DRN-4171508

The complaint

Mr G says East End Fair Finance Limited, trading as Fair Finance, irresponsibly lent to him.

What happened

Fair Finance approved two loans for Mr G. The first was in November 2019 for £500 to be repaid over 14 months at £58 a month. The second was in July 2021 for £220 to be repaid over seven months at £40 a month.

Mr G says he should never have been given the loans. He was stuck in a payday loan cycle, borrowing more to repay existing debt. Fair Finance said that it asked Mr G about his income and expenses when he applied for each loan, and it checked his credit file. It found he had enough disposable income to afford both loans.

Our investigator upheld the complaint in part. She said Fair Finance's checks were proportionate and she found it was fair to have given loan 1. However at the time of loan 2 she felt the checks showed it was clear Mr G was in a cycle of borrowing and so Fair Finance should not have further extended Mr G's indebtedness.

Mr G didn't agree with this assessment and asked for an ombudsman's review. He said, in summary, better checks would have showed he could not afford loan 1 either. He was spending almost half of his income at the time on payday loan repayments, and most of the money he borrowed was being spent on gambling. He was struggling financially.

Fair Finance did not respond to the investigator's assessment.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 2 June 2023.

Extract from my provisional decision

Fair Finance said that when Mr G applied for his loans it asked him about his income and non-discretionary expenses. It confirmed his income by checking his bank statements, and a pay slip for loan 1. It checked his credit file to understand his existing credit commitments and how he had managed his credit historically. Based on all the information it gathered it calculated that at the time of loan 1 he had £905 monthly disposable income and at the time of loan 2 £665 and so concluded he could afford both loans.

I think the checks Fair Finance carried out were proportionate given the value and term of the lending, and the value of the monthly repayments relative to Mr G's income. However I am not currently persuaded it made fair lending decisions based on the information it gathered. I'll explain why.

Loan 1

Fair Finance had copies of Mr G's bank statements and has told us it used these to check *his declared income. But I would also have expected it to respond to the other information that the statements gave it access to. I can't see that it did.*

The statements show in the months prior to this loan application Mr G was persistently reliant on his overdraft; that he had taken out eight payday loans (often withdrawing close to the full value in cash immediately); and was incurring daily overdraft fees. The statements clearly showed Mr G was having problems managing his money, and in no way supported Fair Finance's assessment that he had £905 disposable income each month.

As this was information Fair Finance collected as part of its checks, it needed to have due regard to what it showed. Based on what it knew, I do not think it was reasonable for it to conclude Mr G would be able to sustainably repay this loan. It ought to have realised there was a high risk Mr G would have to borrow to repay, or suffer some other financial harm.

It also seems inconsistent to me that Mr G would opt to borrow £500 if he had surplus income of £905 each month, as Fair Finance calculated – and the lender ought to have considered this.

It follows I think Fair Finance was wrong to give loan 1 to Mr G.

Loan 2

Fair Finance would have needed to see that Mr G's finances had stabilised before considering lending to Mr G given what it had learnt at the time of loan 1. I cannot see it has evidenced this was the case. From the information it gathered, it could see Mr G was still reliant on his overdraft facility and was still using short-term high-cost credit, so it was clear his finances remained under pressure. His income had fallen quite significantly. And as with loan 1 it was illogical that Mr G would want to borrow £220 if he had surplus income of £665.50 each month, as Fair Finance calculated – and again the lender ought to have considered this.

It follows I think Fair Finance was wrong to give loan 2 to Mr G.

I then set out what Fair Finance would need to do to put things right.

Mr G did not respond to the provisional decision. Fair Finance said it had no further points to make specific to this case, but asked for an explanation as to why this service often concludes that it is concerning if an applicant asks for a loan that's lower than their monthly disposable income.

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 also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Fair Finance, need to abide by. Fair Finance will be aware of these. Our approach to this type of lending is set out on our website, and I have followed it here.

Neither party sent in new information or challenged the findings or outcome I set out in my provisional decision so I have no reason to change my conclusion.

Fair Finance asked more generally about my finding that it seemed inconsistent that Mr G would opt to borrow £500 if he had surplus income of £905 each month. I can only comment here on this as relevant to the individual circumstances of this case. And I think Fair Finance has already pertinently said that it would perhaps be better to question why someone is requesting an amount less than their disposable income. That would be my point here – and had it done this, and proportionately checked Mr G's response, it would most likely have uncovered that he was struggling financially. A mismatch between loan value and disposable income can signpost financial difficulties. I hope this is helpful.

It follows I find Fair Finance should not have lent to Mr G.

Putting things right

It is reasonable that Mr G should repay the capital he borrowed as he had the benefit of that money. But he has paid interest and charges on two loans that should not have been given to him. So Fair Finance will have to:

- cap the amount Mr G has to repay/repaid on the loans to the capital he borrowed, in other words £720; and
- if Mr G has paid more than this then Fair Finance needs to refund these overpayments to him along with 8% simple interest per annum* from the date of payment to the date of settlement of this complaint. In this case Fair Finance needs to remove any negative information about this loan from Mr G's credit file; or
- if Mr G has not yet repaid the capital, then Fair Finance needs to treat Mr G fairly and with forbearance and due consideration regarding his outstanding capital balance. This may mean coming to an affordable repayment plan with him. Once the capital has been repaid, then Fair Finance should remove any negative information about the loans from Mr G's credit file.

* HM Revenue & Customs requires Fair Finance to take off tax from this interest. Fair Finance must give Mr G a certificate showing how much tax it's taken off if he asks for one.

My final decision

I am upholding Mr G's complaint. East End Fair Finance Limited, trading as Fair Finance, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 July 2023.

Rebecca Connelley
Ombudsman