

The complaint

Miss P complains that Quidie Limited trading as Fernovo (“Quidie”) provided her with loans when proportionate checks would’ve shown she was dependant on other payday loans.

What happened

A summary of Miss P’s borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of monthly payments	monthly repayment
1	£500.00	20/11/2018	29/11/2018	4	£180.38
2	£300.00	03/12/2018	27/12/2018	3	£157.26
Break in lending					
3	£250.00	25/06/2019	outstanding	3	£112.28

Quidie considered the complaint and didn’t uphold it because it said it had carried out proportionate checks.

Miss P’s complaint initially appeared to be out of jurisdiction because she had referred it here more than six months after the final response letter was issued. However, Quidie consented to the complaint being reviewed and therefore there’s no outstanding jurisdiction issue to be resolved.

An Investigator reviewed the complaint and didn’t uphold it because Quidie had carried out a proportionate check. Miss P didn’t agree. Miss P said the day after loan 3 was advanced, she took another loan from another provider, which was subject to another complaint at the Financial Ombudsman that was found in her favour. Miss P says she was dependent on payday loans.

As no agreement could be reached, the case was passed to me for a decision. I issued my provisional decision explaining the reasons why I was intending to uphold Miss P’s complaint. Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 31 July 2024.

Neither Miss P nor Quidie provided any further submissions to the Financial Ombudsman. 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.

Quidie had to assess the lending to check if Miss P could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Quidie'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 Miss P'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 Quidie should have done more to establish that any lending was sustainable for Miss P. These factors include:

- Miss P 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);
- Miss P 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);
- Miss P 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 Miss P. The investigator didn't consider this applied to Miss P's complaint, and I agree given the number of loans and the time in debt.

Quidie was required to establish whether Miss P could sustainably repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss P was able to repay her 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 Miss P's complaint.

Loans 1 and 2

Before these loans were approved, Quidie asked Miss P for details of her income and she declared this to be £2,000 per month for both loans. Quidie says the income figure was checked by cross referencing information through a third-party report. Doing this gave Quidie a high level of confidence that Miss P's declared income was accurate. Given these were the first loans, it was reasonable for Quidie to have relied on the results of its check.

Miss P was also asked to provide her monthly living costs – and for each loan she declared the same information – that her outgoings were £750 per month.

Quidie then went about checking this information. Firstly, Quidie said it used an "affordability" report provided by a credit reference agency and that report indicated that the amount Miss P paid each month to her other credit commitments was greater than what she had declared – around £500 per month.

Secondly, excluding the credit commitments and the housing costs Miss P had declared, the total of her other outgoings came to £300 for both loans. Quidie says this is much lower than averages provided by the Money Advice Service's (MAS). Using MAS averages for someone in a similar situation to Miss P, this should have led to monthly living costs of around £633. So, this is the figure Quidie used for its assessment for each loan.

Thirdly, Quidie believed Miss P's housing costs were higher than the £300 she had declared taking account her postcode for example and these costs were likely around £432 each month.

Overall, for its affordability assessment, Quidie used the MAS average of £633, plus the

housing costs of £432 plus the credit commitments of £750 which gave total monthly outgoings of £1,565. With an income figure of £2,000 this left £435 per month in disposable income to afford both loan repayments.

Quidie also carried out a credit search and it has provided the results it received from the credit reference agency for each loan. It is worth saying here that although Quidie carried out a credit search, there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Quidie couldn't do is carry out a credit search and then not react to the information it received.

For loan 1, superficially there were no concerns with the data received by Quidie. It knew that Miss P didn't have any defaults, delinquent account or County Court Judgements. However, in saying that it had information to suggest the loan wasn't affordable.

Quidie knew that Miss P had four outstanding loans, three outstanding home credit loans and a hire purchase agreement, in total these loans were costing Miss P at least £970 per month. On top of this, Miss P also had credit card balances that needed repaying.

When Quidie factored in the cost of the outstanding credit it knew about from the credit search, the monthly repayment of the loan along with Miss P's rent figure Quidie used - £432 and the MAS living costs of £633 brought her monthly outgoings to £2,035. So based on Quidie's own checks loan 1 looked unaffordable.

