2022. Mrs B's debt had been sold to a different third party because the last time the original third party had received any money from Mrs B had been in May 2021 which had been for £15. I have no date for that debt sale.

Novaloans explained to Mrs B that it no longer owned the debt. It then addressed her allegation of excessive contact and listed all the contact by telephone in a table. It has come to me as a list which makes it hard to read. But Novaloans' explanation to Mrs B, and therefore to us in defence of this part of the complaint, is that it only ever called her up to two times a day. The list is in relation to the early part of the lending relationship in 2019 and 2020 and I have already covered these in in this provisional decision. So, it does not address any aspect of the contact part of this complaint after 2020.

Mrs B's responses to the March 2022 emails was to explain that she considered she'd been getting recent chase-up calls from Novaloans as well as the third party and so she rejected its explanations.

I have no evidence to indicate that Novaloans had been contacting Mrs B in 2022 over and above the third party collector. And Mrs B has not sent any evidence and that third party is not a respondent to this complaint. As I have said earlier it may be that Mrs B has to raise a complaint with that third party and obtain evidence from it.

Overall, I do not consider that these calls to remind Mrs B before the repayment instalment was due to be taken from her account to be excessive or unreasonable. And when she had missed a payment it's not unusual or, I consider, to have been excessive for it to call her to ask about payment. And Mrs B's responses to those contacts were always apologetic and gave explanations about the late payment. But this part of my provisional decision relates to the period September 2019 to January 2020.

What I do find to have been inappropriate is that

- Novaloans failed to set up the repayment amount of £40 a month on 31 January 2020 and that was pre-Covid and so I see no reason for that having not been done.
- It failed to contact her at all between 31 January 2020 and 29 July 2020 – during a very stressful period for all the nation not just Mrs B – and then emailed her to threaten an escalation in the debt collection activity within 14 days. I consider it to have been heavy handed and not in-line with any guidance about treating customers fairly.

I've seen Statements of Account in the logged contact notes (not as separate documents) and it seems that Mrs B did pay that third party around £15 a month for nine months. I have seen that in September 2020 the outstanding sum was £414.

Then more correspondence to Mrs B sending her the statement of account for the period to September 2021 showed that she owed it £279.10. It was met with an honest and polite reply from Mrs B on 22 September 2021 to say that she could not pay more and now the third party was threatening to take her to court. She explained that she owed other companies too, it was all Covid related and she referred to her ex-husband and so that relationship had broken down completely. She asked for understanding.

It looks like Novaloans replied but I have no details as to how that concluded.

The account is marked on the Novaloans log as '*defaulted*' and part of the reason for this provisional decision is that I need to know when the default occurred and why.

So, I think that if the £40 a month had been set up on 31 January 2020 Mrs B's situation may have been quite different. I think it's feasible that she would have paid off a lot more than she had done by the time she was receiving July 2020 emails to pass the account to a third party. So, all that stress could have been avoided.

I also think that not having the involvement of a third party may well have been avoided if the repayment plan had been set up when Novaloans said it was going to set it up and failed to do.

On current evidence I have no evidence that between 31 January 2020 and 29 July 2020 she would have been unable to pay it.

So, it's very feasible that the payment arrangement may well have been complied with and extended and therefore avoided any further escalation of the collection's activity.

I consider that was a significant error and I plan to make a provisional decision to ensure that things are put right for Mrs B.

How did the parties respond?

Mrs B's response

'I have reread the ombudsman reply and I still believe that I was unfairly harassed by them plus the third party.

As this all took place so long ago now I do not have my call logs etc, as following on from... moving home paperwork got lost, all I know is no one could tell me who to make the payments to and as my income was and still is stretched to say the least I wanted to make sure it was being applied to my debt correctly.

I think the award that the ombudsmen is fair as my debt would have been cleared by now of the arrangement had been set up and put in place, I appreciate a debt is a debt but my treatment was very heavy handed considering the amount, and referring it to a third party just added to it unnecessarily when an agreement and arrangement could have been made with them.'

Mrs B has not been able to send me any evidence of the issues about which she complains.

Novaloans' response

Novaloans expressed concern that the irresponsible lending part of the complaint had been addressed at all.

In a letter to Novaloans after issuing that first provisional decision I explained to it that I was aware Mrs B had not complained about irresponsible lending initially, but as our adjudicator had addressed it and as Novaloans had sent to us a standard Business File of documents to address an irresponsible lending complaint, when it was passed to me it made no sense to ignore that aspect.

Novaloans has not commented further on that part and so it seems it accepts why I included that.

