

The complaint

Mr O complains that My Finance Club Limited ("MFC") lent to him irresponsibly in relation to seven loans over two years.

Mr O complains that the difficulties he has had repaying loan 7 has led to the outstanding balance increasing from £496 to £700 and he thinks this is wrong. He says he ought not be obliged to pay that much.

What happened

Using records from MFC, here is a table of the approved loans:

loan number	loan amount	agreement date	repayment date	term (days)
1	£100.00	12/09/2020	30/10/2020	30
2	£150.00	31/10/2020	30/11/2020	30
3	£200.00	11/12/2020	22/12/2020	11
4	£200.00	11/01/2021	29/01/2021	18
5	£100.00	16/02/2021	26/02/2021	10
seven months gap				
6	£100.00	29/09/2021	29/10/2021	38
nine months gap				
7	£400.00	07/07/2022	outstanding	30

Mr O complained and the final response letter MFC sent on 28 November 2022 covered the checks they'd carried out for each loan and so it said it did not lend irresponsibly. And as for loan 7 it explained that the terms and conditions Mr O signed up to when he took the loan were clear. And that interest and charges were applied in accordance with those terms.

MFC also said that when Mr O approached it in relation to his financial concerns it was 'responsive to your needs' and was flexible in the repayment of the debt. It has explained and sent correspondence to show it asked Mr O for more details about his financial situation in August 2022 following his change of circumstances and did arrange two repayment plans.

One plan was on 15 August 2022 which was three payments of £50 (two of which were successfully paid). And another repayment plan was arranged on 14 October 2022 for £138.40 due on 30 October 2022. This was not paid.

In the final response letter, MFC said that it had done all it should have done. It did not uphold his complaint. Mr O referred it to the Financial Ombudsman Service and in his complaint form he considered that all seven loans had been lent irresponsibly. In relation to the last loan – loan 7 – he said:

'The balance is now £700. Firstly, when I could not repay and fell into arrears, they emailed me everyday and increased the balance. I cannot afford to pay back £700 and refuse to.'

One of our adjudicators looked at the complaint and thought that MFC had not lent irresponsibly. But that adjudicator did not answer the points about the loan 7 debt situation.

Mr O responded to the adjudicator's view to say he was given 7 loans and had difficulty repaying loans 1 and 2 as well as loan 7. Mr O thinks that MFC should have looked into his finances more thoroughly because of the number of loans he had asked MFC for. And he also raised the issue about the £700 debt he was being asked to repay on loan 7 which he says is unfair because he agreed £494. So, he says he will not pay £700.

The unresolved complaint was passed to an ombudsman to decide. And having reviewed the circumstances she asked both parties for more information. She asked MFC for details of account notes and further information on how often it contacted Mr O in relation to loan 7. She then asked Mr O whether he'd sent any bank statements to MFC and she also asked for details of his current situation including his employment.

My colleague then issued a provisional decision setting out her thoughts of the complaint in September 2023. A copy of my ombudsman colleague's provisional decision follows this in smaller font and forms part of this final decision.

Both parties have had an opportunity to raise any final points or provide any new submissions they wanted to make before a final decision was made. Neither Mr O nor MFC responded or had anything new or further to add.

As the deadline for a response has now passed, I've reviewed the complaint afresh before issuing this final decision.

What was 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 Mr O 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. MFC's checks could've taken into account several different things, such as how much was being lent, the size of the repayments, and Mr O'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 MFC should have done more to establish that any lending was sustainable for Mr O. These factors include:

- *Mr O 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 O having many 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 O 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 O. Here, there were significant gaps in the lending relationship which persuade me against considering that there was a pattern

of lending developing.

MFC was required to establish whether Mr O 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 O 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.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr O's complaint. I've provisionally decided not to uphold his complaint about the irresponsible lending and I explain here. The other point about the loan7 debt I've addressed at the end.

Irresponsible lending

Loans 1 to 5

MFC has provided detailed summaries of the information Mr O gave to it when applying for the loans. For loans 1 to 5, the declared income was £1,900 each month after tax which MFC said it had verified using information 'directly from his own bank' and was satisfied it was correct. Mr O has not disputed the income figures.

And for loans 1 to 5, Mr O declared similar figures for each of the categories which included 'Housing, Utilities, food, credit' to list a few of them. And for each of those loans the disposable income ranged between £545 and £660. The loan values for loans 1 to 4 were low value at between £100 and £200.

MFC carried out credit checks for each of the loans including loans 1 to 4 and the results of those searches have been sent to us. I have reviewed them all. There's nothing in those set of results for any of these loans which likely would have led MFC to refuse loans of such low value. And lenders such as MFC would have been used to seeing that applicants had payday or short term loans on their credit files when approaching them for loans.

But it does not mean that would lead to MFC needing to do further checks or to have declined Mr O's applications.

