DRN-5365855

The complaint

Ms F complains through a representative that My Finance Club Limited ("MFC") failed to carry out proportionate affordability checks before it lent to Ms F.

What happened

A summary of Ms F's borrowing can be found below.

loan number	loan amount	agreement date	repayment date	term (number of days)	expected settlement value
1	£200.00	12/11/2021	20/11/2021	30	£248.00
2	£300.00	02/12/2021	07/01/2022	38	£386.40
break in borrowing					
3	£100.00	21/09/2022	21/10/2022	30	£124.00
4	£300.00	10/12/2022	17/01/2023	46	£410.40
break in borrowing					
5	£200.00	09/09/2023	29/09/2023	20	£232.00
6	£400.00	29/09/2023	10/10/2023	63	£435.20
7	£300.00	11/10/2023	outstanding	60	£444.00

Although all of these loans had variable terms of between 30 and 63 days, for each loan Ms F was required to make one repayment. The 'expected settlement value' column is the amount Ms F needed to pay for each loan.

Ms F has had some problems repaying her final loan and MFC says an outstanding balance remains due.

MFC considered Ms F's complaint and didn't uphold it, saying it granted the loans because they appeared affordable based on what Ms F had provided as well as the results of its checks. Unhappy with the response, Ms F's representative referred the complaint to the Financial Ombudsman.

In the investigator's assessment, she didn't uphold the complaint taking account of the separate lending chains. Ms F's representative didn't agree with the outcome, saying from loan 3, Ms Fs credit file showed at least 10 revolving credit accounts owing around £16,000. There was no attempt made to verify Ms F's income. Had MFC known about these factors it ought to have prompted further checks.

These comments didn't change the investigator's mind and as no agreement was reached the complaint was passed to me. I then issued a provisional decision explaining the reasons why I was intending to uphold Ms F's complaint in part.

Both parties were asked for any further submission as soon as possible, but in any event, no later than 27 February 2025.

MFC agreed to the findings that I set out in the provisional decision – and it said that Ms F was due a total refund of £311.57. It also asked for Ms F's bank details in order to make the payment.

Neither Ms F nor her representative responded to the provisional decision.

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. I've taken these into account when considering this complaint.

MFC had to assess the lending to check if Ms F 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. 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 Ms F'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 Ms F. These factors include:

- *Ms F 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);*
- *Ms F 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);*
- *Ms F 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 Ms F. The investigator didn't consider this applied in Ms F's case and I would agree, given the number of lending chains.

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

Loans 1 and 2

Before these loans were approved, Ms F declared she worked full time and she earned £2,500 per month. MFC also says Ms F's income was electronically verified which suggested the income she had declared was likely to be accurate. For these loans, I don't think MFC needed to have carried out any further checks into Ms F's income.

In terms of monthly expenditure, Ms F provided details about her expenditure across several different headings such as, utilities, 'other', food and other credit commitments– to name a *few. MFC says Ms F's outgoings came to no more than £1,058 per month. Therefore, based on the information it had to hand, these loans looked affordable because Ms F had sufficient disposable income to afford the repayment.*

But MFC didn't just take what Ms F said at face value, it said it corroborated her housing costs and her credit commitments taken from her credit file. MFC then explained it used the higher of the values – either what the credit file told them or what Ms F had declared for its affordability assessment. To me, this doesn't seem like an unreasonable approach to have taken.

The income and expenditure figures declared were similar for both loans, I don't think that there is anything unusual about that given how close together the loans were granted.

Before each loan, 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 – if necessary.

I am satisfied that the credit check results wouldn't have been a concern for MFC and the results were the effectively same for both loans. There wasn't any indication that Ms F would likely struggle to repay these loans, and there wasn't anything to suggest Ms F was reliant on such products. And the active accounts that MFC was aware of had been generally well maintained.

MFC knew she had 5 credit / store card accounts owing £4,874, a secured loan – likely to be a mortgage, a current account, two communication accounts and at least one outstanding payday loan.

