

## **The complaint**

Mr D says he was mis-sold a loan from My Finance Club Limited because the term of the loan wasn't what he expected.

Mr D is also unhappy with the way he was treated after he informed My Finance Club about his disability and the news of a family member's declining health.

## **What happened**

Mr D was given one loan from My Finance Club, which was applied for through a credit broker. Mr D was advanced £340 on 16 August 2022 and was due to make one payment of £433.46 on 23 September 2022.

As of January 2023, My Finance Club has confirmed Mr D hasn't made any repayments and now owes a total of £680.

On 13 September 2022, Mr D contacted My Finance Club because he had realised, he was due to repay the loan with one repayment. This is different to what he says was agreed with the broker. Mr D also says during this contact he told My Finance Club that a family member had been diagnosed with a terminal illness and Mr D told them about his own disability. He says he was then treated unfairly.

Mr D says at this time he was told that there was nothing My Finance Club could do for him apart offering a repayment plan that would cost him more and would lead to adverse information on his credit file. Mr D also says My Finance Club failed to make reasonable adjustments or factored in the news he received about the family member.

My Finance Club issued a final response letter which outlined the timeline of events. It also said it wouldn't uphold the complaint. Mr D didn't agree with the outcome and referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator, and he didn't uphold it. He concluded the broker may have made an error, but he thought the information My Finance Club provided to Mr D made it clear what the loan term was.

Mr D didn't agree with the adjudicator's assessment. Mr D made a number of points, some about the service he had received from the Financial Ombudsman Service – these have already been looked at as part of a complaint – so I won't be revisiting those. However, Mr D did say:

- No reference in the assessment was made to the way that he was treated after he told My Finance Club about his circumstances.
- Mr D is a vulnerable consumer, and My Finance Club hasn't assisted him.

The adjudicator, then sent a second assessment to Mr D, this time dealing with what happened after Mr D had told My Finance Club about his situation. At this point, the

adjudicator explained that there were two calls on the day Mr D raised this complaint but only the first call could be provided by My Finance Club.

The adjudicator thought it was reasonable on the first phone call that after finding out about Mr D's family member's health My Finance Club offered a repayment plan. He was also satisfied My Finance Club adjusted its complaint process after being told of Mr D's disability. The adjudicator also heard on the call that My Finance Club would freeze contact with Mr D for 30 days after the complaint was lodged. Finally, the adjudicator thought it was fair that adverse information was reported to the credit reference agencies because this accurately reflected the conduct of the account.

My Finance Club responded and wanted the ombudsman to be aware of the following points;

- Mr D had to opt into the application.
- Mr D had to confirm he agreed to the loan term and the income and expenditure information he provided was accurate.
- Mr D had to confirm he had read all the information and had understood it.

As no agreement was reached, the case was passed to me for a decision. I then issued the first provisional decision which explained the reasons why I was intending to uphold Mr D's complaint in part. Both parties were then given an opportunity to provide any further comments or evidence for my consideration.

My Finance Club says it was prepared to accept the findings as outlined in the first provisional decision. However, it pointed out that so far Mr D hasn't come to any arrangement with it to repay the loan. My Finance Club has also said that it is prepared to pay the £100 compensation but to assist Mr D reduce what he owes, My Finance Club asked whether it could use the compensation amount to decrease Mr D's outstanding balance.

Mr D responded, to say that he wanted to understand why the award of £100 is fair given what the guidance says on our website about payments for distress and inconvenience. Mr D explained, given the impact on him the award ought to have been higher. Mr D provided some further information about what the impact was on him as a result of the calls from My Finance Club.

Having thought about what Mr D provided I decided to issue a second provisional decision to reconsider the award of compensation that My Finance Club ought to pay and I explained in that second provisional decision the reasons why I had planned to increase the award to Mr D to £300.

I gave both parties time to respond to the second provisional, but responses needed to have been received no later than 19 May 2023.

