

The complaint

Mr M has complained that FUND OURSELVES Limited (“Fund Ourselves”) gave him loans which were unaffordable.

Mr M has also complained about the help and support offered to him after he informed Fund Ourselves he was having financial difficulties.

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 instalment per loan |
|------------------|-------------|----------------|----------------|-------------------------------|-----------------------------|
| 1 | £300.00 | 21/12/2021 | 24/12/2021 | 4 | £130.80 |
| 2 | £250.00 | 17/01/2022 | 20/01/2022 | 4 | £123.00 |
| 3 | £250.00 | 07/02/2022 | 17/02/2022 | 4 | £112.00 |
| break in lending | | | | | |
| 4 | £130.00 | 23/02/2023 | 05/04/2023 | 4 | £58.50 |
| 5 | £310.00 | 05/04/2023 | outstanding | 4 | £153.14 |

Fund Ourselves considered the complaint and didn’t uphold it. Unhappy with this response, Mr M referred his complaint to the Financial Ombudsman.

The complaint was then reviewed by an Investigator who concluded given there were two chains of borrowing and that Fund Ourselves had carried out proportionate checks. She also concluded that Fund Ourselves hadn’t acted unfairly when dealing with Mr M.

Mr M didn’t agree and provided copy emails between himself and Fund Ourselves after he told them he was having difficulties. Mr M confirmed that the £25 per month repayment plan is still unaffordable because his outgoings are more than his income.

Mr M also provided screen shots of his credit file showing that he had arrears on existing accounts around the time the final loan was advanced and due to Fund Ourselves not freezing the interest on the account his balance is larger than it otherwise would’ve been.

As no agreement could be reached, the case was passed to me, and I proceeded to issue a provisional decision partly upholding Mr M’s complaint with regards to the actions of Fund Ourselves when Mr M approached it for help and support last year.

Both parties were asked to provide any further comments as soon as possible, but in any event no later than 9 August 2024.

Fund Ourselves accepted the findings in the provisional decision.

Mr M initially accepted the findings as set out in the provisional decision, but he then sent further comments showing that Fund Ourselves had recorded negative information on his

credit file and he has started to be contacted by a third party collection agency asking for repayment of the debt.

After receiving Mr M's further comments, I made further enquires with Fund Ourselves about the loan balance and whether Mr M's final loan had been defaulted.

A copy of the provisional findings follows this 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 two lending chains and the value of the 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

Mr M declared a monthly income of £1,750 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 monthly outgoings and these came to £976 per month. Fund Ourselves believed, based on the information Mr M provided, that he had enough

disposable income to afford the loan repayments. Therefore, it would've been reasonable for Fund Ourselves to believe the loan to be affordable for Mr M.

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. In my view there wasn't any concerning information; Mr M had six active accounts owing around £1,800. All of his active accounts were up to date with no adverse payment information recorded against them.

Mr M had experienced some repayment difficulties in 2016 and 2017 because three accounts had defaulted. However, given the time that had passed since the defaults were recorded, I don't think Fund Ourselves would've thought that Mr M would've struggled to repay this loan when all his active accounts were up to date.

Overall Fund Ourselves carried out a proportionate check which demonstrated Mr M would be able to afford the repayments he was due to make for this loan. There also wasn't anything else to have made Fund Ourselves believe that Mr M's repayments would be unsustainable for him. I am therefore intending to not uphold Mr M's complaint about this loan.

Loans 2 and 3

Fund Ourselves carried out the same checks before these two loans were granted that had been conducted when loan one was given. Mr M declared the same income and this was again checked through a third party tool and he also declared the similar outgoings. Based solely on the income and expenditure checks these loans looked affordable.

Credit searches were also carried out and the results from loan two have been provided. However, the results from loan 3 haven't but Fund Ourselves has provided loan four results so I've looked at those to see what it would've been told when loan three was granted. The same caveats also apply to the credit check results Fund Ourselves received.

The results received for both loans were broadly the same as the information given to Fund Ourselves for loan one and so wouldn't have caused any concern. The credit search results for both loans wouldn't have led Fund Ourselves to have carried out further checks.

Overall, there was no indication that Mr M either couldn't afford the repayments or that the repayments would be unsustainable for him. As proportionate checks have been conducted it therefore follows that I am not upholding Mr M's complaint about these loans.

