

The complaint

Mr H, through his representative, complains that FUND OURSELVES LIMITED (Fund Ourselves) lent to him irresponsibly.

What happened

Using the Subject Access Request (SAR) records together with the business file records from Fund Ourselves, here is a table I have created to show the loans – approved and denied – by Fund Ourselves between 13 June 2021 and 5 June 2022.

| Loan | Approved | Amount | Instalments | Repaid |
|--|-----------------------|--------|-------------|--------------------------|
| 1 | 13 June 2021 | £250 | 4 x £117 | 31 August 2021 (early) |
| - | 31 August 2021 denied | £350 | - | - |
| 2 | 4 September 2021 | £110 | 4 x £53.24 | 2 Nov 2021 (early) |
| 3 | 2 November 2021 | £200 | 4 x £97.20 | 13 December 2021 (early) |
| 4 | 14 December 2021 | £300 | 4 x £139.20 | 1 & 3 Jan 2022 (early) |
| 5 | 5 January 2022 | £300 | 4 x £144 | 31 March 2022 (early) |
| Between 31 March 2022 and 2 May 2022 Mr H applied for 21 loans ranging from £100 to £490 and all were denied | | | | |
| 6 | 10 May 2022 | £210 | 4 x £99.96 | 16 May 2022 |
| - | 21 May 2022 denied | £390 | - | - |
| 7 | 21 May 2022 | £200 | 4 x £90.80 | 2 June 2022 (early) |
| 8 | 5 June 2022 | £250 | 4 x £121 | Arrears |

Mr H instructed his representative on 9 May 2022 which was just after he'd been refused for 21 loans by Fund Ourselves. However, Mr H continued to apply for loans and three were approved for him.

Mr H's representative started by submitting a SAR to Fund Ourselves the details of which have been shared with us and it's those records which revealed the declined loans – 23 in all.

The complaint was submitted to Fund Ourselves on behalf of Mr H in August 2022 and the final response letter (FRL) was issued around the same time. The FRL did not uphold Mr H's complaint and so his representative referred it to the Financial Ombudsman Service.

One of our adjudicators considered it and thought that by loan 6 there had become a pattern of lending which would have been harmful to Mr H from that time and so she considered that

loans 6, 7 and 8 ought not to have been lent.

Mr H's representative acknowledged it and appeared to be satisfied with the outcome. It said:

*'Thank you for your email. We appreciate your assistance.
We will forward the outcome of your decision to our client.
In the meantime, should you have further instructions, please let us know.'*

Fund Ourselves' response was:

'Please can you confirm whether you assessed the Call Credit Checks provided in the business file for loans 6, 7 and 8?'

Our adjudicator responded to answer Fund Ourselves' question and explained that she had considered that the pattern of borrowing and Mr H's lending history itself was enough to determine he shouldn't have been given these loans.

Fund Ourselves responded to say

'We await a decision from the Ombudsman – the loans were not back to back and there was a gap in lending between loans 5 and 6.'

The unresolved complaint was passed to me to decide.

As Mr H's representative appears to be content with the adjudicator's outcome I have not reviewed in detail loans 1 to 5 as it appears these are resolved.

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 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 Mr H could afford to pay back the amounts he'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 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 Fund Ourselves 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 (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. Our adjudicator considered that this applied to Mr H's circumstances from loan 6.

Fund Ourselves was required to establish whether Mr H could *sustainably* repay the loans – 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 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, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a Fund Ourselves 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.

A factual matter to explain early on is that the SAR obtained by Mr H's representatives is what disclosed the 23 loan refusals (21 in succession between March 2022 and May 2022). The information provided to us did not include that and may be the reason that Fund Ourselves' defence to the claim is that there was a gap between loans 5 and 6. It shows a fundamental misunderstanding of its own records as the 'gap' was the period when Fund Ourselves refused Mr H 21 times.

I've only one set of details surrounding Mr H's applications and that may indicate that each application was the same. And I'd consider that £1,050 was a relatively low income albeit for part-time work. Plus, Mr H had declared to Fund Ourselves that he was single with no dependants and was living at home with his parents.

The FRL states that Mr H had declared that his expenditure was £725 a month and yet other records indicate that the expenditure Mr H had declared was as listed here which adds up to £450.

Debt commitments £150 a month
Food and drinks £150
Leisure commitments £50
Travel commitments £50
Utility and bills £50

I am unclear as to the reason for the discrepancy on the figures here but in any event Fund Ourselves said in its FRL:

We are satisfied that the loans were affordable as we use the services of a national credit bureau to assess the accuracy of the information provided at the time of the application.

