

The complaint

Mr Y complains that had Quidie Limited trading as Fernovo (Fernovo) done the proper checks it would have realised he could not afford this loan.

What happened

Mr Y took one loan for £350 on 3 December 2022. It was due to be repaid over three instalments. The total due to be repaid was £533.45 and at the date of the complaint (January 2024) Mr Y had repaid £90. The status of the loan account is unknown.

Mr Y complained to Fernovo and received a final response letter (FRL) on 17 January 2024. It did not uphold his complaint. It has made a couple of offers to Mr Y in the FRL and then in the follow-up correspondence – the latest being an offer to reduce the outstanding balance by £70. But it's unclear whether this offer is still available to Mr Y and I am proceeding on the basis it is not. Mr Y referred his complaint to the Financial Ombudsman Service.

One of our investigators asked Fernovo several times for its Fernovo file about the loan decision and the complaint.

Our investigator reviewed what she had from the detailed FRL and what Mr Y had sent to her. She did not think that the complaint should be upheld.

Mr Y disagreed and he said that at the time he was seriously in debt and his payslips (copies of which he forwarded to us) show that he'd even asked his employer for advanced payments at the end of 2022 which he says shows how much trouble he was in at that time.

The unresolved complaint was passed to me.

I asked for the Fernovo business file again, and it was received by us after I had issued the provisional decision on 6 June 2024. That provisional decision is duplicated at the end of this decision for ease of reading.

Having received the business file, I re-sent the decision to Fernovo on 10 June 2024 reconfirming the reply date was 20 June 2024.

I received an acknowledgement from Fernovo that it had received that provisional decision. Since then, I have received no further submissions or evidence from Fernovo.

Mr Y emailed to us to say that he agreed with my provisional decision.

So now that I am satisfied that both parties are aware of the decision I was planning to make, and now that I have a full file from Fernovo, I have reconsidered the whole 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.

My provisional decision (duplicated below) forms part of this final decision and the body of that earlier decision sets out the rationale, facts and my reasoning based on the evidence I had at the time.

Since then, I have received evidence and submissions from Fernovo about the lending decision which I have reviewed. But my decision has not altered and I explain why.

On Fernovo's own evidence, Mr Y was clearly overindebted and it knew that. The credit report Fernovo has sent to me shows much of what I had seen when I had relied on Mr Y's own credit report. These are set out in my provisional decision.

The information Fernovo had before lending was that Mr Y had 23 active accounts, his loans debt balance was £45,944 and his revolving credit (which usually means credit cards) debt balance was £38,908. His 'balance to limit ratio' for that revolving credit was 97%. On top of all this Mr Y had a mortgage of £102,000.

The 'affordability' report sent to me by Fernovo is peppered with red and amber markings which included the following:

Unsecured debt percentile: 88%

Debt balance increase in 3 months £2,297

Debt balance increase in 12 months £68,189

So having seen these details, my findings set out in my provisional decision remain unchanged – those are repeated here and form my final decision which is that I uphold the complaint for those reasons given and based on what I have seen recently from Fernovo.

Putting things right

In deciding what redress Fernovo should fairly pay in this case I've thought about what might have happened had it not lent to Mr Y, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr Y may have simply left matters there, not attempting to obtain the funds from 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 reconstruct now accurately.

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 Y in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr Y would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Fernovo's liability in this case for what I'm satisfied it has done wrong and should put right.

Fernovo shouldn't have given Mr Y the loan.

If Fernovo has sold the outstanding debt it should buy it back if Fernovo is able to do so and then take the following steps. If Fernovo can't buy the debt back then it should liaise with the new debt owner to achieve the results outlined below.

- A. Fernovo should then remove all interest, fees and charges from the balance of the loan, and treat any repayments made by Mr Y as though they had been repayments of the principal. If this results in Mr Y having made overpayments then Fernovo should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Fernovo should then refund the amounts calculated. But here I understand Mr Y has paid very little towards the loan so a refund is unlikely.
- B. If there is still an outstanding balance – which is the more likely scenario here - then the amounts calculated in “A” can be used to repay any balance remaining on the loan. If this results in a surplus, then the surplus should be paid to Mr Y. However, if there is still an outstanding balance then Fernovo should try to agree an affordable repayment plan with Mr Y.
- C. Fernovo should remove any adverse information recorded on Mr Y’s credit file for the period up to now but going forward Mr Y needs to appreciate that Fernovo does have to report accurately to the CRAs in the future.