Mr D emailed to let us know that he had no further comments and nothing further to provide.

My Finance Club responded and I've summarised its response below:

- It is concerned that Mr D won't repay the money that he borrowed and therefore it has requested to use the proposed redress payment of £300 to reduce the amount outstanding.

- It further wishes to use the £300 to reduce the balance because the account is now nine months in arrears and no attempt – as far as My Finance Club is concerned has been made to repay the debt.
- By using the redress to offset the balance that would help reduce the amount Mr D will need to pay My Finance Club and will assist him with any repayment plan he may require. If My Finance Club was able to offset the balance it would leave only £143.36 left to pay.
- This may improve Mr D's position in the short term because it would enable this balance to be cleared more quickly.
- My Finance Club confirmed the default hasn't been formally registered with the credit reference agencies due to the ongoing complaint. But My Finance Club has asked for guidance about what may happen if Mr D doesn't engage with it moving forward in terms of collection processes and activities. But the account is showing in arrears with the credit reference agencies.

A copy of findings that were reached in the second provisional findings follows in smaller font and forms part of this final decision.

### **What I said in my second provisional decision:**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I have split this decision into two parts. The first part will deal with what happened when the loan was granted. But to be clear, this decision does not deal with whether the loan was affordable because that wasn't Mr D's complaint.*

*The second part will deal with what happened after Mr D raised his complaint and the help and support (if any) that was offered to him.*

#### **Approval of the loan**

*Mr D has provided details of his health problems and the treatment that he has sought for it. I hope Mr D is in a better space now and things have improved for him.*

*Mr D applied for a loan through a credit broker. I want to be clear, that I can't consider anything, in this decision about the actions (or inactions) of the credit broker. I can only consider what My Finance Club did as part of the loan application.*

*I've considered what Mr D says happened, especially around the text message he received to complete the application. I've also considered what My Finance Club sent including the process that would've been undertaken by Mr D to be granted the loan.*

*I've thought about all of these things, and having done so, I don't think, in this case, My Finance Club made an error when Mr D was approved for the loan, and I've explained why below.*

*My Finance Club has explained the process Mr D would've gone through in order to be approved for the loan. As part of that process, it has provided screen shots and a walk-through guide for the steps that Mr D would've gone through. I've highlighted the key steps below – to be clear I've not included all the steps as some are not relevant to my consideration of the complaint.*

- 1. An email and a text message was sent to Mr D because the application hadn't been fully completed. I've seen a copy of an email sent to Mr D that explained he had been approved for a £340 loan and he had to click on a link to proceed. I do accept that this email doesn't outline the proposed repayment term.*
- 2. Mr D would've been directed to a page for him to verify his card details for,*

*amongst other things, the continuous payment authority to be set up.*

*3. Mr D then would've been directed to a new page, which My Finance Club says would've showed the loan amount and loan term – which would've appeared in an orange box with the term displayed as the number of days. To progress the application Mr D would've needed to have clicked a box that says "confirm"*

*4. Mr D would've needed to have ticked a box a number of boxes and then click "confirm" after being provided with a number of documents including the credit agreement.*

*5. Under separate email cover, Mr D received the credit agreement, pre-contract information and the adequate explanation document. My Finance Club has shown these documents were opened at 01:44 am and so were likely received by Mr D.*

*I accept that Mr D was clearly shocked to discover that the loan was due to be repaid at the end of September 2022, when he believed the loan was to be repaid over a three- or four-month period.*

*However, having looked through the walk-through guide and considered the information My Finance Club provided Mr D as part of his application, I'm satisfied that it gave Mr D enough information for him to have made an informed choice about the loan which included the term. I say that because he was given this information a number of times through the application process. And having received the information, Mr D still chose to proceed with it.*