Novaloans has sent me evidence to show that the repayment plan was set up in January 2020 and that after the first £10 payment then the first £40 payment all other payments failed. The account notes showing this have been sent to Mrs B with this provisional decision to show her the evidence.

It also explained to me that staff shortages were occurring at the time and so when the debt was passed to the arrears department then it issued a Notice of Default on 6 July 2020 - an extract of which is here:

'If you fail to pay us the total arrears referred to above of £398.11 by 20/07/2020 we will:

-Serve notice on you in writing demanding payment of the outstanding balance of £414.10

-Take court action, if necessary, in connection with the above.

If you cannot pay the arrears in full by 20/07/2020 you are urged to contact us on [telephone number given] to discuss your options.'

Novaloans said to us that Mrs B failed to contact them and so the Default was applied to the account on 20 July 2020.

Novaloans has told me that the account was passed to its third party collection agent on 17 August 2020. And that fits with records I've seen showing that from September 2020 Mrs B was paying £15 a week to that third party debt collection agent.

Novaloans has told me that the debt was sold to a third party, and therefore was not owned by Novaloans, in late December 2021 or early January 2022. But, I've also received details of an account note in which it says there was a Notice of Assignment 11 August 2021. So, I think it may have been sold to that third party earlier than Novaloans has told me it was.

And a debt sale of August 2021, just one year after the debt collector had been handed it in August 2020, fits. If Mrs B was still in arrears 12 months after that handover to the debt collector then it likely would have been sold at that point.

So, I think that Novaloans had no ownership of the loan from around August 2021.

In the circumstances I have had to issue a second provisional decision as the evidence has demonstrated to me that Novaloans did not fail to set up the payment arrangement on 31 January 2020 which was the basis of me awarding Mrs B some compensation. Now that I know this, in fairness to Novaloans, I cannot maintain that planned compensation award on that foundation.

And Mrs B was in receipt of the 6 July 2020 Notice of Default before the Default was applied in July 2020. And so, I am not able to consider that it was particularly heavy-handed, as I thought before, as it looks to me that Novaloans did what would have been expected of it. And it seems that Mrs B's debt was not owned by Novaloans from August 2021 or at the latest January 2022. And so, the upset she has explained to me likely was from another party and not Novaloans.

I am sorry to have to issue a second provisional decision but my role is to review all evidence and give a fair decision having considered it all.

So, my second provisional decision is that I do not uphold Mrs B's complaint.

How did the parties respond to the second provisional decision?

Novaloans accepted my second provisional decision.

Mrs B responded and was disappointed about the new provisional outcome.

She outlined her thoughts which are summarised here:

- Mrs B explained she was not able to send evidence to show the makers of the telephone calls or the dates and times they were received by her
- Mrs B maintains that both Novaloans and the company it had sold the debt to were contacting her at the same time to chase her for the debt and it was too much
- Mrs B says she was not advised that the debt had been sold on
- Mrs B says she was trying to make payment arrangements but neither could assist her as to which one she had to make the payments to
- Mrs B said: *'This debt would have been cleared by now if an agreement had been set up but I was not able to do so due to not knowing who owned this debt.'*

I've seen that 29 July 2020 email from Novaloans to Mrs B which stated it was going to refer her account to an external debt collection agency within 14 days. I said this in my first provisional decision. So, I do think Mrs B had been told what had happened to her debt at that time.

If Mrs B was aware that she was being contacted by both parties then she knew that the debt had been moved to a third party. As I said earlier in this decision, I am not able to respond to any complaint about a third party which is not a respondent to this complaint.

I have seen from records, and noted in the earlier decisions I have done on this complaint, that Mrs B was paying the third party debt collector from 30 September 2020 to 3 May 2021.

And so, the evidence demonstrates to me that Mrs B had successfully set up a payment arrangement and was fulfilling the objective to pay the loan down between September 2020 and May 2021. These dates were the period which *followed* the time I thought Novaloans

had failed to set up the £40 a month repayment plan on 31 January 2020. It's been shown to me that it had and the payments failed which precipitated the debt being moved on for the first time to the debt collector in or around August 2020 (after the 29 July 2020 email I referred to earlier and in my first provisional decision).

I am as sure as I can be from the records I have seen that the debt was sold and the ownership of the debt passed a year later – in or around August 2021 (or at the latest January 2022) – after which Novaloans would have had no control. Since August 2021 (or January 2022) the debt was no longer owned by Novaloans and so the concerns Mrs B has had appear to relate to another party's alleged actions.

Overall, I have decided that I do not uphold Mrs B's complaint.

My final decision

My final decision is that I do not uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 May 2023.

Rachael Williams
Ombudsman