

The complaint

Mr M complains that My Finance Club Limited trading as Ondal.co.uk ("MFC") gave him a loan without carrying out the correct affordability checks. Mr M says that had further checks been carried out MFC would've realised Mr M was already in a significant amount of debt and was gambling.

What happened

Mr M was advanced one loan on 30 April 2023 for £400. Mr M was contracted to make one repayment on 30 May 2023 for £496. It is my understanding an outstanding balance remains due.

Following Mr M's complaint MFC wrote to him to explain why it wasn't going to uphold the complaint about the loan – because it had had carried out proportionate checks. Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman Service.

An investigator then reviewed the complaint, and he didn't uphold it. Saying in summary that proportionate checks had been carried out which showed the loan to be affordable. There also wasn't anything to suggest the loan would be unsustainable for him.

Mr M didn't agree with the outcome, saying that he thinks it's fair that he should just repay the capital amount he borrowed. As a result of his difficulties MFC has added a lot of additional interest to the outstanding balance – to the point where Mr M now owes it £800 – Mr M says this isn't fair.

As no agreement was reached, the case was passed to me for a decision. I then proceeded to issue a provisional decision explaining the reasons why I was intending to uphold Mr M's complaint in part.

Both parties were given an opportunity to provide any further comments or evidence for consideration. Mr M said;

- He is now in a repayment plan with MFC and he provided a copy of an email from it showing the agreed terms.
- Mr M wants any negative information removed from his credit file because he has done everything he ought to have done to resolve this matter.

MFC said that it had updated Mr M's outstanding balance and had removed interest that came to £192. At the time of confirming this it said Mr M's outstanding balance was £398. It also asked about the Breathing Space scheme that Mr M entered into and that the notification letter it received didn't suggest that it had to freeze interest during the 60-day hold.

A copy of the provisional findings follows this in 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 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. 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 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 MFC 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. This doesn't apply in Mr M's complaint because only one loan was advanced.

MFC was required to establish whether Mr M could sustainably repay the loan – not just whether he technically had enough money to make his repayment. Having enough money to make the repayment 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.

Before the loan was granted MFC made enquires with Mr M about his income and he declared this to be £2,900 per month. MFC says that Mr M's income was validated through a report generated by his bank – which showed MFC that Mr M's declared income was likely to be accurate.

Mr M was also asked to provide details of his monthly outgoings across a number of different categories including housing, utilities, food, transport, credit and 'other'. Mr M declared monthly outgoings of £2,109. Based on the information it had the loan looked affordable as Mr M had sufficient disposable income to afford his repayment.

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 to the information it received.

MFC knew Mr M had current accounts, a telecommunications account, a credit card, one other payday loan and a longer unsecured loan. All of these accounts were within the credit or overdraft limits and there wasn't any adverse payment information recorded – such as missed payment markers or a default. The results wouldn't have prompted MFC to have carried out further checks, and they didn't indicate that Mr M has having financial difficulties.

There wasn't anything in either what Mr M declared to MFC or the results of the credit search that indicated Mr M was having or likely having financial difficulties to the extent that MFC would've thought it needed to have verified the information that he had provided. This means, for a first loan, I do not think MFC needed to obtain copy bank statements or any other documentation.

I'm sorry to hear about the struggles Mr M has explained to the Financial Ombudsman about his gambling and the impact that had on his mental health. I do hope things have, and are, improving for him.

Mr M has said he was spending significant sums each month on gambling transactions, and he has provided a copy of his bank statements from around the time that the loan was approved. I do think it's important to say, that had MFC reviewed Mr M's bank statements to obtain a full understanding of what his finance position was – to be clear I don't think it needed to here -then I do think it would've likely decided that the gambling was taking up too much of his income and therefore not have lent.

But there was no indication in what Mr M told MFC, or what it found out from the credit reference agency to suggest he was using income or loans to gamble. This means, I can't say MFC made an error when it advanced the loan as it didn't know, and it is not reasonable to conclude that it ought to have known, about Mr M's gambling by carrying out a proportionate check.

For a first loan I think it was reasonable for MFC to have relied on the information Mr M provided about his income and expenditure as well as the credit check results - which showed sufficient disposable income to afford the repayment. There also wasn't anything else to suggest that Mr M was currently having financial difficulties or that the repayments would be unsustainable for him.

I'm therefore intending not to uphold Mr M's complaint about the approval of the loan.

Repayment of the loan

Mr M says that due to his financial difficulties he's struggled to repay this loan, and he is unhappy that despite MFC knowing about his difficulties it added £304 of additional interest. On the day that Mr M was meant to make the contracted payment to pay the loan, he contacted MFC to ask whether it would be possible to split the repayment in two – and pay on 5 June 2023 and then make the final payment on the 12 June 2023.

There isn't anything to suggest that Mr M informed MFC that he was struggling due to gambling or due to any other reason. MFC appears to have considered this request and then granted it.

It explained that as a result of extending the term further interest would be added to the balance. This is in line with the terms and conditions as outlined in the credit agreement, and I think the actions of MFC were reasonable. However, the payment plan failed because the payment due on 5 June 2023 wasn't made.