MFC has sent to us detailed submissions part of which explain the late repayments for loan 1. For Loan 1 Mr O had contacted MFC and said he'd experienced the illness Covid 19 and he could pay at the end of October 2020. He did that. Mr O acknowledged that he may incur additional fees. And again – that would not have been a reason then consider that a later application for loan 2 would necessarily have led to it refusing the loan.

I plan not to uphold the complaint about loans 1 to 5.

Loans 6 and 7

The significant gaps in the lending make a difference as to how I would expect a lender to approach Mr O's applications. Having paid off loan 5 Mr O did not apply to MFC for seven months and came back to ask for a low value loan of £100. I consider it fair and reasonable of MFC to have approached Mr O's application as if he was a new customer and rely on the information he gave to it about his income and expenditure figures.

Mr O's income had increased a little to £2,150 for loan 6 which, again, MFC said it verified. And I find that £80 declared spending on food for a month to be unrealistic and for £20 on utilities to be unusual considering the earlier figures were £100. But even if those figures

were doubled still the disposable income Mr O had presented to MFC would have been enough to cover the loan.

MFC carried out a credit search and I have reviewed it. I do not consider that the credit report revealed anything to lead MFC to think that Mr O was unable to afford the loan.

I plan not to uphold the complaint about loan 6.

After paying off loan 6 Mr O did not approach MFC for a further nine months and all I have said about the gap after loan 5 is applicable here. Mr O was applying for a loan of £400 and although larger than the earlier loans still a £400 loan was a relatively modest loan. He had told MFC he earned £2,000 and had outgoings of around £850. He's told us that he was in employment and earning £1,900 each month. So they are about the same.

Mr O had declared to MFC he was spending £130 a month on credit, and I have reviewed the credit search MFC carried out. It showed that he had the following:

- one mail order account with a balance of £240 on a £300 limit
- a credit card with a balance of £299 on a limit of £300
- a credit card with a balance of £195 on a limit of £200
- a credit card with a balance of £827 on £900
- an unsecured loan which is one that seems to vary as to the repayments. It may have been an account which allowed Mr O to draw down funds and then pay off intermittently. The outstanding balance was £319
- he had a balance to pay of £8 on his current account which suggests he may have gone into his overdraft. But £8 is a low figure

So – using a 5% minimum repayment calculation then I think that at least Mr O had to repay £66 a month towards his credit cards in total – plus a further repayment to the mail order account which at 5% would have been around £12 and he had the outstanding balance on the unsecured loan (whatever its nature) which I do not know the repayments for. So, allowing £20 for that the total due the month coming would have been £98 – Mr O had declared £130 a month for credit and so that seemed about right.

And it was the figure MFC would have used and having checked his credit report then it would have realised that figure was about right.

So, the £130 plus the £496 due for loan 7 would have translated into being about 31% of his net monthly salary and I'd not consider that to be particularly high for a one off short-term loan. And on its own that would not be a reason to refuse the loan or for me to conclude that this was an irresponsible lending decision. The disposable income (left after Mr O had repaid all these items plus his living costs plus the MFC loan) would have left Mr O with £624. Allowing for additional spending on utilities and on food – as the declared sums were low – then still I think that MFC had carried out proportionate checks for a £400 loan and being the first one in this third loan chain.

I plan not to uphold the complaint about loan 7.

Loan 7 and its repayments

Part of Mr O's complaint in November 2022 was:

'The initial repayment was agreed as £486.00 and is now £700, even though I did make 2 payments of £50.

This is harrassment [sic] and simply not affordable.

I request that the interest is removed from the loan as it never should have been given to me.

The payment of £100 should also be deducted from the balance and the loan removed from my file.'

MFC has said it asked Mr O for copy bank account statements to assist it with making repayment arrangements in 2022 and never received them. Mr O says he was never asked for copy bank statements. But he's sent a set to us and so I've been able to review them.

They do not really assist as they cover January 2022 to April 2022. I mention here that for the irresponsible lending part of the complaint I would not have expected MFC to have obtained bank statements. I've reviewed them to assess this part of the complaint surrounding the debt.

The statements show me that Mr O's salary payment on 31 January 2022 was £2,300, for 28 February 2022 was just under £3,500, for 31 March 2022 it was £1,983.

The statements show that Mr O has (or had) another account as he usually transferred money to that other account after receiving his salary. I've no details of that other account. As the payment plans were set up after Mr O had taken loan 7 in July 2022 then these do not assist in resolving the issue surrounding why it is he thinks it's unfair to have to repay the loan or has ceased to repay the £50 instalments as agreed for loan 7.

Recently, through our adjudicator, I asked Mr O for '...his current situation in relation to ...employment and other financial details' but he has not given me any details.

MFC has sent to me, at my request, all copy account notes and I have reviewed them all. I note that Mr O wrote to MFC on 3 August 2022 to say he's lost his job and was in financial difficulties. He offered £50 a month to pay off the debt. He repaid twice.

MFC has explained to me recently as to why the loan amount has increased from the original £496 to pay to it now being £700. It is comprised of £400 capital originally loaned and £300 interest accrued since it was approved on 7 July 2022.

