DRN-4600227

The complaint

Mr M has complained that FUND OURSELVES LIMITED trading as Fund Ourselves ("Fund Ourselves") gave him loans without carrying out sufficient affordability checks. Mr M has also complained that after entering a Debt Respite Scheme, Fund Ourselves continued to charge interest which is prohibited.

What happened

A summary of Mr M's borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	largest repayment per loan
1	£500.00	13/03/2022	23/03/2022	4	£229.00
2	£600.00	31/03/2022	21/04/2022	4	£289.20
3	£500.00	17/06/2022	18/07/2022	4	£248.00
4	£420.00	12/08/2022	15/08/2022	4	£248.00
5	£500.00	26/08/2022	15/11/2022	4	£237.00

Following Mr M's complaint, Fund Ourselves explained why it wouldn't uphold it. However, it made an offer as a gesture of goodwill to refund 50% of the interest that Mr M paid towards loan 5. Unhappy with this response, Mr M referred his complaint to the Financial Ombudsman.

As part of the investigator's review of the complaint she contacted Fund Ourselves about the interest that was apparently charged while Mr M was part of the respite scheme.
Fund Ourselves explained that at the time any deduction in interest needed to be made manually but as the loan was repaid online, Fund Ourselves didn't make the adjustment. It explained that Mr M was due a refund of £264 plus 8% simple interest.

The investigator then concluded Fund Ourselves had carried out proportionate checks which demonstrated that Mr M would be to afford his loan repayments. Finally, she concluded the offer Fund Ourselves had made for loan 5 was fair and reasonable and she didn't ask it to do anymore.

Mr M didn't agree with the proposed outcome and in summary he said;

- Fund Ourselves didn't conduct a credit review, income verification or a bank statement review.
- Mr M provided details of his vulnerability at the time and details of his financial position. I say no more about it here to protect Mr M's privacy but I have taken on board what he has told us.
- When loan 1 was advanced Mr M had over £82,000 of debt and had recently opened 2 high interest loans. Which he says shows a pattern of unsustainable borrowing.
- He was asked to estimate his monthly repayments, but Mr M assumed it would've checked the information he had given.

- It wasn't within the regulations to just rely on the information Mr M had provided.
- He returned for loan 2, shortly after loan 1 was repaid and he took a larger amount – this ought to have prompted further checks.
- By loan 3, Mr M had taken two payday loans and further credit cards and by loan 4, Mr M had opened a further 3 payday loans.
- While Mr M was in the debt respite scheme Fund Ourselves applied interest to the balance when it shouldn't have done and this was a particular stressful period of time for him.

As no agreement could be reached, the case was passed to me and I proceeded to issue a provisional decision where I explained why I was intending to uphold Mr M's complaint in full. Both parties were then given a further opportunity to provide any new submissions as soon as possible, but in any event, no later than 2 February 2024.

Fund Ourselves said it didn't have anything further to add, we didn't hear from Mr M.

A copy of the provisional findings follows this 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.

Fund Ourselves had to assess the lending to check if Mr M 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 M'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 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. The investigator didn't consider this applied to Mr M's complaint and I would agree given the number of loans and the values of those loans.

Fund Ourselves was required to establish whether Mr M 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 M was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

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

Loan 1

As part of his application, Mr M declared a monthly income of £5,066 and Fund Ourselves says this income was electronically verified through a third-party tool provided by a credit reference agency, in order to gauge its accuracy. Fund Ourselves says the results indicated Mr M's income was likely to be accurate.

Mr M was also asked to declare his outgoings across a number of different variables, such as outstanding debt, rent and travel. He declared these costs to be £3,330 per month. Fund Ourselves believed, based on the information Mr M provided, that Mr M had enough disposable income to afford the loan repayments.

Before the loan was approved, Fund Ourselves carried out a credit search and it has provided a copy of the results it received from the credit reference agency. It is worth saying here that although Fund Ourselves carried out credit searches, there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Fund Ourselves couldn't do is carry out a credit search and then not react to the information it received – if necessary.

