DRN-3974382

The complaint

Mr M says Fair for You Enterprise CIC irresponsibly lent to him.

What happened

Mr M took out five credit agreements with Fair for You. A summary of his borrowing follows, accounts 1 to 4 were loans for specific goods from a named supplier and the funds were paid directly to the supplier. Account 5 was an open-ended shopping card.

account	taken out	value, £	term in weeks	weekly repayment, £
1	07/05/2017	199.99	104	2.71
2	11/12/2017	349.99	52	8.04
3	05/06/2018	139.99	30	5.19
4	22/08/2018	439.99	78	7.31
5	29/10/2020	350	n/a	8.45

Mr M says he was struggling financially at the time Fair for You lent to him. He was on benefits, looking after his disabled wife and just taking out credit to survive. Most of his other loans have ended up with debt collectors. This has detrimentally impacted his mental health. He wants all interest he paid refunding.

Our investigator upheld Mr M's complaint. She said there was evidence from the time of loan 1 that Mr M would struggle to repay the borrowing and his finances only deteriorated over the term of the lending relationship. So it was wrong for Fair for You to lend to Mr M.

Fair for You disagreed with this assessment. In summary, it said Mr M came to it with evidence of using high-cost lending and it gave him a loan for an essential item so he would not have to borrow from a more expensive lender. It lends to some of the most economically vulnerable in society. And during the lending relationship his overall indebtedness reduced and recent credit was well managed. It argues Mr M's finances would have been worse had he continued to use high-cost short-term credit, rather than its loans. It set out how much cheaper it was than Mr M's likely alternatives.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when Fair for You lent to Mr M required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So Fair for You had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr M. In other words, it wasn't enough for Fair for You to simply think about the likelihood of it getting its money back, it had to consider the impact of the repayments on Mr M.

Checks also had to be proportionate to the specific circumstances of each application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Fair for You did what it needed to before agreeing to lend to Mr M. So to reach my conclusion I have considered the following questions:

- did Fair for You complete reasonable and proportionate checks when assessing Mr M's applications to satisfy itself that he would be able to repay the credit in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did Fair for You make fair lending decisions?
- did Fair for You act unfairly or unreasonably in some other way?

I can see Fair for You asked for some information from Mr M before it approved the credit. It asked for his income (£1,159.60) and the purpose of each loan (1 and 3 were for strollers, 2 and 4 were for gaming systems). It also spoke to Mr M to confirm his income and that the repayments were affordable. It completed credit checks to understand his credit history and existing credit commitments. From these checks Fair for You conclude the loans were affordable for Mr M.

I'm not wholly persuaded these checks were proportionate given Mr M was on a relatively low income and his outgoings were not in any way reviewed. But I won't comment further on this as even based on the data it gathered, I don't think Fair for You made fair lending decisions. I'll explain why.

Loan 1

Whilst Fair for You decided the loan would be affordable on a pounds and pence basis and the data to an extent supported that, I can't see it thought about whether Mr M would be able to sustainably repay the debt – so without having to borrow to repay or suffering other adverse financial consequences. And it was obliged to do this.

The credit check showed Mr M was struggling financially, he was already in arrears on a home credit account, an expensive way of borrowing. And he had taken out that loan after falling behind on another loan. So despite missing payments Mr M continued to borrow – I think from this Fair for You ought to have concluded Mr M was under financial pressure and most likely in a cycle of borrowing to repay. Equally, this loan was not to repay any of his existing debt, rather it was for a specific item.

Fair for You argues that by lending to Mr M it prevented him from taking out more expensive credit elsewhere, but that does not change my finding that it ought not have extended Mr M's indebtedness given what the credit check showed. Fair for You had to consider if its lending was responsible, not to assume what might happen if it did not lend. Giving the loan in no way guaranteed that Mr M would not borrow again from high-cost lenders. Arguably it may have driven him to in order to be able to make his repayments. It was clear from Mr M's recent management of his accounts that he was struggling, and more debt would most likely only exacerbate this.

It follows I think Fair for You was wrong to give loan 1 to Mr M.

Loans 2-4 and the shopping card

I have reached the same conclusion about all subsequent lending decisions. There had been no change to Mr M's income. The credit checks show Mr M continued to struggle financially. In December 2017 he was still failing to make his contractual repayments on the same account that was in arrears at the time of loan 1. By December 2017 he had an arrangement to pay in place on a priority bill. And by October 2020 four accounts had defaulted and a CCJ had been registered against Mr M in 2018. This was for £1,127 and remained unsettled two years later. In addition Fair for You knew loans 2 and 4 were for non-essential items.

It also has supplied the report it checked showing Mr M's bank transactions from May to August 2018. These showed that Mr M's regular income did not cover his outgoings once gambling winnings and a one-off payment from a solicitor was stripped out. So I think this should have also flagged to Fair to You that there was a high risk Mr M would be unable to sustainably repay any borrowing then.

It follows I find Fair for You was wrong to give loans 2 to 4 and the shopping card to Mr M.

I have thought carefully about Fair for You's comments on its purpose and ethos. But this does not change its obligation to lend responsibly and for the reasons set out above I don't find that it did in these instances. Fair for You also flagged that when it spoke to Mr M he confirmed the repayments would be affordable, but this does not change its obligation to reach a fair and independent conclusion on the affordability.

I have not seen any evidence Fair for You acted unfairly or unreasonably towards Mr M in some other way.

Putting things right

It is reasonable Mr M repaid the capital he borrowed as he had the benefit of the items, bit he has paid interest and charges on credit that should not have been given to him.

So Fair for You should:

For loans 1-4

- Add up the total amount of money Mr M received as a result of having been given all the loans. The repayments Mr M made should be deducted from this amount.
- As this will result in Mr M having paid more than he received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).*
- Remove any negative information recorded on Mr M's credit file.

For the shopping card

- Refund all the interest and charges Mr M has paid to date.
- As this will create a positive balance, it should be returned to Mr M and 8% simple interest* should be added to the surplus.
- Remove any adverse information from Mr M's credit file.

*HM Revenue & Customs requires Fair for You to deduct tax from any award of interest. It must give Mr M a certificate showing how much tax has been taken off if he asks for one.

My final decision

I am upholding Mr M's complaint. Fair for You Enterprise CIC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 April 2023.

Rebecca Connelley
Ombudsman