I have reviewed the credit searches and I can see that each one does record that Mr H had one County Court Judgment registered from 11 August 2016 for £351 which had been settled on 1 March 2018. In addition, Mr H had had three accounts (sometimes two) in the previous 36 months which had defaults recorded. One of those was for £391 in April 2019 which was satisfied in March 2021.

Then, in March 2022, having repaid loan 5 early, Mr H was refused loans 21 times. Fund

Ourselves ought to have been alerted that Mr H was very keen to apply for credit which may have indicated an underlying financial issue. Fund Ourselves has made a point in the FRL that its good checks led to the refusals. That may be the case but equally the multiple applications and multiple refusals ought to have acted as there likely being an underlying issue its creditworthiness assessments ought to have uncovered before lending again. And yet it did lend again – at loan 6. No explanation has been given.

So, in addition to looking at the checks that Fund Ourselves did before each loan which included asking Mr H for details of his income and expenditure, I've also looked at the overall pattern of Fund Ourselves' lending history with Mr H. I looked with a view to seeing if there was a point at which Fund Ourselves should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Fund Ourselves should have realised that it shouldn't have provided any further loans.

Given the circumstances of Mr H's case, I think that this point was reached by loan 6. I say this because:

- It had just refused Mr H 21 loans in succession and so I think that it must have realised that there was a fundamental concern which ought to have led it to have ceased lending to Mr H, and
- It had been almost a year from when Fund Ourselves had first lent to Mr H and he was still returning for more credit despite the history and lending relationship between them, and
- The 'break' in the lending was not a gap at all as it was multiple refusals over several weeks. So, that combined with the sequential lending up to loan 5 leads me to think that Mr H was permanently looking for credit, even when it was refused, and
- Fund Ourselves ought to have used this combined information when assessing Mr H's creditworthiness to realise that Mr H was not applying to for loans to solve a short term cash flow problem – but it was a more fundamental issue.

I think that Mr H lost out when Fund Ourselves provided loans 6, 7 and 8 because:

- Loans 6 to 8 had the effect of unfairly prolonging Mr H's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time
- the number of loans and the length of time over which Mr H borrowed and /or had been refused loans, was likely to have had negative implications on his ability to access mainstream credit and so kept him in the market for these high-cost loans.

Overall, I'm upholding Consumer's complaint about loans 6 to 8 and 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 stopped lending to Mr H at loan 6, 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 – particularly as a relationship existed between him and this particular Fund Ourselves 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 Fund Ourselves 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 Fund Ourselves 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 don't think I can fairly conclude there was a real and substantial chance that a new Fund Ourselves would have been able to lend to Mr H in a compliant way at this time.

Having thought about all 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 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 Mr H loans 6 to 8.

Its unclear whether loan 8 remains outstanding but assuming it does then Fund Ourselves should buy back the debt if that debt has been sold. If it is unable to buy the debt back then it needs to liaise with the new debt owner to achieve the results below.

- A) Fund Ourselves should add together the total of the repayments made by Mr H towards interest, fees and charges on loans 6 & 7, including payments made to a third party where applicable, but not including anything it has already refunded. If loan 8 has already been repaid then loan 8 needs to be included in this paragraph.
- B) Fund Ourselves 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) Fund Ourselves should remove all interest, fees and charges from the balance on loan 8 if it is outstanding and treat any repayments made by Mr H as though they had been repayments of the principal on all outstanding loan.

If this results in Mr H having made overpayments then it 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.

Fund Ourselves should then refund the amounts calculated in "A" and "B" and move to step "E".

- D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on the outstanding loan. If this results in a surplus then the surplus should be paid to Mr H. However, if there is still an outstanding balance then Fund Ourselves should try to agree an affordable repayment plan with Mr H.
- E) The overall pattern of Mr H's borrowing for loans 6 to 8 means any information recorded about them is adverse, so it should remove loans 6 and 7 entirely from Mr H's credit file now and when loan 8 has been repaid it should remove it.

If loan 8 has already be repaid then it needs to be removed with loans 6 and 7 now. In the menatime it should remove any adverse information from the loan 8 record until it is repaid.

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

My final decision

My final decision is that I uphold Mr H's complaint in part and I direct that FUND OURSELVES LIMITED does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 August 2023.

Rachael Williams
Ombudsman