I’ve considered whether the relationship between Mr Y and Fernovo might have been unfair under s.140A of the Consumer Credit Act 1974. However, I’m satisfied the redress I have directed should be carried out for Mr Y results in fair compensation for him in the circumstances of his complaint. I’m satisfied, based on what I’ve seen, that no additional award would be appropriate in this case.

*HM Revenue & Customs usually requires Fernovo to deduct tax from this interest if any is applied. It should give Mr Y a certificate showing how much tax it has deducted if he asks for one.

My final decision

My final decision is that I uphold the complaint and I direct that Quidie Limited trading as Fernovo does as I have outlined in the ‘putting things right’ part of the decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr Y to accept or reject my decision before 19 July 2024.

My Provisional decision dated 6 June 2024 (duplicated)

I’ll look at any more comments and evidence that I get by 20 June 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

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Mr Y complained to Fernovo and received a final response letter (FRL) on 17 January 2024. It did not uphold his complaint. It has made a couple of offers to Mr Y in the FRL and then in the follow-up correspondence – the latest being an offer to reduce the outstanding balance by £70. But it’s unclear whether this offer is still available to Mr Y and I am proceeding on the basis it is not. Mr Y referred his complaint to the Financial Ombudsman Service.

One of our investigators asked Fernovo several times for its Fernovo file about the loan decision and the complaint. I have also asked for such a file but none has been sent to us.

Our investigator reviewed what she had from the detailed FRL and what Mr Y had sent to her. She did not think that the complaint should be upheld. Mr Y disagreed and he said that at the time he was seriously in debt and his payslips (copies of which he forwarded to us) show that he'd even asked his employer for advanced payments at the end of 2022 which he says shows how much trouble he was in at that time.

The unresolved complaint was passed to me.

What I've provisionally 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.

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

- Mr Y 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 Y 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 Y 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 Y. But a pattern would not have developed here as Mr Y took one loan only.

Fernovo was required to establish whether Mr Y could *sustainably* repay the loan – not just whether he technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Mr Y was able to repay the loan 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 Y's complaint. I've provisionally decided to uphold this complaint and I explain here.

Mr Y had declared a monthly income of £2,900. Fernovo has described in its FRL that it conducted an on-line income verification check which returned a score indicating Mr Y's declared income was highly likely to be around that amount. More recently Mr Y has sent to us copy payslips which show his net salary (usually) was £2,742 for November 2022. So, the on-line verification was about right and I consider that reasonable of Fernovo to proceed on the basis Mr Y's monthly net income was as he had told them it was.

I have noted Mr Y's concern about the payslip evidence – namely that one of his payslips shows he had been paid in advance by his employer. I have thought about this. But there's no requirement for Fernovo to have obtained a payslip. And its method of checking Mr Y's income is a well-known and established electronic method and one I considered to have been reasonable. So, I doubt that any payslip was necessary to have been requested by Fernovo and so I do not think that it would have seen this or have known of this unless Mr Y had told Fernovo. There's no evidence he did that.

Fernovo checked Mr Y's credit file history which did not show any elements to prompt it to be unduly concerned. It explained to Mr Y that he did not have any defaults or delinquent accounts in the previous 12 months before it lent to him. I add that there are no requirements to do such a credit search but having obtained one Fernovo did have to apply the information it received. Fernovo did do that. And I say that because of what it told Mr Y in correspondence about the complaint:

'Our affordability checks showed that your total expenditures were almost 3 times higher than you had stated during your application. Our checks also showed that your credit commitments were 2 times higher than you had claimed. We used the figures received from our checks to determine the suitability of the loan. Despite your outgoings being higher than the information you provided, our affordability checks showed that you had enough disposable income each month to be able to afford our monthly instalment amounts, without the need for further borrowing.'

As I have explained earlier in this decision, despite several communications with Fernovo, no business file has been received from it. And I have used the detailed FRL as much as I am able to. But considering Mr Y's submissions to us that he was in a great deal of debt and that his credit card debt was around £40,000 at the time the loan was advanced, I have decided to look into Mr Y's finances further. In the absence of a credit report from Fernovo and therefore not knowing exactly what information it received from the credit reference agency I have considered it to be fair and reasonable that I use the personal credit file Mr Y has sent to me.