*I just want to add that as part of his complaint to the Financial Ombudsman Service, Mr D has provided some detail of his mental health problems and the treatment sought as well as the adjustments he says need to be made – which is that information should be provided in a straightforward and simple manner. My Finance Club didn't know of this until he raised his complaint, so I can't fairly say that My Finance Club ought to have amended or adjusted the loan application process because it was unaware of Mr D's disability at the time the loan was applied for.*

*I therefore do not uphold Mr D's complaint about the loan application.*

### **Raising the complaint**

*There is however, a second element of the complaint. Which is what happened as part of the complaint process and what if anything My Finance Club did after it was made aware of Mr D's disability. This element of the complaint is linked to the first part of the complaint and was raised by Mr D when he submitted his complaint form to the Finance Ombudsman Service.*

*Both parties accept that on the day the complaint was raised there were two phone calls. Mr D has said that the two phone calls were contradictory in nature. Mr D says he was given "2 different outcomes on 2 different calls". He also says that My Finance Club hasn't made reasonable adjustments, the agent was rude, and he has discriminated against him.*

*What I do know, is on the date Mr D made his complaint - 13 September 2022 - there were two phone calls between himself and My Finance Club and following the second call an email was sent by My Finance Club – the final response to his case. It has provided a recording of the first phone call as well as a copy of the email – which was the final response letter which it says was sent shortly after the second phone call had taken place.*

*However, My Finance Club says the second call can't be provided due to it being corrupted. I accept that this will be disappointing to Mr D, but ultimately, we work on a good faith basis, so if a consumer or a lender / business says information can't be provided, then we do have to accept that. So, I don't know what was discussed on this call. But the follow-up email which I must assume reflects the content of the phone call, does not provide contradictory information.*

### **First telephone call**

*This call is the first time that My Finance Club were told about Mr D's disability and so from this point in time it had to consider how best to deal with Mr D and how to make any reasonable adjustments.*

*A copy of this telephone call has been provided and I've listened to it. In summary Mr D does explain his disability to My Finance Club and initially Mr D makes it clear it would help if the complaint could be taken from the phone call rather than him having to visit the My Finance Club's website. The agent then agrees to listen to the call recording later in order to set the complaint up for Mr D. I consider, at this point My Finance Club acted reasonably.*

*My Finance Club's agent also explains why Mr D owes what is due and after being told about his financial difficulties offers Mr D a repayment plan. I also accept this was the correct course of action to take, considering what My Finance Club knew at the time. However, Mr D didn't seem to be happy that adverse credit file information would be recorded on his credit file and secondly, if he needed a repayment plan, he would be charged extra interest.*

*I come to the extra interest below, but it was right of My Finance Club to explain that a repayment plan would be recorded on Mr D's credit file. After all, unless a loan (or any other type of credit) is repaid in line with the credit agreement then adverse information will be recorded. This is a well-established approach, and it complies with the guidance by the Information Commissioner's Office.*

*My Finance Club has also explained that following this phone call it updated its system to reflect the fact that Mr D was a vulnerable consumer and again this was the right course of action to take.*

*Mr D was said he was given two different outcomes. Both the call and the final response letter say broadly similar things. In as much as the balance was due to be paid on the due date but some further steps were taken in the email. For example, My Finance Club cancelled Mr D's payment method. It also reinforced that Mr D would incur extra interest and have information recorded on his credit file.*

### **Help and support**

*As I've said above, I don't think it was unfair for My Finance Club to offer Mr D a repayment plan. After all Mr D, was expecting to make payments over a three or four month period. However, it does seem, now his situation had changed due to recent news about a family member – based on what Mr D said in the call this was going to put significant strain on his finances, and he explained this to My Finance Club.*

*On the first call, My Finance Club offered to freeze contact for 30 days, which again, I think was fair and reasonable in the circumstances especially in light of what it was told about Mr D's family member.*

*As I've said the offer of a repayment plan was a fair course of action. But My Finance Club also explained that interest would still accrue on the balance – I've checked, and this is in line with the terms and condition of the loan as outlined in the credit agreement. So, I agree with My Finance Club that in principle it could add further interest.*