Loans 4 and 5

There was a break in lending of just over a year from Mr M repaying loan three and before he returned for loan four. This break in lending is large enough for to think it was reasonable of Fund Ourselves to have treated Mr M as if he was a new customer. So, while this was Mr M's fourth loan in total, it was in fact the first loan in a new lending chain. This does have consequences for what I may consider a proportionate check to be. I've kept this gap in mind while thinking about this lending chain.

The same sort of checks were carried out for each of these loans. For both loans Mr M declared an income of £1,750 which was once again checked through a third-party report and the results indicated Mr M's income was likely to be accurate. For the start of a new loan chain, it was reasonable for Fund Ourselves to have relied on the results it was given.

As before, Mr M was asked about his outgoings, and he declared these came to £947 for both loans. Fund Ourselves was entitled to rely on these results and this left sufficient disposable income for Mr M to be able to afford his repayments to Fund Ourselves.

Again, credit searches were carried out for both loans and the same caveats apply. The credit checks for loan four, didn't show any significant change to Mr M's financial position

since his last loan, and so wouldn't have been enough to have prompted further checks. So, I am intending to not uphold Mr M's complaint about loan four, because Fund Ourselves carried out proportionate checks which showed the loan to be affordable.

However, by loan five, there were signs within the credit report and within the other information Fund Ourselves had to hand to indicate that perhaps Mr M's financial position was starting to deteriorate.

Firstly, loan four, while it had been repaid much earlier than planned, Mr M hadn't made the payment towards the loan in March 2023 – as he was contracted to do. And while the loan was fully settled on 5 April 2023, this also meant that Mr M's loan repayment was two days late – as his payment was due on 3 April 2023.

But more importantly, the credit search results now showed that Mr M was over his credit limit on one of his cards – it was only by a few pounds, but it is important when taken into consideration with how loan four was repaid. There was also another credit card, that while was within the limit – there didn't appear to have been any payments made towards it for a number of months, and I say this because the balance on the account hadn't changed. There was also a "1" marked – indicating a missed payment.

Overall, this was now the fifth loan in total – albeit the second loan in this chain and Mr M appeared to have had some issues repaying loan four, as well as the credit file showing possible signs of Mr M starting to struggle to keep on top of his existing credit commitments. I think by this point, Fund Ourselves ought to have dug deeper into Mr M's finances to ensure that the loan was both affordable and sustainable for him. Fund Ourselves could've gone about doing this a number of ways. It could've asked for copy payslips, bills, any other documentation it felt was needed or it could've asked to see copy bank statements.

To be clear bank statements was only one option available to Mr M and just because I think that further checks were needed that doesn't automatically mean the complaint about this loan can be upheld. I also have to be satisfied that had further checks been conducted Fund Ourselves would've likely discovered Mr M couldn't afford the repayments.

Mr M has provided us reasons as to why he's currently unable to provide the bank statements and I'm sorry to hear about what he is going through. We've also offered, to contact this bank to obtain copy bank statements for the relevant period of time. However, unfortunately, we've not received bank statements nor received his details to be able to obtain his bank statements.

I therefore have progressed the complaint but Mr M will see that he has another four weeks in which to submit any further information he wants me to consider. But as it stands, I am not in a position to uphold Mr M's complaint about his fifth loan.

Other considerations

In Fund Ourselves final response letter of 18 August 2023, it explained that at the time, the outstanding total balance was £569.98. Fund Ourselves explained up to when the letter was sent Mr M had paid £50 towards the balance. So, in total Mr M was expected to repay £619.98. This is marginally more than the £612.56 that Mr M was due to repay Fund Ourselves had he repaid the loan in line with the credit agreement.

It is also worth saying here that Mr M's loan is caught by the industry regulator's cost cap – put simply this means, the amount Mr M can owe Fund Ourselves can't be more than 100% than the amount he borrowed. For loan 5, this would mean Fund Ourselves can't collect more than £620. I haven't seen any evidence to suggest that Funds Ourselves are trying to collect more than the cost cap.

Fund Ourselves also outlined the relevant terms and conditions for the loan that allowed it to charge at most an additional £8 worth of interest – taking the amount Mr M could pay to the £620 cost cap.