As part of the affordability assessment, MFC has recorded Ms F's credit commitments as zero – and that obviously can't be correct given the credit check result that MFC received. So, what it ought to have done is substituted the information it received from the credit reference agencies into the affordability assessment. Which is what it has said it did – although the information it has provided suggested this didn't happen.

But given the monthly repayments that would be due to Ms F's credit cards and what she was likely repaying on her other accounts, had MFC substituted the information in its assessment it would've come to the same outcome – these loans were affordable.

Taking account of the checks that MFC carried out, I'm satisfied that it likely did review all the information it had. And even if it had not, I've looked to see if the information it ought to have used would have made a difference. My view is that had it fully utilised the information it was given it would've decided the loans were affordable. I am therefore not upholding the complaint about loans 1 and 2.

Loans 3 and 4

There was an eight-month gap between Ms F repaying loan 2 and before she returned for loan 3. So, like the investigator I do think that gap was large enough for MFC to have in effect treated Ms F as if she was a brand-new customer. This will have an impact on the types and or level of checks that MFC may have carried out before lending.

MFC says it carried out the same sort of checks for these loans as it had carried out for loans 1 and 2. Ms F's income, was at a minimum £2,500 per month. Taking account of the information Ms F provided about her outgoings and MFC's checks it determined that both loans were affordable.

The credit checks have been provided for both of these loans. Ms F's representative says there was a significant change from loan 3 onwards, where Ms F had significant outstanding balances and was using revolving credit facilities.

As before, I do have concerns about the credit commitment figure used by MFC – this time Ms F said her commitments were £20 per month for loan 3 and zero for loan 4. MFC may have made adjustments to these figures to account for the credit file data but if it did do this, it hasn't provided the Financial Ombudsman with the figures it used. But based on what I have the information provided by Ms F it just wasn't plausible to believe her credit commitments were no more than £20 per month.

For loan 3, it knew that five months before the loan had been granted Ms F had taken an unsecured loan and although the monthly repayments weren't noted in the credit report the credit report did tell MFC that Ms F owed £8,887 down from £9,998 so its likely payments were around £200 per month.

Ms F also had more credit cards / store card / mail order accounts than last time she had borrowed, at least three new accounts. This time, her total balances on this debt was £8,566. I do agree with Ms F's representative that around the time of loan 3 her total debt was around £17,000. The results for loan 4 were similar to loan 3, which again isn't surprising given the close proximity of the applications.

As before, it isn't clear why MFC didn't update the credit commitments table that was provide to us and within the final response letter. Clearly, it knew that Ms F had outstanding commitments, but as with the first loans the ones she did have were generally well maintained.

The information given to MFC didn't show whether cash advances were being taken – I only mention this because Ms F's representative says she was taking cash advances which could be a sign of financial distress. That doesn't mean Ms F didn't take cash advances merely it isn't reflected in the data that MFC received and / or requested. So, it couldn't and wouldn't have known about these cash advances based on carrying out a proportionate check.

So, there does appear to have been increased indebtedness which MFC was aware of compared to loans 1 and 2. But with the gap in borrowing, the existing commitments appeared to have been repaid well, Ms F's commitment to MFC and what MFC worked out to be her disposable income, I do think it was just about reasonable for it conclude that these loans were affordable for Ms F – even if I do have some concerns with what MFC did or didn't do with the credit file data.

Overall, I am not upholding Ms F's complaint about these loans.

Loans 5 – 7

As before, with the previous lending chain there is a gap of around 8 months between loan 4 being repaid and when Ms F returned for loan 5 and the rest of the borrowing in this chain. It was therefore reasonable for MFC to have treated Ms F as if she was a new customer.

Ms F declared she once again earned £2,500 per month with disposable income, before the MFC loan payment of between £1,347 and £1,687. Based on the income, expenditure and MFC's checks it concluded Ms F had sufficient disposable income to afford her loan repayments.

The credit check results received for loans 5 and 6 were almost identical, and this isn't surprisingly, given these loas were granted in the same month. The credit search results for loans 5 and 6 showed MFC that Ms F had one existing payday loan. Ms F's overall credit card / store card and mail order debt had reduced since the last credit check when loan 4 was approved. At this point, her outstanding creditors were about £3,345.

