

The complaint

Mr M complains that FUND OURSELVES LIMITED (FOL), lent to him irresponsibly, because Mr M had multiple and recent payday loan application refusals and he says FOL ought to have known that and not lent to him.

What happened

Mr M took one loan with FOL for £250 repayable over four months. It was on 5 May 2022 and the total amount to repay including interest - if the loan was repaid on time and over the four monthly instalments of £121.50 each - would have amounted to £486. Mr M is in arrears.

Mr M said in his original complaint email to FOL this:

'I have tried previously with you for a loan and all were rejected, so I didn't believe this one would be accepted. In addition, if you had carried out the appropriate checks, you would've seen that I have had at least 8-10 applications rejected for payday loans and credit cards, all of which were rejected.'

FOL issued its final response letter in July 2022 after Mr M had complained on 2 July 2022. In it, FOL explained that it had checked his income and had relied on the information it had been given by Mr M which had indicated he could afford the loan. So, it did not uphold Mr M's complaint.

Mr M referred it to the Financial Ombudsman Service where one of our adjudicators looked at it and thought the same. He considered that FOL had carried out checks proportionate to the loan applied for. Mr M was very discontent about that outcome.

The unresolved complaint was passed to me to decide. I issued a provisional decision on 16 June 2023. I gave time for Mr M to send additional evidence. That provisional decision is duplicated in the next part of this decision. It is in smaller type to differentiate it.

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.

FOL had to assess the lending to check if Mr M could afford to pay back the amount he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. FOL's 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 M's income and expenditure.

I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest FOL should have done more to establish that any lending was sustainable for Mr M. These factors include:

- Mr M 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 M 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);
- Mr M 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 M. But as Mr M took only one loan with FOL of £250 these points do not really apply to Mr M's circumstances. And Mr M declared an income of £2,200 a month which FOL income verified and so Mr M would not look to have fallen into the low income category.

FOL was required to establish whether Mr M could sustainably repay the loan – 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 M 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 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.

Duplicated provisional decision findings

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr M's complaint.

Mr M says that he had applied to FOL before and had been rejected but has given us no details. But as it is an important point I checked with FOL and it has said: *'There were no unsuccessful loan applications prior to this loan being approved.'* So, I can't take that point forward.

This was Mr M's one and only loan with FOL – his first – and he'd declared an income of £2,200 a month plus outgoings of around £1,160.

It verified Mr M's income using a tool used with credit reference agencies. There was no requirement to carry out a credit search but FOL has sent the search it did on Mr M to us. That was dated 5 May 2022 and I have reviewed it. Our adjudicator did not have this information.

Mr M had a County Court Judgment (CCJ) from 5 February 2018 for £591 which was satisfied in November 2018. This is a poor record but it was from February 2018 and so as Mr M's application for the loan with FOL was over four years later then I doubt FOL was too concerned about it when Mr M was applying for such a modest sum.

The credit search tells me that Mr M had a total debt balance of £1,259 and most of his accounts were either delinquent or were in default. He had eight active accounts of which five were defaulted and three were delinquent. Some I can see were persistent arrears.

Lenders such as FOL are used to lending to customers who may have adverse credit history record and/or have taken out payday loans in the past. It's the nature of their business. But the combination of the CCJ plus the persistent arrears and multiple defaults does lead me to think that FOL ought to have done more. This is a poor record and so I would have expected FOL to have discovered what Mr M's outgoings really were, verify his income in a second way and find out why he needed the loan.

Mr M has not sent to us any details about his financial situation in May 2022. For me to be able to assess the complaint I'd need to be able to see what it is that FOL may have discovered if it had carried out further checks with Mr M. As we've no information then I'm issuing a provisional decision giving Mr M time to send details if he wishes.

My provisional decision is that on current evidence I do not uphold his complaint.

Mr M has described to us some worrying personal issues and so I do recommend that he explains all this to his advisers and to FOL who are under an obligation to treat Mr M fairly and with forbearance.

How did the parties respond to the provisional decision?

Mr M has informed us that he has been receiving legal advice and assistance from a local community advice centre. Mr M has also said he has a representative from a specific department of the local council to assist as well. Mr M has referred to the fact his mother is helping him financially. So, while I know of Mr M's health issues – as he has told us about then – I'm also aware he's said he has assistance. And aware of that as I am, I do consider that Mr M's various avenues of assistance currently being provided to him means that he appears to be supported.

Mr M told us that if FOL had carried out proper checks – which he says ought to have included looking at bank account statements - it would have realised he had a gambling issue and he says it would have declined his application for a loan.

We informed FOL of this and it said that as it was only one loan and it was not common practice for it or for any other lender to request bank statements.

And I agree with that statement by FOL. It is not a requirement and would be considered disproportionate for FOL to have obtained and reviewed bank statements for a first loan and one which was for £250.

In my provisional decision I said that lenders such as FOL are used to lending to customers who may have an adverse credit history record and/or have taken out payday loans in the past. It's the nature of their business.

The credit search FOL carried out in May 2022 informs me that Mr M had a total debt balance of £1,259 which FOL would have considered very low. And I note that low overall debt level as it is a valid factor when a lender is carrying out a creditworthiness assessment.

However, that credit search also informed me – and FOL at the time – that Mr M had eight active accounts, and that he had three delinquent accounts in the previous 12 months and five defaults in the 36 months leading up to Mr M's application (none in the previous 12 months).