In response to the assessment, Mr M provided copies of emails he had sent to Fund Ourselves, where he made it clear that he couldn't afford the repayment and he asked for assistance. On 5 May 2023, Fund Ourselves said it could postpone the payment for 30 days. Mr M requested this and Fund Ourselves then set out the new payment amounts and the dates that it would need to be paid on – this was a reasonable course of action to take at the time and was evidence of it treating Mr M fairly.

At the start of June 2023, Mr M makes it clear he is struggling financially and so can't afford the repayment. Fund Ourselves said a repayment plan could be set up and it asked for an income and expenditure form to be completed. Again, given Mr M says he was in difficulties, I don't think it was unreasonable for Fund Ourselves to make further enquires to ensure that any repayment plan was affordable for him.

By the middle of June 2023, based on Mr M's email Fund Ourselves was aware that Mr M was potentially vulnerable, and hadn't called him when Mr M had requested. But Fund Ourselves did propose a repayment plan of £51.66 per month.

Mr M said that was an unaffordable amount and instead proposed interest and fees to be frozen and he make a payment of £25 per month. Fund Ourselves agreed with this plan to start in July 2023, for six months and then it would be reviewed. I think that was a reasonable compromise – in terms of the monthly repayment amount given the original amount that Fund Ourselves had wanted Mr M to pay.

However, it does seem that Fund Ourselves continued to charge interest on the balance – and I do have to consider that by the middle of June 2023, it was fully aware of the income and expenditure information Mr M had provided as well as details about his health.

Mr M says the £25 per month that he is saying isn't affordable for him, I don't know what if any review was conducted – as per Fund Ourselves email in June 2023. But the original offer of £25 came from Mr M and so if that was unaffordable for him at the time he could've said. Indeed, he did tell Fund Ourselves in an email as early as 11 July 2023 that the plan was unaffordable for him.

Fund Ourselves was on notice from at least 13 June 2023, that Mr M was experiencing financial difficulties. I've also considered that the credit agreement allowed for additional interest, fees and charges and for the contracted interest to be levied on the balance. But equally, Fund Ourselves had an obligation under CONC 7.3.5 to treat Mr M fairly and with forbearance – and there are a list of a number of options open to Fund Ourselves such as suspending or cancelling interest.

Having thought about what happened here, I'm satisfied Fund Ourselves ought to have gone further with its actions given what Mr M has told it. While it was fair for a repayment plan to be agreed, it does seem like, given the amount Mr M offered that it would take nearly two years to settle the outstanding balance. And so, in those circumstances, it would've been fair for Fund Ourselves to have stopped the interest and re-calculate the balance of the account as if no further contracted (or otherwise) interest was applied from 13 June 2023.

Fund Ourselves has an obligation to treat Mr M fairly and with forbearance, and if he hasn't already done so, he may wish to speak to Fund Ourselves about his personal circumstances to see what extra help and support it may need offer him. But Mr M has made it clear he can't afford the current payments of over £78 per month that Fund Ourselves wants him to pay and Mr M may well need to complete a new income and expenditure form to see what is affordable.

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've considered Mr M's response to the provisional decision, and he doesn't appear to disagree with my findings that I reached about Fund Ourselves decision to provide these loans.

As no new information, such as bank statements or any other documentation has been provided to show what his finances were at the time loan 5 was granted, I'm not in a position to say Fund Ourselves made an error when it approved the final loan. I am therefore still not upholding Mr M's complaint about Fund Ourselves' decision to lend to him.

However, Mr M has provided a screen shot of his credit file showing Fund Ourselves has reported adverse credit file information about loan 5 and he's also told us a third-party debt collector is now chasing him for the balance of the loan. Finally, there is a concern raised about the outstanding balance amount showing on Mr M's credit file which he doesn't think is correct.

Further enquires were made with Fund Ourselves about what has happened with the balance. Fund Ourselves, has confirmed, through a statement of account that with the capital, contracted interest and additional interest that was added, Mr M owes it a total of £619.98. This is below the cost cap set by the regulator, so superficially, the total owed appears to be inline with the credit agreement says should be paid.