*But in this case, I don't think it was fair or the right thing to do. The relevant guidance – which can be found in the Consumer Credit Source book (CONC) - says in that Mr D needed to be treated fairly (CONC 7.3.2).*

*My Finance Club knew that Mr D needed adjustments and initially it made these, but it also knew he was going to have financial difficulties. CONC 7.3.5 outlines some of the steps My Financed Club needed to take account of what CONC says in relation to the help and support:*

- (1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties*

*and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);*

*In this case, given what My Finance Club knew about Mr D, I do think My Finance Club ought to have capped the interest that Mr D was due to pay at the amount outlined the credit agreement. So, My Finance Club shouldn't collect more than £443.36. I say this because Mr D contacted My Finance Club around the repayment date, and so the above amount was already in effect due.*

*However, what I don't think is fair, is that knowing about Mr D's situation that My Finance Club should then carry-on charging extra interest, fees and charges. It knew and accepted Mr D is a vulnerable customer and was also having financial difficulties. It would've been fairer and of greater assistance to Mr D to have stopped the charges at this point in time. Instead, Mr D now owes My Finance Club £680 – which is the maximum amount he can owe under the cost cap.*

*Just briefly, the cost cap was put in place by the Financial Conduct Authority to limit the amount a consumer can owe to a high-cost short term loan provider – such as My Finance Club. This was introduced in 2015 and means that a lender cannot charge more than 100% of the loan in interest fees and charges. For example, on a £100 loan, the most that can be repaid by a consumer is £200.*

*I am therefore intending to partly uphold the complaint and ask My Finance Club to reduce the amount Mr D currently owes it.*

*In addition, on the telephone call I have been given the agent explained that contact would be frozen for 30 days to allow the complaint to be investigated. However, looking at the contact notes provided by My Finance Club this doesn't appear to have happened. I can see pretty much every day from when the complaint was raised in September 2022 to January 2023 Mr D received some sort of communication either an email or text which provided an update on the loan and or requesting him to speak to My Finance Club to repay what was owed. Even though My Finance Club knew that Mr D was in financial difficulties and was vulnerable – because it had marked its internal systems to reflect this.*

*Given Mr D was vulnerable, it is clear the communication that carried on when My Finance Club said it wouldn't contact him had a detrimental impact on him. He sent the Finance Ombudsman several emails and had a number of telephone calls where he outlined the impact of the continued contact and the effect this had been having on his mental health.*

*Mr D recently explained what while My Finance Club was aware of what has happening – in terms of a recent family member's terminal diagnoses he also provided further information about the care and support that he provides to another family member as well as the treatment he received earlier on in 2022 as a result of his mental health. I don't go into too much detail about this here to respect Mr D's privacy.*

*Clearly, Mr D was in a vulnerable position at the time due to a number of external factors but My Finance Club was partly aware of these and so Mr D having to deal with the calls and messages received from My Finance Club compounded what as already an extremely stressful and distressing period of time for him.*

*I'm therefore satisfied My Financial Club has caused Mr D additional distress and inconvenience by contacting him during a time that was already stressful for Mr D, and I don't think the pervious suggested award of £100 was reflective of that – given what Mr D has recently provided and explained about his health. So, I am planning instead to increase the suggested award to £300.*

*I've also had to consider, that ultimately, My Finance Club only agreed to hold contact for 30 days, which while was the correct course of action to take, it wouldn't have been unreasonable for it to then to start to make enquires with Mr D about paying down what was owed. I accept that there was a dispute about the total amount owing, but there is no dispute*

*that Mr D would owe My Finance Club something.*

*I accept Mr D may also be disappointed by this outcome, as the complaint hasn't been fully upheld. But, given the conclusions I've reached about how he came to have the loan I don't think it's fair for My Finance Club to make this loan interest free, because he accepted he applied for the loan and was expecting it to be repaid over three or four months. Therefore he was expecting to make some monthly repayments and be charged some interest.*

