DRN-4083788

The complaint

Ms R complains FUND OURSELVES LIMITED trading as Fund Ourselves gave her loans which she couldn't afford to repay.

What happened

Ms R was advanced two loans by Fund Ourselves and below is a table of her borrowing.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment
1	£400.00	27/01/2022	15/03/2022	4	£186.40
2	£400.00	24/03/2022	outstanding	4	£190.40

Fund Ourselves wrote to Ms R to explain why it wasn't going to uphold the complaint because it had carried out proportionate affordability checks before the loans were granted.

Unhappy with this response, Ms R referred the complaint to the Financial Ombudsman. The case was then considered by an adjudicator, and she didn't think Ms R's complaint should be upheld because in her view, Fund Ourselves carried out proportionate checks which showed these loans were affordable.

Ms R didn't agree with the adjudicator's assessment and asked for the case to be reconsidered. As no agreement could be reached the case was passed to me to decide.

I then issued a provisional decision explaining the reasons why I was intending to uphold Ms R's complaint about loan 2 only. Both parties where then given a further opportunity to provide anything further for consideration – but this needed to be received by 18 April 2023.

Neither Ms R nor Fund Ourselves acknowledged or responded to the provisional decision.

A copy of my provisional findings follows this in smaller text 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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

Fund Ourselves had to assess the lending to check if Ms R could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Fund Ourselves' checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Ms R'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 Fund Ourselves should have done more to establish that any lending was sustainable for Ms R. These factors include:

- *Ms R 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);*
- *Ms R 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);*
- *Ms R 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 Ms R. As there were only two loans the adjudicator didn't think this applied to Ms R's complaint.

Fund Ourselves was required to establish whether Ms R could sustainably repay the loans – 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 Ms R was able to repay her loans 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 Ms R's complaint.

For these loans, as part of her application, Ms R declared a monthly income of £2,956 for loan 1 and £3,020 for loan 2. It was reasonable, given this was the start of the lending relationship for Fund Ourselves to have relied on the income information Ms R had provided without the need to verify it.

Ms R was also asked to declare her outgoings across a number of different variables, such as travel, rent, utilities, food and commitments. For loan 1, Ms R declared her monthly outgoings to be £1,930 and £2,260 for loan 2. The increase, in costs at loan 2, related to having larger payments under "Dependant" commitments and slightly larger credit commitment costs.

Fund Ourselves believed, based on the information Ms R provided she had at least £760 per month in disposable income to afford her largest repayment of £190.40. Therefore, it would've been reasonable for Fund Ourselves to believe these loans to be affordable for Ms R.

Before these loans were approved Fund Ourselves also carried out a credit search and it has provided the Financial Ombudsman with the results it received from the credit reference agency. I want to add that although Fund Ourselves carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard.

Fund Ourselves was also entitled to rely on the information it was given by the credit reference agency. So, I've looked at the results to see whether there was anything contained within it that would've either prompted Fund Ourselves to have carried out further checks or possibly have declined Ms R's application(s).

For loan one, Fund Ourselves knew that Ms R wasn't insolvent, and had no County Court

Judgements (CCJ). It also knew that Ms R hadn't any defaults recorded on her credit file within the three years preceding the loan application.

However, there were some concerning information, Fund Ourselves knew that Ms R had opened 5 new credit accounts within the last 6 months – which is close to on average of one new account per month.

It also knew that Ms R owed other creditors (excluding her mortgage) just over £35,000 which is not an insignificant sum. But the servicing of this amount appears to have been factored into Fund Ourselves checks because it had already seen that Ms R declared over £1,000 per month on existing credit commitments.

Given this was the first loan application, for a fairly modest sum, and the checks carried out were proportionate, I do think Fund Ourselves made a reasonable decision to provide this loan. So, I am intending to not uphold Ms R's complaint about loan 1.

However, I do think by loan 2 Fund Ourselves needed to do more. I've already commented on the income and expenditure information which suggested the loan was affordable. And like loan 1 a credit search was also carried out – which showed the same information about her solvency and CCJs.

But it knew this time, that Ms R now had 27 active credit facilities (which is an increase of 2 on loan 1). And since loan 1, Ms R had settled two further credit accounts. However, Ms R had also opened 8 new accounts in the previous 6 months. Which to me, suggests that Ms R was repaying credit and then applying for and being granted new lines of credit. Given the frequency of when this credit was being granted (more than one new account per month) it is likely, that Ms R was seeking new funds from high-cost credit providers. This is also reflected in Ms R's overall indebtedness, which had increased by more than £1,000 compared to loan 1.