Mr M had a CCJ was February 2018 and satisfied in November 2018 and as I said in my provisional decision, on its own I'd have not considered that to have been something that FOL necessarily would have thought a reason to either reject the loan application or to have prompted it to have asked for additional information.

I said that because the CCJ was satisfied by Mr M several years before May 2022 when he applied for the loan. But the combination of that historic CCJ plus the defaults and delinquent accounts did lead me to think that FOL ought to have checked for some more details.

Since the provisional decision was issued, Mr M sent to us a series of screenshots. The first set were to demonstrate he did a lot of gambling and betting transactions. But many of the screenshots post-date the 5 May 2022 loan application and as I am being asked to decide on a lending decision made on 5 May 2022 I have not considered those as they are irrelevant.

But the ones sent of April 2022 and early May 2022 do show some gambling transactions. However, these screenshots are not satisfactory for several reasons – they do not show Mr M's name on the account, I can see that Mr M may have another account as money looks to be transferred in from another account with his name, and the very nature of screenshots is that they are incomplete, not sequential, and not able to give me a full and consistent picture.

So, overall, I am not able to assess what it is that FOL may have seen if it had done some sort of additional checks. In relation to the gambling, I know that Mr M has said he has problem with it and I am sorry to hear it, but for the purposes of the complaint I need to know more than just a few and curtailed screenshots for a few odd days in April 2022 and maybe early May 2022.

Another set of screenshots were sent by Mr M to us to show me that he was out of work when he applied to FOL for the loan on 5 May 2022.

But here I am faced with insufficient evidence on this point. Mr M had told FOL he earned £2,200 a month. FOL has sent me evidence of having verified that income and it proceeded with the loan application on the basis that income verification tool told it that Mr M's income was around that figure.

Having told us that in May 2022 he had recently become unemployed, he has not been able to demonstrate that to me. He has sent to me screenshots of money coming into his account from a third party which he says was money from his mother which should show me that he was out of work and being supported by a parent. But I'm sorry to inform Mr M it does not show that and I am not persuaded by it.

And from FOL's perspective, having received the application from Mr M with his declared income in it, and having done an income verification check then it proceeded on that basis – that Mr M earned £2,200 a month. So that evidence is more persuasive in the absence of anything further from Mr M. And I do not consider it an unreasonable basis on which FOL proceeded to evaluate his application for a £250 loan.

FOL had details of his expenditure and it looked like Mr M could afford the loan.

For me to be able to assess the complaint I'd need to be able to see what it is that FOL may have discovered if it had carried out further checks with Mr M. I explained this in the provisional decision. And I am not satisfied that I have enough.

On 3 July 2022 I emailed Mr M to request additional evidence. Mr M's response was clear:

- Mr M has tried to obtain a P45 but says he can't get it.
- he considers that he's sent to us enough evidence

- The photos of the third party credits to his account he sent were private and confidential
- he considered we were wasting his time
- he says that he will proceed to court.

It's not clear whether Mr M is planning to take the Financial Ombudsman Service to court or whether Mr M is planning to take his complaint with FOL to court.

Either way I have considered whether this amounts to an effective withdrawal of Mr M's complaint under the Financial Conduct Authority (FCA) DISP rules which govern us. Those are - DISP 3.5.9R (4) and DISP 3.5.15R (2). I set them out here for clarity.

DISP 3.5.9 R *'The Ombudsman may:*

- (1) exclude evidence that would otherwise be admissible in a court or include evidence that would not be admissible in a court;*
- (2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;*
- (3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and*
- (4) treat the complaint as withdrawn and cease to consider the merits if a complainant fails to supply requested information.'*

DISP 3.5.15R *'If a complainant fails to comply with a time limit, the Ombudsman may:*

- (1) proceed with consideration of the complaint; or*
- (2) treat the complaint as withdrawn and cease to consider the merits.'*

On balance I've decided to review all I have from Mr M and from FOL, reconsider the regulations and the expectations demanded of FOL when carrying out the creditworthiness assessment in May 2022 and make a decision, knowing that I have made my position clear to Mr M and requested additional evidence which I now know will not be sent.

Mr M had applied for a low value loan of £250 and so a perfectly reasonable starting point for any regulated lender is that Mr M wanted the money. Mr M had declared his income as part of the application process which had been verified as £2,200 each month. I consider that Mr M's declaration to FOL in May 2022 that he earned £2,200 a month plus FOL's income verification check meant that FOL was entitled to proceed to consider the application with confidence that Mr M did earn that amount.

Mr M had provided to FOL his outgoings and for a first loan as a new customer it was entitled to use the figures Mr M had given to it. He had told FOL that his financial commitments (such as outstanding debt, travel, rent etc.) amounted to £1,160. That was less than his income and so the loan looked affordable.

However, Mr M has demonstrated that he gambled but I do not know the extent of it. And unless Mr M told FOL of this, of which I have no evidence, then I'd not have expected FOL to have known of this. Mr M has said he was out of work in May 2022 but I have not got enough evidence to know that was the case.

Mr M's expectation that for a £250 loan FOL ought to have automatically reviewed his bank account statements is not necessarily the case.

Having reviewed what I have, I have decided not to uphold the complaint.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 August 2023.

Rachael Williams
Ombudsman