I have seen that around 5 months before the loan was granted – so during the period of time when Ms F wasn't borrowing from MFC - she had some difficulties repaying a number of revolving credit accounts. A number of accounts entered arrears with missed payment markers being reported. Indicating that perhaps that Ms F – at the time may have been *financial difficulties because her credit file showed she had recently had a number of accounts enter arrears.*

However, Ms F had been able to bring the accounts up to date and hadn't had any further problems making payments. So, I think it was just about reasonable for MFC to have granted loans 5 and 6 without carrying out any further checks, taking account of Ms F's income, the gap in lending and the repayment that Ms F was due to make.

But things appear to have changed when loan 7 was granted and this is reflected in the credit search results. This time there was more adverse credit file data – the previous month a mail order account had entered arrears and 2 months before that a different mail order account had entered arrears albeit the account had been corrected.

So, by the time of loan 7, not only was MFC aware of the adverse credit file data that had been recorded 6 months before – which Ms F had been able to correct, there were signs payments were once again being missed. And this, could be a sign that Ms F was having or likely having current financial difficulties. I am therefore intending to conclude that proportionate checks weren't carried out before loan 7 was approved.

In saying that, I don't think those missed payments would've led MFC to automatically decline the application but I do think it ought to have led MFC to have carried out some further checks into Ms F's finances in order to try and understand what was going and to better understand what if any other payday loans Ms F had outstanding at the time.

One way would've been to have checked the exact amounts that Ms F had to other loan providers – and I say this because the credit check results for loan 7 showed one payday loan plus two other unsecured loans – but no repayment amount was provided. And given that Ms F was struggling to pay her mail order accounts I think it would've been prudent of MFC to have looked at what her commitments actually were in more detail.

Ms F's representative has provided a copy of her full credit file, and I've reviewed this to see exactly what Ms F's credit commitments were including any other payday loans were at the time to see whether if further checks would've likely led MFC to have conclude that the loan was either unaffordable or unsustainable.

Had MFC investigated Ms F's finances more closely, perhaps by checking what other payday loans she had it would most likely have shown Ms F was having problems managing their money. I think you'd have become aware that Ms F had at least three outstanding payday loans as well as having a high-cost revolving credit facility – that at times was costing her over £1,000 per month.

In this case, I'm satisfied there were a number of outstanding payday loans and high-cost revolving credit facility along with the triggers of missed payments on two mail order accounts. In these circumstances, I think MFC ought to have realised it was unlikely Ms F would've been able to sustainably repay this loan. I am therefore intending to uphold Ms F's complaint about loan 7.

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.

MFC responded and said it agreed with the provisional decision, and we didn't hear from Ms F nor her representative. As such, I see no reason to depart from the findings that I made in the provisional decision.

I still think MFC ought to not have lent loan 7 and I say this because had it carried out further checks, which is what I think would've been proportionate given the credit search results.

MFC would've discovered that Ms F already had recent adverse payment markers and a number of outstanding payday loans. Therefore, it wasn't sustainable to provide the loan.

I am therefore upholding Ms F's complaint about loan 7 only.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Ms F 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 MFC should fairly pay in this case I've thought about what might have happened had it not lent loan 7 to Ms F, 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 Ms F may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with 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 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 Ms F 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 Ms F would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce MFC's liability in this case for what I'm satisfied it has done wrong and should put right.

MFC shouldn't have given Ms F loan 7.

A. MFC should remove all interest, fees and charges from the balance of loan 7, and treat any repayments made by Ms F as though they had been repayments of the principal. If this results in Ms F having made overpayments then MFC 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 MFC should try to agree an affordable repayment plan with Ms F.
C. If no outstanding balance remains after all adjustments have been made, then MFC should remove all adverse information it has recorded from Ms F's credit file.

*HM Revenue & Customs requires MFC to deduct tax from this interest. MFC should give Ms F 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 Ms F's complaint in part.

My Finance Club Limited should put things right for Ms F as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 2 April 2025.

Robert Walker
Ombudsman