

The complaint

Miss K complains My Finance Club Limited (“MFC”) provided her with a loan during a time when she was having financial difficulties.

What happened

Miss K was advanced one loan of £400 on 11 May 2022. The loan was due to run for 38 days with one payment due of £521.60. Miss K has had some problems repaying the loan and entered a debt management plan in October 2022. To date she has paid £81.19 towards the loan with an outstanding balance remaining of £718.81.

In response to Miss K’s complaint, MFC said it hadn’t done anything wrong when it advanced the loan because its checks were proportionate. However, as a gesture of goodwill it offered to reduce her outstanding balance by £200. Unhappy with this response, Miss K referred the complaint to the Financial Ombudsman.

As part of MFC’s submission to the Financial Ombudsman it made an offer to settle the complaint which in effect meant that the balance would be recalculated as if interest had been frozen from 17 July 2022.

The complaint was considered by an adjudicator, and it wasn’t upheld. She concluded MFC made a reasonable decision to provide the loan because it had carried out a proportionate check which showed the repayment to be affordable. She also didn’t think MFC needed to have verified the information Miss K had provided.

Miss K didn’t agree, and she said that had MFC checked her bank statements it would’ve seen she had a lower income, a poor credit score and had council tax arrears.

The complaint was then passed to me, and I issued my provisional decision explaining the reasons why I was not intending to uphold Miss K’s complaint about the lending decision. But I also explained why the offer by MFC which it outlined in its submissions to resolve the complaint, was fair and reasonable. Both parties were asked for any further submissions to be received by 14 August 2023.

Neither Miss K nor MFC responded to or provided any further comments in response to the provisional decision.

A copy of the provisional findings follows this in italics as well as in a smaller font and forms part of this final decision.

What I said in my provisional decision:

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 Miss K could afford to pay back the amount she'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 Miss K'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 Miss K. These factors include:

- Miss K 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);*
- Miss K 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);*
- Miss K 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 Miss K. The adjudicator didn't think this applied in Miss K's complaint and I agree.

MFC was required to establish whether Miss K could sustainably repay the loan – not just whether she technically had enough money to make her repayment. Having enough money to make the repayment could of course be an indicator that Miss K was able to repay her loan 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 Miss K's complaint.

Before the loan was approved, Miss K declared she worked for a lettings agent, and she declared her income to be £2,630 per month. MFC says this information was verified using a third-party report – which suggested the information Miss K had provided about her income was accurate. This was her first loan, so I think it was reasonable for MFC to have relied on the information Miss K provided, without the need to have verified it with her such as with a wage slip or some other method.

In total Miss K declared monthly outgoings of £475 to cover items such as housing, food, transport, creditors and other. This left monthly disposable income of £2,155 to afford the repayment of £521.60.

I appreciate Miss K says her expenditure was greater than what she declared – for example for food because she had her children to look after. But, as part of her application she told MFC that she was single and had no dependants. Given, this, I can't fairly say MFC was wrong to have accepted what Miss K says when there was nothing to suggest that her living costs were too low. And I also don't think, for a first loan, that MFC needed to have verified this information through a bank statement or other documentation.

Before the loan was approved MFC also carried out a credit search and it has provided the results it received from the credit reference agency. It is worth saying here that although MFC carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard.

I've reviewed the credit file results MFC received and there isn't anything contained within it that would've given MFC cause for concern. According to the results Miss K had two active current accounts, with one having an overdraft of £500. Although Miss K was utilising around £480 of this overdraft, there wasn't any evidence of missed or late payments. The credit check results wouldn't have prompted MFC to have carried out further checks into Miss K's financial position.

Miss K has also said she had significant council tax arrears, but these arrears weren't reflected in the information that she provided MFC nor was it reflected in the information MFC received from the credit reference agency. So, I can't fairly say, given this was for a first loan, that MFC ought to have known about the council tax arrears.

Finally, there also wasn't anything else to suggest that Miss K was having financial difficulties or that the loan repayment would be unsustainable for her for any other reasons.

I'm sorry to hear about the problems Miss K has had and I do hope things are better for her now. But, for a first loan, it was reasonable for MFC to rely on the information it was provided with, and this wasn't contradicted by the information in the credit search. I also don't think the checks needed to go further to the extent that it would've been prompted to have asked for evidence in the form of bank statements to verify Miss K's income and expenditure. I'm therefore intending to not uphold Miss K's complaint about the approval of the loan.

Other considerations

After the loan was granted, should the payment not have been made to settle the account in line with the credit agreement, MFC could, under the key information section of the credit agreement charge daily interest up to the maximum of 100% of the borrowed funds. This is also in line with the industry cost cap imposed on these types of loans. So, in this complaint the maximum that MFC could collect towards the loan would be £800.

Miss K didn't make her payment as expected, and there was contact between her and MFC during July 2022 when a payment plan was worked out. However, MFC has now said that the daily interest ought to have been stopped being added to the balance from 17 July 2022.

MFC has said this was the date that Miss K provided it further evidence and information about her circumstances. And I consider this proposal to be fair and reasonable, because by now, MFC was on notice of Miss K's hardship and so it wasn't treating her fairly or with forbearance by allowing her debt to continue to grow up to the maximum that it could.

MFC's offer is to recalculate the balance as if no further interest had been added to the balance after 17 July 2022. This would've capped her debt at £614.40. And then MFC has said it will apply the payments Miss K has already made towards the balance which results in a new outstanding debt of £533.21.

MFC has also offered to work with the debt management provider to pay down the rest of the balance, and I consider that to be fair and reasonable resolution to the complaint.

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.

As neither party has provided any further comments or submissions, I see no reason to depart from the findings that I made in the provisional decision.

I'm still satisfied a proportionate check was carried out before the loan was advanced, which demonstrated to MFC that Miss K could afford her repayment.

And I also felt, the offer made by MFC to recalculate the outstanding balance as if interest was stopped on 17 July 2022 was fair and reasonable. So, I am going to be directing MFC to do this to bring this matter to a close.

Putting things right

To put things right for Miss K, MFC should do what it has already agreed to do and what I outlined in the “*other considerations*” section of the provisional decision. Which is to re-work the outstanding balance of Miss K’s loan as if the interest had stopped being added to the balance from 17 July 2022.

I would also remind MFC of its obligation to treat Miss K fairly and with forbearance.

My final decision

For the reasons I’ve explained above and in the provisional decision, I’m not upholding Miss K’s complaint about MFC’s decision to lend.

But My Finance Club Limited should put things right for Miss K as it has agreed to do and what I outlined in the provisional decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss K to accept or reject my decision before 14 September 2023.

Robert Walker
Ombudsman