### **Offsetting the compensation payment**

*I understand why My Finance Club would like to use the proposed redress to offset what it is owed. However, this payment was recommended because of the action of My Finance Club in its dealings with Mr D. Generally, I don't think in those situations it is fair to use the compensation for distress to be used to offset the balance. Of course, Mr D may choose to use the refund to offset the balance – which he is of course free to do.*

*I also accept that no payments have been made to date, and there is still going to be a balance outstanding that Mr D will need to repay. So, Mr D may wish to contact My Finance Club to discuss a way forward once this complaint has been settled.*

### **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.

Mr D didn't have anything further to add whereas My Finance Club's main concerns are around the redress payment as well as what happens moving forward. So, it does seem to me that it does agree with the proposed redress in as much as it will cap the amount Mr D owes it as well as pay compensation.

But what My Finance Club has asked, is given that Mr D hasn't made any repayments to date (or come to a mutually agreeable repayment plan) that it should be able to use the compensation payment to offset the balance Mr D currently has.

I do understand why my Finance Club wishes to use it to offset – especially as that amount would clear the majority of Mr D's debt and only leave a small sum outstanding to pay. However, I do have to consider, that the payment for distress and inconvenience is due to the fact that something went wrong with the communication between Mr D and My Finance Club.

And having thought about this, and our usual approach to how compensation is paid, I am still concluding that the payment should be made directly to Mr D. However, should Mr D wish to use it offset his balance that this is something he can do – and something he may wish to carefully consider.

I accept My Finance Club has some concerns about Mr D's willingness to engage with it to repay what is owed – and it is concerned that it may not recover the money. However, I can only say that this decision explains that no error was made when the loan was approved, and My Finance Club can collect from Mr D the amount as outlined in the credit agreement. And both parties should work together to agree a mutually agreeable repayment plan – if this is something that Mr D requires.

I thank My Finance Club for confirming that the default hasn't yet been reported to the credit file – although arrears are showing. So as part of putting things right, that also will also need to be reported. Moving forward, My Finance Club should report an accurate reflection of the conduct of the account.

I appreciate it wants guidance as to whether a new default notice can be issued – or a default applied at a later date. But that is really outside of the scope of this decision, because I can't say what will or will not happen in the future.

So, I've reached the same conclusions I reached before, for the same reasons and I've outlined below what My Finance Club needs to do in order to put things right.

### **Putting things right**

My Finance Club has confirmed that while the default notice was issued it hasn't been registered with the credit reference agencies. So, there will be no default notice to remove. But it will need to remove other adverse credit file information it has reported.

But, what Mr D does need to be aware of, is that if that as he hasn't repaid the loan and may well need a repayment plan to clear what is owed. I don't think it would be unreasonable, moving forward for My Finance Club to record how Mr D accurately repays the loan. For example, should a repayment plan be needed, it is likely to be fair and reasonable that this is recorded with the credit reference agencies. But to be clear, I am making no finding on whether any possible future adverse information will be fairly recorded.

In order to put things right My Finance Club should in addition to what it has already agreed to do in response to the first provisional decision:

- Collect no more from Mr D than was outlined in the credit agreement for the loan- £443.36.
- Try and come to a mutually agreeable repayment plan to repay what is owed. But I'd remind My Finance Club of its regulatory obligation to treat Mr D fairly and with forbearance. It will also need to consider whether it will need to make any reasonable adjustments to its communication in order to assist Mr D.
- Amend Mr D's credit file to remove adverse credit file information it has recorded. My Finance Club should ensure that any new information recorded is an accurate reflection of how the account is repaid.
- Pay Mr D directly £300 compensation for the distress and inconvenience caused.

### **My final decision**

For the reasons I've explained above and in the provisional decisions, I'm upholding Mr D's complaint in part.

My Finance Club Limited should put things right for Mr D as set out above.

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

Robert Walker  
**Ombudsman**