

## The complaint

Mr C complains that My Finance Club Limited ("MFC") gave him loans which he couldn't afford to repay.

## What happened

Mr C was advanced a total of eight loans from MFC and I've outlined a summary of his borrowing below.

loan number	loan amount	agreement date	repayment date	contracted term (days)
1	£350.00	10/03/2021	14/03/2021	38
2	£300.00	30/05/2021	14/06/2021	22
3	£200.00	24/06/2021	01/07/2021	28
gap in lending				
4	£300.00	02/06/2022	12/06/2022	14
5	£200.00	16/06/2022	30/06/2022	14
6	£180.00	11/07/2022	20/07/2022	28
7	£200.00	21/07/2022	03/08/2022	28
8	£100.00	04/08/2022	21/08/2022	17

MFC says all of Mr C's loans were repaid earlier than contracted for.

Mr C made a complaint to MFC but he didn't receive a response, instead he referred the complaint to the Financial Ombudsman Service.

In the adjudicator's latest assessment, he partly upheld the complaint about loan 8 only. He concluded further checks needed to have been carried out by MFC, and had better checks been conducted it would've likely discovered he was spending a significant sum each month gambling.

MFC agreed with the adjudicator's assessment to uphold loan 8 only, and it calculated using the formula given to it by the adjudicator that Mr C was owed £13.61.

Mr C didn't agree with the outcome, saying:

- The refund isn't enough considering he paid in total nearly £500 of interest to MFC.
- At the time the loans were approved, Mr C was on benefits and his finances were in a "mess".
- Mr C says that MFC ought to have further checks after the first few loans – so for the final 5 loans – and he said a fair outcome would be to have those loans refunded.

As no agreement has been reached, the case has been passed to me for a decision.

## 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.

MFC had to assess the lending to check if Mr C 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. MFC's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr C'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 MFC should have done more to establish that any lending was sustainable for Mr C. These factors include:

- Mr C 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 C 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 C 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 C.

MFC was required to establish whether Mr C 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 C 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 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 Mr C's complaint.

There is a break in borrowing of nearly a year after Mr C repaid loan 3 and before he took loan 4. This break is significant enough for MFC to have in effect treated Mr C as a new customer when he returned for loan 4. The effect of this, means that while it was his fourth loan, it was the first loan in a new lending chain. So, when thinking about this complaint I've considered the two chains of lending. Loans 1 – 3 and then loans 4 – 8.

### Loans 1 – 3

Before loan 1, Mr C declared he worked full time and he earned £1,800 per month (at loan 1) and £1,900 per month before loans 2 and 3 were advanced. MFC also says Mr C's income

was verified through a third-party report – which suggested the income he had declared was likely to be accurate.

In terms of monthly expenditure, Mr C provided details about his expenditure across a number of different headings such as, utilities, 'other', food and other credit – to name a few. MFC says Mr C's outgoings came to £759 for loan 1, £1,022 for loan 2 and £1,096 for loan 3. Therefore, based on the information it had to hand these loans looked affordable as Mr C had sufficient disposable income.

No housing costs had been declared, but Mr C had told MFC that he lived at home with parents and as this was early in the lending chain MFC didn't need to verify this. So, the small housing costs wouldn't have been of a concern for it.

Before these loans were advanced MFC also carried out a credit search and it provided the results it received from the credit reference agency. It is worth saying here that although MFC carried out a credit search there wasn't a regulatory requirement to do one, let alone one to a specific standard. But what MFC couldn't do is carry out a credit search and then not react to the information it received.

The credit check results wouldn't have been a concern for MFC. It knew Mr C had current accounts and credit cards, but these were all within their limits and there wasn't any sign of adverse payment information. And while at loans 2 and 3, it knew there was an outstanding payday loan, this wouldn't have made those loans unaffordable. And neither would it have prompted MFC to have declined the loan or to have carried out further checks.

Overall, given these were the first loans in the first lending chain it was reasonable for MFC to have relied on the information that Mr C provided about his income and expenditure. The checks MFC carried out were proportionate and showed Mr C could afford the repayments and there also wasn't anything else to suggest that the loan would either be unaffordable for him or unsustainable.

I'm therefore not upholding Mr C's complaint about the approval of loans 1 – 3.

#### **Loans 4 – 7**

As I've said above, these loans were granted in a new and separate lending chain and MFC carried out the same sort of checks as it had done for loans 1 – 3.

This time, it still knew Mr C worked full time and declared his income to be between £1,980 and £2,005 per month for these loans. Again, MFC says it received information from its searches which indicated the amount Mr C declared was likely to be accurate.

I appreciate, that Mr C says he was on benefits at the time, but this wasn't reflected in the information he provided to MFC and given these were the first loans in the second chain of lending MFC was entitled to rely on the income figures provided by Mr C.

Mr C was also asked about his expenditure for these loans, and he declared his monthly outgoings ranged from £1,250 at loan 4 up to £1,444 when loan 6. So, Mr C had sufficient disposable income for each loan after the MFC's loans were factored in.

MFC also carried out credit checks – which I would consider to be proportionate. I've reviewed the results, and these were similar to the results MFC received for the first three loans. The credit cards were within their respective limits and there wasn't any adverse payment information. There wasn't anything, that would've prompted MFC to have either

declined these loans or to have carried out further checks solely based on the credit check results.

There also wasn't anything to suggest that MFC needed to verify the information Mr C had provided it, so I don't think it needed to consider Mr C's bank statements. The loans appeared to have been repaid without any difficulty and the credit searches hadn't shown MFC anything of concern. So, while Mr C has provided copy bank statements, it would've been disproportionate for MFC to have considered them.

The checks MFC carried out for these loans were proportionate given this was a new loan chain, and generally the loans decreased in value. Each loan was repaid early and so it was entirely reasonable for MFC to have relied on the information Mr C gave it as well as the credit check results.

I do not uphold Mr C's complaint about these loans.

### **Loan 8**

The adjudicator upheld this loan and directed MFC to pay redress as outlined in his assessment. MFC has accepted this loan ought not to have been advanced and so this loan is no longer in dispute, and I therefore don't need to make a formal finding about it. But, I have, for completeness outlined below what MFC needs to do to put things right for Mr C.

### **Putting things right**

In deciding what redress MFC should fairly pay in this case I've thought about what might have happened had it not provided loan 8, 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 C 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 Mr C 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 Mr C would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce MFC's liability in this case for what I'm satisfied it has done wrong and should put right.

As MFC has agreed, it shouldn't have provided Mr C with loan 8.

- A. MFC should add together the total of the repayments made by Mr C towards interest, fees and charges on loan 8.
- B. MFC should calculate 8% simple interest\* on the individual payments made by Mr C which were considered as part of "A", calculated from the date Mr C originally made the payments, to the date the complaint is settled.

- C. MFC should pay Mr C the total of “A” plus “B”.
- D. MFC should remove any adverse information it has recorded on Mr C’s credit file in relation to loan 8.

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

### **My final decision**

For the reasons set out above, I’m upholding Mr C’s complaint in part.

My Finance Club Limited should put things for Mr C as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 31 August 2023.

Robert Walker  
**Ombudsman**