I have reviewed Mr Y's personal credit file which covers the period up to December 2023. I have used the individual account dates (started and settled) in that document to identify which accounts were open at the time he was applying for this Fernovo loan.

The Fernovo loan was dated 3 December 2022 but I have looked at accounts in November 2022 as that's the information Fernovo's credit search may have shown to it. And I say 'may' as not all credit search reports produce the same information or level of detail. And so, it's feasible that Fernovo's credit search report would not have been the same as the one I've received from Mr Y. Fernovo can, in response to the provisional decision provide a copy of the credit report data that it received, if it considers that I've included credit accounts that it didn't know about.

I can see that Mr Y had a mortgage repayment of £687, a hire purchase commitment of £361, a loan costing £32, media charges of £58 and another loan costing him £71 each month. These all add up to £1,209.

Mr Y had several types of 'flex account' or 'buy now pay later' type accounts – one with an on-line bank and it had a debt balance of under £2,000 at the time of the Fernovo loan application. But the others commenced either too close in time, in my view, for the Fernovo credit checks to have identified them or after the Fernovo loan was approved. So, I've not included them in my review of Mr Y's credit review.

I have noted that many of Mr Y's mail order, credit card and loan accounts defaulted in the summer months of 2023 and so something must have happened recently which appears to have caused financial distress for Mr Y.

I see a mail order account was around £5,000 in debt but at that stage (November 2022) did not appear to be in arrears. I see it has defaulted now. There's at least one other mail order account in a similar position.

Mr Y did have several credit cards (I've counted 12) some of which had high credit limits (£13,000). It's not easy to work out Mr Y's exact outstanding balance at the time of the loan application to Fernovo but from what I have seen it was a total credit card debt of £70,000. (Mr Y has said he thought it was £40,000). Many defaulted in June, July, or August 2023 and the records indicate that the arrears started from around January 2023 and so these arrears wouldn't have been visible in any credit check conducted by Fernovo.

But overall, the credit card accounts in November 2022, just before he applied for the Fernovo loan, were being paid back satisfactorily. And even if I am wrong on that, which I don't think I am, an account that may have registered as having one month of arrears would not have been an account about which Fernovo would have been concerned. One month arrears recorded would not have been considered to have been a large issue.

However, the level of debt has caused me concern. And even Fernovo in its FRL has explained that the debt and expenditure Mr Y had told them about had to be tripled because of what it had found on its own searches.

Mr Y has said he thinks he was about £40,000 in debt on his cards. I think it may have been more than that but even proceeding with the figure Mr Y has given us, I am persuaded that this was very likely his credit card debt level in or around November 2022. For a debt of that size, calculating the minimum repayments each month would have been around £1,200.

That means that the credit accounts I've already identified as likely costing Mr Y £1,209 each month plus the £1,200 for his credit cards means that he would have had about £500 money left from the declared income of £2,900. I know from payslips Mr Y has sent to me that his pay was more like £2,700 each month. So, it's more likely that Mr Y's money left over was closer to £300 and may have been less.

But using the income figure Fernovo would have used (£2,900) that would have left Mr Y with £500 for ordinary expenses such as council tax, utility bills, food, travel and transport costs. So, I do not think that Mr Y was able to afford the instalments on this loan even accounting for the short-term nature of it. My provisional decision is that I plan to uphold the complaint.

Putting things right

In deciding what redress Fernovo should fairly pay in this case I've thought about what might have happened had it had not lent to Mr Y, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr Y may have simply left matters there, not attempting to obtain the funds from 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 reconstruct now accurately.

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 Y in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr Y would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Fernovo's liability in this case for what I'm satisfied it has done wrong and should put right.

Fernovo shouldn't have given Mr Y the loan.

If Fernovo has sold the outstanding debt it should buy it back if Fernovo is able to do so and then take the following steps. If Fernovo can't buy the debt back then it should liaise with the new debt owner to achieve the results outlined below.

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*HM Revenue & Customs usually requires Fernovo to deduct tax from this interest if any is applied. It should give Mr Y a certificate showing how much tax it has deducted if he asks for one.

This is the end of the duplicated provisional decision.

My final decision

My final decision is that for the reasons set out in both my provisional decision and in this decision, I uphold the complaint and I direct that Quidie Limited trading as Fernovo does as I have outlined in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 19 July 2024.

Rachael Williams
Ombudsman