The statement of account also shows that to date Mr M has paid £125.02. So taking this away from the above total amount that was owed, leaves £494.98 to pay. As this is the amount that is shown within the screen shots Mr M provided of his credit report, I'm satisfied, that before any redress is carried out that the outstanding balance is correct, based on the current balance and the payments Mr M has made.

Of course, the complaint has been upheld for the support (or lack of) that was provided, so the current outstanding balance is incorrect, and adjustments will need to be made which ought to reduce the outstanding balance further if the final decision is accepted.

Fund Ourselves has also confirmed the account was defaulted – and it has provided a copy of an email that was sent to Mr M telling him the default notice was served. I don't know the exact date the email was sent, but it's been sent to the same email address that Mr M provided to the Financial Ombudsman when he referred his complaint here. So, I think it's fair to say that Mr M likely received that email and was on notice that Fund Ourselves intended to default the account.

The loan has been defaulted, because Fund Ourselves has said that Mr M hasn't maintained either the contractual repayments – as laid out in the credit agreement - nor has he stuck to the repayment plan of £25 per month. Indeed, the statement of account shows that the last payment was received by Fund Ourselves on 13 January 2024.

I've reviewed the contact notes and I can see in October 2023, that Mr M asked for a further postponement of payments, but this could only be done for 30 days. However, as payments haven't been regular, either within the contracted monthly repayments or in line with the payment plan that was agreed for £25 per month, then Fund Ourselves has taken the decision to default the account.

This process, is in line with the guidance laid out in the Information Commissioner's Office document called *"Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"*.

I understand why Mr M wants the adverse information removed from his credit file, but in the circumstances, I don't think that would be fair. The only way to avoid any adverse payment

information being recorded about an account is to make payments in line with the payment schedule in the credit agreement or in line with any repayment plan the parties have subsequently agreed. Mr M had already departed from that due to his financial difficulties by agreeing a repayment plan.

As such, this would be adverse payment information recorded on his credit file, and so I wouldn't have asked, and didn't ask Fund Ourselves to remove the adverse as part of the redress for the complaint. In addition, as I've found that on balance, albeit it needed to do more before loan 5 – that based on what I had a fair lending decision was made. So, there were and are no grounds to ask for the default to be removed from the credit file.

Mr M has also said Fund Ourselves didn't place the account on hold. I've had a look through all the communication received, and I can't see that Fund Ourselves agreed to do this. I also haven't seen anything to suggest that Fund Ourselves had agreed to indefinitely hold the account after the 30 day holds that were agreed in March and October 2023. And while I accept that some lenders may make a decision to place an account on hold while the Financial Ombudsman is reviewing a complaint it isn't required to.

I can also see that the investigator had made enquires with Fund Ourselves about setting up a new repayment plan because Mr M said he could only afford repayments at £15 per month. But it isn't clear whether Fund Ourselves would've accepted such an arrangement. The income and expenditure forms were sent to Mr M, and unfortunately, I don't know what happened to them after that date.

And even if I am wrong about this, and Fund Ourselves had agreed to place the account on hold, this would've been superseded by the default notice that Mr M was sent telling him what he needed to do and by what date in order to prevent the account from defaulting.

It doesn't seem the arrears on the account were cured and so the account defaulted. As Mr M hasn't been able to repay the loan in line with the contracted payments, I am not going to be asking Fund Ourselves to make any adjustments to the credit file.

I am therefore not departing from the findings that I made in the provisional decision, and I've set out below what Fund Ourselves needs to do to put things right for him.

Putting things right

I'm satisfied, based on what I've currently got to hand that Fund Ourselves made a fair lending decision for each loan.

However, it was told in several emails that Mr M was in financial difficulties and by July 2023, it was on notice that even the £25 per month payments weren't affordable for him. As such, I think it's right that the interest was frozen on 13 June 2023 – which means contracted interest that Mr M was due to repay ought to be removed from the balance.

So, in order to put things right Fund Ourselves need to do the following, or arrange with the third party collection agency to achieve the results as set out below.

1. Rework the account balance removing all interest, fees and charges which were added after 13 June 2023.
2. It should also provide Mr M with a statement of account showing what his new outstanding balance will be.
3. If an outstanding balance is still due then Fund Ourselves should work with Mr M to repay what is owed in a sustainable manner.

My final decision

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

FUND OURSELVES Limited 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 19 September 2024.

Robert Walker
Ombudsman