In my view the credit check results are concerning, and I've explained why below. Firstly, Fund Ourselves knew that there wasn't any adverse credit file information in as much as there were no County Court Judgements, defaults, delinquents or insolvency markers within the last three years.

But the headline figures were that Mr M had 14 active accounts, of which seven had been opened within the last six months. That, in some situations could be a large enough number to have prompted Fund Ourselves to question what was happening with Mr M's financial situation. After all Mr M had opened more than 1 account on average per month and he seemed to have a constant need for credit.

But in my view the more worrying information was that Fund Ourselves was told that Mr M had more than £80,000 worth of debt. Yet none of it related to a mortgage account indeed, looking at the credit results provided by Fund Ourselves it seems that most of the money was owed to at least 10 credit cards providers.

I understand that Mr M was a relatively high earner when he took this loan, which may, in some situations mean he would be more able to withstand a short-term financial shock. However, the evidence I have seen here suggests that wasn't applicable to Mr M.

Fund Ourselves knew was that Mr M already owed debt of around 80% of his yearly salary, spread across a number of different loans and credit cards. Of which two credit cards were over their credit limit and all of the other cards were close to their limits as well – indicating that Mr M was close to maxing out most of his accounts. To me, this is a sign that Mr M was starting to struggle.

In any event, the £350 per month figure that Fund Ourselves was told and accepted as part of its affordability assessment couldn't possibly be correct – and it had information to support that in the credit check results and so Fund Ourselves needed to have reacted to this.

Excluding his credit commitments, Mr M declared £3,000 per month of living costs. But given the sheer volume of credit that he had outstanding I really don't think that he had the funds to either service any new credit or have the ability to take on new credit without it impacting on his finances. I think Fund Ourselves ought to have concluded that the loan wasn't affordable, when just from the credit check results, I think it's fair to say that his monthly credit commitments were more than £2,000 per month and therefore he didn't have sufficient disposable income to take on the loan.

It is arguable whether the results of the credit check were enough on their own to have prevented Fund Ourselves from lending because Mr M appeared to be already significantly indebted and over stretched with his monthly repayments.

But even if Fund Ourselves thought further checks were needed to establish whether to lend to Mr M, if it looked at his bank statements to verify the information it was given, on top of a number of large credit card repayments, it would've seen that he had at least 11 accounts with a by-now-pay- later company, had recently taken on another £1,000 of payday loans and was servicing a flexible credit facility that was costing around £2,000 per month. So, even if Fund Ourselves had done further checks – to be clear I don't think in this case it needed to - as it should really have declined the application based solely on the credit check – it still would've likely discovered that Mr M couldn't afford to take on this loan.

I am therefore intending to uphold Mr M's complaint about this loan.

Loans 2 to 5

The same sort of checks were carried out for each of these loans. For loan 2 Mr M declared the same income and expenditure information he had given for loan 1. And due to the proximity of loan 2 to loan 1 Fund Ourselves didn't carry out a new credit search. This meant Fund Ourselves relied on the same information for loan 2 as it had used for loan 1. It's therefore for the same reasons I've given above I don't think loan 2 ought to have been granted either.

For loans 3 to 5 Mr M declared the same outgoings of £3,580 per month. His income remained broadly similar at £5,100 for loan 3, £5,350 for loan 4 and £5,400 for loan 5. Mr M's income was also electrically verified.

Credit searches were also carried out for loan 3 and then the same one was used for loans 4 and 5. As above the same sort of caveats apply to the results.

The credit check results were broadly similar with Mr M still continuing to own significant sums of debt – indeed by loan 5 the outstanding debt balance had risen to nearly £88,000 and the number of active accounts had increased to 20. Fund Ourselves was also told, by loan 5 that Mr M had opened 11 new accounts within the last six months – so close to 2 new accounts on average per month – a further sign he had a constant need for credit.

Given everything that Fund Ourselves had been provided with, I think it was clear he couldn't afford to or continue to take credit and pay it in a sustainable manner. Especially as his overall indebtedness continuing to increase and due to the number of new credit accounts which had been opened. These are all indicators, in my view, that Mr M was likely borrowing from other sources in order to meet his repayments.