A credit search has been provided by Quidie for loan 2, but this is dated January 2019 – so a month after loan 2 had been repaid. This could mean there was a further declined application, but I need not speculate.

Instead, I've considered the information in the search that would've likely been visible to Quidie at the time loan 2 was advanced. And it would've been told a similar picture – this time there was an additional home credit loan and Miss P's credit commitments to her hire purchase agreement, other loans came to around £1,100 per month. Adding the cost of loan 2, the rent and the MAS costs, Miss P didn't have any disposable income in which to afford her loan payments.

I am therefore intending to uphold Miss P's complaint about loans 1 and 2.

Loan 3

There was a gap of around six months between Miss P repaying loan 2 and before she returned for loan 3. Thinking about the overall lending relationship and this gap, I think it would've been fair for Quidie to have treated Miss P's application afresh.

The same sort of checks were conducted by Quidie. Miss P's income has been verified as being £2,000 per month and with declared outgoings of £1,260. Like loans 1 and 2, Quidie crossed reference what it was told with MAS data and her credit file. As a result, it concluded her monthly outgoings came to £1,785. Leaving enough disposable for Miss P to afford her repayments.

Quidie carried out a credit search and it has given me the results it received. The same sort of caveats apply to the results as they did for loans 1 and 2. Having reviewed the information given to Quidie, it's apparent the loan wasn't affordable to Miss P. Taking account of her active hire purchase agreement, home credit loans. Her existing commitment based on the credit file data Quidie received showed her costs were almost £1,400 per month. On top of this the rent of £432 and the MAS figure of £633 – comes to £2,465 – which is greater than the verified income that Quidie used.

It therefore follows, that based on the information Quidie received it ought to have concluded this loan wasn't affordable for Miss P. As such, this loan ought to not have been approved as Miss P didn't have any disposable income in which to afford her repayments.

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 don't think Quidie should've granted any of the loans because the information Quidie gathered before granted the loans indicated that Miss P couldn't afford them.

I've therefore outlined below what Quidie needs to do in order to put things right for Miss P.

Finally, I've also considered whether Quidie has acted unfairly or unreasonably in any other way and I've thought about whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I'm proposing below is fair compensation for Miss P in the circumstances of her complaint. I'm satisfied, based on what I've seen that no additional award would be appropriate in this case.

Putting things right

In deciding what redress Quidie should fairly pay in this case I've thought about what might have happened had it not lent to Miss P, 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 Miss P 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 Miss P 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 Miss P would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Quidie's liability in this case for what I'm satisfied it has done wrong and should put right.

Quidie shouldn't have given Miss P any of the loans. If Quidie have sold the outstanding debt it should buy it back if Quidie is able to do so and then take the following steps. If Quidie isn't able to buy the debt back then Quidie should liaise with the new debt owner to achieve the results outlined below.

- A. Quidie should add together the total of the repayments made by Miss P towards interest, fees and charges on all upheld loans without an outstanding balance.
- B. It should calculate 8% simple interest* on the individual payments made by Miss P which were considered as part of "A", calculated from the date Miss P originally made the payments, to the date the complaint is settled.
- C. Quidie should remove all interest, fees and charges from the balance on the upheld outstanding loan, and treat any repayments made by Miss P as though they had been repayments of the balance. If this results in Miss P having made overpayments then Quidie 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. Quidie should then refund the amounts calculated in “A” and “B” and move to step “E”.

- D. However, if there is still an outstanding balance then the amounts calculated in “A” and “B” can be used to repay any balance remaining on loan 3. If this results in a surplus, then the surplus should be paid to Miss P. However, if there is still an outstanding balance then Quidie should try to agree an affordable repayment plan with Miss P and I would remind it of its obligation to treat Miss P fairly and with forbearance.
- E. Quidie should remove any adverse information recorded on Miss P’s credit file in relation to loans 1 – 3.

*HM Revenue & Customs requires Quidie to deduct tax from this interest. Quidie should give Miss P a certificate showing how much tax it has deducted, if she asks for one.

My final decision

For the reasons I’ve explained above and in the provisional decision, I’m upholding Miss P’s complaint.

Quidie Limited trading as Fernovo should put things right for Miss P as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss P to accept or reject my decision before 30 August 2024.

Robert Walker
Ombudsman