Fund Ourselves was aware Ms R had declared that she needed £1,300 per month to service the outstanding debt – compared to her declared income of £3,020. So, Fund Ourselves was already on notice that more than a third of her declared income was already committed to going on her current credit commitments. In some situations, that alone maybe enough to say the complaint ought to be upheld.

However, the amount of total credit and Ms R's apparent need to continue to seek and open new credit ought to have led Fund Ourselves to gain a full understanding of Ms R's actual financial position to ensure the loan was affordable and sustainable.

This could've been done in several ways, such as asking for evidence of her outgoings, looking at bank statements and/or collecting any other documentation it felt it needed to obtain to have satisfied itself the loan was affordable for Ms R. This might've helped verify information provided and revealed whether there was any other information that Fund Ourselves might've needed to consider about Ms R's financial position.

However, that isn't the end of the matter. For me to be able to uphold this loan, I have to be satisfied that had Fund Ourselves carried out what I consider to be a proportionate check it would've likely discovered that Ms R couldn't afford it or Fund Ourselves was given evidence that indicated the loans were unsustainable in some other way.

Ms R has provided her bank statements from the month before loan 2 was approved – and given the statement production date it would've been the one available to Fund Ourselves if it had taken it upon itself to carry out better checks.

To begin with there are signs that Ms R was having financial difficulties – there are five separate direct debits that are returned as unpaid – due to insufficient funds. And the guidance issued by the industry regulator says that missed direct debit payments can be a sign of someone experiencing financial difficulties (Consumer Credit Sourcebook 1.3).

In addition, in February 2022, Ms R paid six high-cost creditors around £1,274. This is a significant amount to have spent solely to such creditors. And on top of this I can see what appears to be minimum payments towards at least 9 credit cards, 2 buy now pay later suppliers and a home shopping payment.

In my view, had Fund Ourselves carried out further checks it would've likely discovered Ms R couldn't repay loan 2 sustainably. The credit checks indicated that Ms R was seeking new credit shortly after repaying other accounts, had what I consider to be a large number of high-cost credit loans to which she was already spending a third of her income on. In addition, Ms R was regularly not able to meet other repayments due to direct debits being returned unpaid due to insufficient funds. In my view, it was likely that Ms R would have had problems repaying this loan given her overall financial situation.

Therefore, I am intending to uphold Ms R's complaint about loan 2 only.

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.

I've reached the same conclusions as I did in the provisional decision. I still don't think Fund Ourselves carried out proportionate checks before loan 2 was advanced given the information it was received in the credit check it carried out. Had Fund Ourselves carried out more in-depth checks, it would've likely discovered Ms R couldn't afford the repayments she was committed to make.

I've outlined below what Fund Ourselves needs to do in order to put things right.

Putting things right

In deciding what redress Fund Ourselves should fairly pay in this case I've thought about what might have happened had it not lent loan 2 to Ms R, 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 Ms R may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they 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 now accurately reconstruct. 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 Ms R 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 Ms R would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Fund Ourselves' liability in this case for what I'm satisfied it has done wrong and should put right.

Fund Ourselves shouldn't have given Ms R loan 2 and based on the statement of account an outstanding balance remains due. So, if Fund Ourselves has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Fund Ourselves isn't able to buy the debt back then it should liaise with the new debt owner to achieve the results outlined below.

A. Fund Ourselves should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Ms R as though they had been repayments of the principal on all outstanding loans. If this results in Ms R having made overpayments then Fund Ourselves should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
B. However, if there is still an outstanding balance then Fund Ourselves should try to agree an affordable repayment plan with Ms R. Fund Ourselves shouldn't pursue outstanding balances made up of principal it has already written-off.
C. Fund Ourselves should remove any adverse information recorded on Ms R's credit file in relation to loan 2.

*HM Revenue & Customs requires Fund Ourselves to deduct tax from this interest. It should give Ms R a certificate showing how much tax it has deducted, if she asks for one.

My final decision

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

FUND OURSELVES LIMITED should put things right for Ms R as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 18 May 2023.

Robert Walker
Ombudsman