The following day, MFC was notified that Mr M had entered a breathing space scheme. By entering the scheme MFC had certain rights and obligations towards Mr M. For example, MFC couldn't contact Mr M for 60 days (the length of the scheme) to discuss the repayment of the debt nor could it take enforcement action. MFC seems to be fully aware of this because it said the breathing space scheme was due to end at the beginning of August 2023.

However, an additional part of MFC's obligation was also to stop interest being added to Mr M's outstanding balance. A statement of account hasn't been provided by MFC so I can't be sure whether during the two-month scheme interest was stopped. All I'm able to safely conclude is that all further interest was suspended on 3 September 2023. In response to this provisional decision, it would be helpful if MFC could provide an up-to-date statement of

account.

Again, I don't know why further interest was stopped on 3 September 2023 but given the total outstanding balance that is currently due it's entirely possible that the interest had to be suspended at this time because the total outstanding balance had reached the cost cap limit introduced by the regulator – and so MFC couldn't, even if it wanted to, have applied further interest.

During the breathing space scheme – on 10 June 2023 – Mr M raised his complaint and MFC reviewed it and completed its investigation by 26 June 2023. By this point in time, MFC was now fully aware, not only of his ongoing financial difficulties to the extent that he had the need to enter a breathing space scheme but MFC was also given information to demonstrate why he needed the scheme in the first place – the complaint email is the first time that Mr M told MFC about his gambling.

When the complaint was raised, interest ought to already have been suspended due to the breathing space scheme. But I'm also minded to conclude that as MFC was aware of Mr M's vulnerabilities from 10 June 2023, then though MFC was entitled to charge further interest on the balance after the scheme ended, but I don't think that would've been fair or reasonable.

I recognise from MFC's viewpoint that it doesn't consider Mr M has engaged with it in order to try and repay what is owed. Although I would add that I've seen the emails where Mr M has explained why he was willing to repay just the capital that he borrowed – and he doesn't appear to have had a clear answer as to whether that would or wouldn't be acceptable to MFC until 3 October 2023. A payment plan was offered at this point, and it's clear from Mr M's response to this email that he wanted a final ruling from the Financial Ombudsman before progressing.

Overall, it's clear from Mr M entering the breathing space scheme that MFC should've frozen the interest and charges during the time he was in it. But also, MFC was told not long after he entered the breathing space scheme that he was in financial difficulties and was vulnerable. MFC had to react to what it was being told. I do think, in the individual circumstances of this complaint that it ought to have permanently frozen the balance as it was on 6 June 2023, when he entered the breathing space scheme.

I therefore think MFC needs to recalculate the outstanding balance that is owed as if the balance had been frozen on that date.

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 thank Mr M for providing a copy of the email where he confirmed he has a repayment plan set up with MFC – that was the first time I had seen that and I'm glad to hear the outstanding balance is now reducing in line with the plan that was agreed in October 2023.

I've thought about Mr M's request to remove the negative information recorded on his credit file. But in this case, I don't think it is fair to ask MFC to remove the adverse payment information. I appreciate Mr M will be disappointed by this, but I've explained why below.

Mr M wasn't able to repay the loan in line with the terms and conditions he agreed to when it was advanced. This is what he would've needed to have been done in order for there to be no adverse payment information.

As soon as any sort of credit isn't repaid in line with the conditions that govern an account a lender is entitled to report adverse payment information with the credit reference agencies. This is consistent with guidance issued by the Information Commissioner's Office.

Mr M is late in repaying the loan due to not just the breathing space scheme but also needing a repayment plan. So, I do therefore think it's fair for this information to be reported to the credit reference agencies as it would be an accurate reflection of how Mr M managed his account. As such I won't be asking MFC to remove the adverse it may have recorded. This is especially so because I have already decided MFC didn't make an error in advancing the loan in the first place.

Turning to MFC's comments, in terms of holding the interest for 60 days while Mr M's account was part of the breathing space scheme. All I can say is that following further searches on a number of well-known and established debt advice charities and organisations their websites confirm that as part of any breathing space scheme a business should not add fees or interest.

I accept that it could be interpreted to mean no further interest beyond what was contracted to be paid, but by the time Mr M entered the scheme his contracted loan repayment was already late. And, in any event, for the reason I explained in the provisional decision, not long after Mr M entered the breathing space scheme, he provided MFC with further details about his vulnerability which ought to have led it stop the interest anyway.

Having taken account of the additional comments I still think MFC was wrong to have continued to charge interest on Mr M's account while he entered the breathing space scheme. I've set out below what MFC needs to do – if it hasn't already done so, to put things right.

Putting things right

In order to put things right for Mr M – if it hasn't already done so, MFC should.

- Recalculate the outstanding balance as if interest, fees and any charges were suspended from 6 June 2023, which is the date the breathing space scheme started.
- An outstanding balance will still be owed to MFC so I would remind it of its obligation to treat Mr M fairly and with forbearance with any repayment plan that may be needed.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr M's complaint in part. My Finance Club Limited trading as Ondal.co.uk 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 29 May 2024.

Robert Walker
Ombudsman