

The complaint

Mr H complains that Novaloans Ltd trading as cash4unow (Novaloans) gave him a loan he couldn't afford to repay.

What happened

Mr H took one loan from Novaloans for £500 on 26 August 2019. Mr H was due to make three monthly repayments of £193.55 and one final payment of £193.34. Mr H repaid his loan in December 2019.

Following Mr H's complaint, Novaloans issued a final response letter. It detailed the checks that it carried out which included asking for income and expenditure details as well as carrying out a credit search. It was satisfied that based on these checks that Mr H could afford his repayments. So, it didn't uphold his complaint.

Unhappy with this response, Mr H referred his complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who upheld the complaint. He concluded Novaloans was given information from its credit search that ought to have prompted further checks. Had further checks been made it would've likely discovered Mr H had had some recent repayment problems with other payday lenders.

Mr H agreed with the proposed outcome.

Novaloans didn't agree because it says its decision to provide the loan was reasonable and in summary it said:

- Some of the information the adjudicator used to uphold the complaint wasn't available to it at the time.
- Mr H didn't provide an accurate picture of his expenditure when asked as part of the application. For example, he didn't disclose he had a Hire Purchase (HP) agreement.
- There were no indications from Novaloans' checks that Mr H had been subject to either reduced payments and / or payment plans for other loans.
- Mr H still had over £200 as a "*good buffer*" to cover unexpected costs.
- Novaloans doesn't consider two defaults in the year before the loan being approved to be excessive.
- Mr H repaid this loan earlier than planned.
- Novaloans' credit checks showed zero active short term loan accounts and Mr H hadn't been funded by any in the previous six months.

As no agreement has been reached, the case has been passed to me for a decision.

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'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 Mr H could afford to pay back the amount he'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 Mr H'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 Mr H. These factors include:

- Mr H 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);
- Mr H 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);
- Mr H 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 Mr H. The adjudicator didn't consider this applied to Mr H's case because there was only one loan.

Novaloans was required to establish whether Mr H could *sustainably* repay the loan – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr H was able to repay his 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 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 Mr H's complaint.

Novaloans has shown, that as part of the affordability assessment it asked Mr H for details of his income and expenditure. Mr H's income was declared as being £1,900 per month and he also declared his monthly outgoings were £908.99. This left more than sufficient disposable income for Novaloans loans to reasonably conclude that Mr H could afford his repayments of around £194 per month.

Before this loan was approved Novaloans also carried out a credit search and it has provided a summary of these results in the final response letter. I want to add that although Novaloans carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Novaloans couldn't do, is carry out a credit search and then not react to the information it received – if necessary.

Novaloans was also entitled to rely on the results it was given, and I've looked at the results to see whether there was anything contained within it that would've either prompted Novaloans to have carried out further checks or possibly have declined Mr H's application.

A summary of the information that Novaloans was provided is;

- Mr H having 15 active accounts of which two were opened in the previous six months.
- Mr H had one active short term loan account and in the month before this check was carried out, he made repayments to short term loan lenders of £112.
- Mr H had defaulted on two accounts within the previous year – but it didn't know the date of these defaults.
- Mr H owed other creditors over £32,000. But just over £27,000 of that was "*balances on loans*".

The results given to Novaloans indicated that Mr H, in the not too distance past, had problems repaying at least two creditors to the extent that these accounts were marked as in default. It was also on notice that in the months before the loan Mr H had been borrowing from other high-cost credit providers. Finally, Mr H owed a not insignificant sum to other creditors – with the majority of this owed on loan(s).

However, as part of his application – Mr H declared he had credit commitments of £290 per month. But I don't think that was realistic for Novaloans to have accepted this figure. Firstly, it was aware of Mr H's use of other short term loan providers and secondly, he had total debt of just over £32,000 and so Mr H's credit commitments were likely to be higher than £290.

Novaloans was also on notice that some of the information provided to it didn't quite match up. And as it is the one responsible for carrying out a proportionate check I do think, in the circumstance of this case, its checks needed to go further than just relying on what Mr H had told it as well as the credit check results. Given everything Novaloans had available to it at the time it should've carried out further checks, perhaps verifying what Mr H had told it or checking his credit commitments.

Novaloans could've gone about carrying out a proportionate check in a number of ways. It could've asked to see copy bank statements, copy of bills, asked for a full copy of his credit file or any other documentation it felt was reasonable to obtain to allow it to establish Mr H's true financial position.

A copy of Mr H's full credit file has been provided on a previous complaint and so it's entirely reasonable to consider this in order to determine what fuller checks may have shown Novaloans – had these been carried out. For ease, I've summarised the other information that I've found out from his credit file.

- Mr H had an outstanding HP agreement – paying £513 per month which was around a quarter of his declared income at the time, before any other credit commitments and living costs were considered.
- In the months shortly before this loan was approved two separate credit cards entered arrears. One had a payment status of "2" five months before this loan. The other, had a missed payment around the month before this loan was granted.
- One of the defaults Novaloans was aware of was recorded only four months before this loan was approved, for £1,470. This was a "*Finance House*" loan.
- A payday loan had been subject to a repayment plan in the months leading up to the loan being granted.

- Mr H repaid a loan in May 2019, but in the months before the loan was closed there were significant arrears.

Overall, I'm satisfied that a further, more detailed look into Mr H's circumstances would've showed he was having difficulties maintaining his contractual repayments that he already had. And knowing this, I don't think Novaloans would've believed that Mr H could've repaid this loan in a sustainable manner.

While I accept the above information wasn't available to Novaloans at the point of application, I do think it is likely it would've discovered some or all of what I've seen had it carried out what I consider to be a proportionate check. And as such, I'm therefore upholding Mr H's complaint about this loan and I've outlined below what it needs to do in order to put things right for him.

Putting things right

In deciding what redress Novaloans should fairly pay in this case I've thought about what might have happened had it not lent to Mr H, as I'm satisfied 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 H may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he 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 H in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr H would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Novaloans' liability in this case for what I'm satisfied it has done wrong and should put right.

Novaloans shouldn't have given Mr H his loan.

- A. Novaloans should add together the total of the repayments made by Mr H towards interest, fees and charges on this loan.
- B. Novaloans should calculate 8% simple interest* on the individual payments made by Mr H which were considered as part of "A", calculated from the date Mr H originally made the payments, to the date the complaint is settled.
- C. Novaloans should pay Mr H the total of "A" plus "B".
- D. Novaloans should remove any adverse information it has recorded on Mr H's credit file about the loan.

*HM Revenue & Customs requires Novaloans to deduct tax from this interest. It should give Mr H a certificate showing how much tax it has deducted, if he asks for one.

My final decision

So, for the reasons I've explained above, I'm upholding Mr H's complaint.

Novaloans Ltd trading as cash4unow should put things right for Mr H as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 April 2023.

Robert Walker
Ombudsman