DRN-4800956

The complaint

Mr M, through his representative, complains that FUND OURSELVES Limited trading as Fund Ourselves ("Fund Ourselves") gave him a loan without carrying out sufficient affordability checks. Mr M's representative also says that he is a vulnerable person and so may not have fully understood the loan agreement.

What happened

Mr M was advanced one loan on 22 July 2023 for £500. Mr M was due to make five monthly repayments of £200. Mr M has had some problems repaying this loan and to date, no payments have been made – the total outstanding debt is £1,000 and the account has been defaulted.

Mr M's representative referred his complaint to the Financial Ombudsman after it had been reviewed by Fund Ourselves who didn't uphold it.

The complaint was considered by an investigator, and she didn't think Mr M's complaint should be upheld because proportionate checks had been carried out by Fund Ourselves. She was also satisfied Fund Ourselves didn't know about Mr M's vulnerability and given he completed the loan application and then logged onto his account she didn't think Fund Ourselves had made an error.

Mr M's representative didn't agree. The complaint was passed to me. I then issued a provisional decision outlining why I thought Mr M's complaint should be upheld.

Both parties were given an opportunity to provide anything further for consideration. Fund Ourselves said it had nothing further to add, and we didn't hear from either Mr M or his representative.

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.

Fund Ourselves 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. 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. But as there was only one loan, I don't think this applied here.

Fund Ourselves was required to establish whether Mr M could sustainably repay the loan – 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.

As part of his application, Mr M declared he worked full time and received a monthly income of £1,000. For a first loan I think it was reasonable for Fund Ourselves to have relied on what Mr M declared about his income without the need to verify it.

Mr M was also asked to declare his outgoings across several different categories, such as travel, rent, utilities, food and commitments. Mr M declared his outgoings were £150 per month. This is a relatively small amount, but Mr M declared he lived with parents so it's may well have been that Fund Ourselves would've expected few and smaller living costs then say a customer who had rent and other associated costs. As before, I think it was, at this time, reasonable of Fund Ourselves to have relied on the information Mr M had provided. Mr M had enough disposable income to afford the largest monthly loan repayment of £200.

But Fund Ourselves 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 Fund Ourselves carried out a credit search there wasn'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.

The results of the credit search in my view should have been concerning for Fund Ourselves. While superficially Mr M only had five active accounts owing these creditors nearly £1,700 – the checks also showed recent and ongoing payment difficulties.

Fund Ourselves was provided with information about Mr M's active credit facilities and it showed that two of his five facilities were in arrears. Firstly, Mr M had a credit card which he had opened in November 2022, but he hadn't made a payment towards the balance since February 2023. The arrears on the account were now showing as "4" indicating that Mr M hadn't made payments for at least four months. As a result of non-payment, the credit card was now significantly over the credit limit by at least 50%.

The second account relates to one that has been recorded as a "TM". This was now in arrears by a month and was being reported as "AA" and "1". So, on two separate credit accounts, Mr M was showing signs of financial difficulties and difficulties managing his existing credit commitments. I don't know why Fund Ourselves concluded – knowing about these arrears – that Mr M would be able to take on further credit when he wasn't paying his existing creditors.

In some situations, I may have concluded that Fund Ourselves ought to have done better checks before granting the loan. However, in this case, and weighing up the other information Fund Ourselves had to hand I think it ought to have reasonably concluded that the arrears across a number of different accounts meant Mr M was likely having financial difficulties. Rather than it being the case he had perhaps just forgotten to make one or two of the payments. As such, given Fund Ourselves was aware of Mr M's financial difficulties, I therefore have concluded that it ought to not have granted the loan.

But even if Fund Ourselves believed that the credit checks results didn't lead it to automatically declining the loan and instead decided it ought to have made better checks to verify that Mr M wasn't in fact having financial difficulties, it would've likely discovered the loan was unaffordable.

I say this because further checks would've involved verifying the information given to Fund Ourselves. It could've done a number of ways, it could've asked to see evidence of his income through a payslip, copy bills, bank statements or any other documentation that it had to hand.

Mr M's representative has provided copy of Mr M's bank statements from around the time this loan was approved and in the absence of anything else, it is appropriate to review these to see what Fund Ourselves may had seen had it made better checks.

Fund Ourselves would've likely discovered that Mr M was in receipt of benefits at the time and this was his only source of income. Now, a customer in receipt of benefits doesn't automatically mean that any lending is unaffordable for them. But in this case, Mr M received around £250 per month, given the monthly repayment of £200 – clearly the loan was unaffordable for him.

Overall, the credit check results were of sufficient concern to show that Mr M was already having problems managing a number of existing credit commitments. However, even if Fund Ourselves would've undertaken further checks it still would've likely decided that the loan was unaffordable.

In those circumstances, Fund Ourselves ought to have reasonably concluded that Mr M couldn't afford the loan and therefore it shouldn't have provided it. I am therefore intending to uphold Mr M's complaint about the sale of the loan.

I've set out below what Fund Ourselves needs to do in order to put things right for Mr M.

Other considerations

I've thought about what Mr M's representative has explained about Mr M's vulnerabilities and Mr M has sign posted us to the relevant section of guidance. But it's worth saying here that Funds Ourselves could only act and make any adjustments if it knew or reasonably ought to have known there was a vulnerability.

In the circumstances of this case, it didn't know. However, it is now on notice, and as an outstanding balance is due to be paid it will need to consider the information it has been told when working with Mr M (or his representative) to repay what he owes.

I appreciate Mr M's representative is unhappy with the excesses interest rate charged by Fund Ourselves., But as the complaint is now being upheld Mr M will only need to repay the amount of capital that he was advanced - £500.

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 submissions, I see no reason to depart from the findings I reached in the provisional decision. I still think, for the same reasons as outlined above that Fund Ourselves shouldn't have lent the loan given the results it received from the credit reference agency.

I've set out 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 his loan.

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

A. Fund Ourselves should remove all interest, fees and charges from the balance of the loan, and treat any repayments made by Mr M as though they had been repayments of the principal. If this results in Mr M having made overpayments then Fund Ourselves 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.
B. However, if there is still an outstanding balance then Fund Ourselves should try to agree an affordable repayment plan with Mr M. I would also remind if of its obligation to treat Mr M fairly and with forbearance.
C. Fund Ourselves should remove any adverse information recorded on Mr M's credit file in relation to the loan.

*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 14 June 2024.

Robert Walker
Ombudsman