MFC has said 'Mr O has only made a total of £100 payment towards his debt (£50.00 on 02.09.2022 and £50.00 on 30.09.2022.' This £700 figure was reached by 9 November 2022 after the last £50 repayment had been taken on 30 September 2022. Since then, no response had been received from Mr O. Nothing was heard from him between 6 September 2022 and 28 November 2022.

MFC has explained that each time it communicated with Mr O it offered him help and support in relation to the debt. I've been sent details including copies of the FCA Arrears FCA help leaflets and the FCA Default notice help leaflets giving advice and contacts. I see that the account had got to £700 through an incremental increase and Mr O had been written to regularly to remind him as the amount owed increased. Mr O was warned that he was at risk of default at least twice and the default notice was served on 5 December 2022 – six months after the debt was first funded in July 2022.

MFC was right to have accepted the £50 a month as a repayment plan in August 2022 even though I acknowledge that it ought to have been an interim measure until more financial details could be obtained from Mr O. And I say that because Mr O had applied for the loan in July 2022 and he had said he was in employment and had been earning £2,000 a month and had £850 expenditure. So, my view is that it was understandable that MFC would have wanted to know more information about Mr O's situation less than a month later. I don't think it's reasonable for an individual to say – about three weeks after taking the loan – that he now could not afford it and then send nothing to back up those assertions for months despite being asked to make contact.

Having said that - it would have been incorrect for MFC to have refused the £50 a month in August 2022. And MFC did not refuse to do that. It accepted Mr O's repayment offer as an interim arrangement.

However, since then I see that MFC has written to Mr O many times and there's been little engagement, two payments followed by an irresponsible lending complaint soon after receiving notification of the default.

I consider that the interest accruing when the repayments were not being made was in line with the credit agreement and in the absence of information or engagement by Mr O then I don't consider it unreasonable that the interest accrued to make it £700. It was prevented from going higher due to the FCA cost-cap regulations of which MFC were aware and adhered to.

By December 2022 Mr O was several months in arrears on the account and the repayment plan had failed and yet he'd sent no supporting information to MFC to explain why.

I've considered what the Information Commissioner's Office (ICO) says because it is the body which has been created and has issued guidance for lenders as to what, how and when information should be reported to the credit reference agencies.

This guidance can be found in its paper called "Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies." I consider this to be good industry practice and so it is entirely reasonable to see what the ICO says about when a default ought to be reported.

The ICO sets out a clear expectation that should payments not be made in line with the credit agreement then adverse information can and should be reported to the credit reference agencies (CRAs).

"2. Should a payment not be made as expected, information to reflect this will be recorded on your credit file

If you do not make your regular expected payment by the agreed time and/or for the agreed amount according to your terms and conditions, the account may be reported to the CRAs as being in arrears.

If this continues over time, the level of reported arrears will increase, which may result in the lender taking some form of action. This could include notification of their intention to report the account as "defaulted" (see Principle 4 below)."

The guidance goes on to say

"4. If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down.

As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears. ...

If an arrangement is agreed (see Principle 3 above), a default would not normally be registered unless the terms of that arrangement are broken."

So, the ICO is clear, that should payments not be made, then when the account is at least three months in arrears a default can be recorded. So, I do not consider that MFC did anything incorrect on that.

Mr O has used the term 'harassment'. Harassment is a criminal offence and not one that I am able to determine as criminal charges are prosecuted through the criminal courts. What I am interpreting this part of Mr O's complaint to mean is that he feels the MFC contact was too much and unreasonable.

Without any evidence from Mr O then I have had to rely on what MFC has given me. And I consider that there is a balance to be struck between a lender reasonably following up with its customer about missed and late payments and excessive contact such that the owner of the debt feels that this was too much to bear.

Using some of the Guidance in the FCA's specialist Sourcebook - CONC 7.3.2

'When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.'

And PRIN 2.1.1. 'A firm must pay due regard to the interests of its customers and treat them fairly.' And there's the older Office of Fair Trading Debt Collection Guidance (referenced in CONC 7) in paragraph 3.7

'Examples of unfair or improper practices are as follows: a.) contacting debtors at unreasonable times and/or at unreasonable intervals

I reach a provisional conclusion that the contact between MFC and Mr O was not an unreasonable amount. So, I am planning not to uphold this part of Mr O's complaint.

I see the most recent email was on 23 August 2023 offering an interest discount. I'd recommend Mr O engages with MFC about that.

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 have reviewed the complaint afresh and having done so I agree with the conclusions reached by my colleague and as outlined in the provisional decision (a copy of which can be found above in smaller font) for the same reasons.

As no new comments or submissions were provided, I see no reason to depart from the findings my colleague made and for the reasons outlined above I do not uphold Mr O's complaint either about the lending decisions nor with the way the final loan has been managed.

My final decision

For the reasons explained above and in the provisional decision, I'm not upholding Mr O's complaint.

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

Robert Walker
Ombudsman