So, for the same reasons as loan 1, I think Fund Ourselves ought to have concluded these loans weren't affordable for Mr M given the likely monthly repayments he would've had to make to service his debt.

Indeed, his bank statements for the period when these loans were approved showed a deterioration – in early June 2022 – so just before loan 3 was approved, 8 direct debit payments were returned as unpaid and a direct debit was also returned the day before he was advanced loan 5. This continued most months and so as the guidance says, in CONC 1.3 continued missed payments ought to have alerted Fund Ourselves to the fact that Mr M was having ongoing financial difficulties.

Mr M also continued to take other payday loans through the entire period of his borrowing, for example in the weeks before loan 4 and 5 were granted Mr M took on another payday loan and he continued to make full use of a flexible credit facility.

I therefore intended to uphold his complaint about these loans as well.

Debt Scheme

Mr M is quite correct, that the debt respite scheme he was enrolled on meant Fund Ourselves was not allowed to charge any interest, fees or charges on his outstanding debt.

Fund Ourselves has accepted and has explained that there needed to be a manual workaround to enable the interest to be removed from the balance. However, in this case, because Mr M went online and paid the balance himself there was no extra input from Fund Ourselves and so it couldn't make the adjustment to the interest and balance.

I share Mr M's concerns that Fund Ourselves appears to only have a manual workaround in order to prevent additional fees and charges being added during a time when its required not to charge them. However, in saying that, my role and remit is only to consider the impact in this individual case and I am not able to ask a business to change its systems.

In this case, Fund Ourselves had made an offer to refund the interest that it incorrectly applied to the balance – which I don't consider to be unreasonable. However, as I've now decided that loan 5 shouldn't have been advanced it therefore follows that all interest, fees and charges levied on the loan need to come back to Mr M and I've outlined this process at the end of this decision.

In saying that, Mr M has provided some details around what was happening in his personal life at the time and I am sorry to hear about this, but I do hope things have improved for Mr M since. There isn't anything to suggest Funds Ourselves was aware of the issues Mr M was having but that doesn't mean that Fund Ourselves actions didn't have a detrimental impact on Mr M.

Mr M has provided evidence that he checked with Fund Ourselves that the account had been updated to reflect the scheme that he had entered into – and Fund Ourselves confirmed that it was aware of it. Clearly, Mr M was concerned and so checked with Fund Ourselves to ensure that further interest wasn't added to the balance.

Mr M does appear to have been caused distress and inconvenience as a result of this error, he raised it with Fund Ourselves and says that his complaint about it was "dismissed" even though, Fund Ourselves had made an error by continuing to apply interest during a period when it shouldn't have done. Given this, and the impact Mr M says it had on his health, I do think a payment should be made by Fund Ourselves to reflect this, of £150 – which needs to be paid directly to Mr M.

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 new submissions then I see no reason to depart from the findings I made in the provisional decision. I still think the checks Fund Ourselves carried out before each loan ought to have led it to conclude that Mr M was already significantly over indebted and he therefore wouldn't be able to afford to make any of his loan repayments in a sustainable manner.

I also think Fund Ourselves caused Mr M distress and inconvenience when it charged interest on the balance of loan 5, during a period of time when he was subject to debt respite scheme and therefore no further interest should have been charged.

I've therefore, outlined below what Fund Ourselves needs to do in order to put things right for Mr M.

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 not lent to Mr M, 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 M may have simply left matters there, not attempting to obtain the funds from elsewhere. 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 M 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 M 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 M any of his loans.

A. Fund Ourselves should add together the total of the repayments made by Mr M towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything you have already refunded.
B. It should calculate 8% simple interest* on the individual payments made by Mr M which were considered as part of "A", calculated from the date Mr M originally made the payments, to the date the complaint is settled.
C. Fund Ourselves should pay Mr M the total of "A" plus "B".
D. Pay directly to Mr M £150 for the distress and inconvenience caused as a result of the way Fund Ourselves managed his respite scheme.
E. Fund Ourselves should remove any adverse information it has recorded on Mr M's credit file in relation to these loans.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr M's complaint.

FUND OURSELVES LIMITED trading as Fund Ourselves should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 March 2024.

Robert Walker
Ombudsman