

## The complaint

Mr J has complained that East End Fair Finance Limited trading as Fair Finance (“Fair Finance”) gave him a loan without carrying out sufficient affordability checks.

## What happened

Below is a summary of Mr J’s borrowing.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£400	07/06/2024	24/02/2025*	12	£60.69
2	£600	24/02/2025	outstanding	12	£89.11

\*£197 (rounded) was rolled over into the second loan.

Fair Finance didn’t uphold the complaint because it considered it had carried out checks to demonstrate the loans were affordable. Mr J referred the complaint to the Financial Ombudsman.

The complaint was then reviewed by an Investigator, who didn’t uphold the complaint about the first loan because proportionate checks had been carried out. However, the second loan was upheld because Fair Finance had information which suggested that Mr J was spending on gambling and so shouldn’t have lent.

Mr J accepted the outcome, but Fair Finance didn’t agree with the decision to uphold loan 2 and in summary it said.

- Gambling expenditure on its own doesn’t mean Mr J was vulnerable or that automatically means Fair Finance ought to not have lent to him.
- Having assessed Mr J’s income and expenditure the loan appeared affordable and sustainable.
- There was no evidence to show the gambling was causing Mr J harm and so the gambling was likely to be discretionary.
- There was no evidence that further lending would cause Mr J any harm.

These points didn’t change the Investigator’s mind and so the complaint has been passed to me to decide.

## 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.

We’ve set out our general approach to complaints about lending - including all the relevant rules, guidance and good industry practice - on our website.

Fair Finance had to assess the lending to check if Mr J 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. Fair Finance'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 Mr J'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 Fair Finance should have done more to establish that any lending was sustainable for Mr J. These factors include:

- Mr J 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 J 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 J coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

Fair Finance was required to establish whether Mr J 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 J was able to repay the 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 J's complaint.

### **Loan 1**

The Investigator didn't uphold Mr J's complaint about this loan and neither Mr J nor Fair Finance disagreed with the outcome. As such, this loan is no longer in dispute and so as far as I can see, there is no need for me to make a finding about it. Instead, I've thought about the disputed loan – which is loan 2.

### **Loan 2**

This loan was taken on the same day that loan 1 was repaid and it was for a larger sum. I also think it's fair to say that Fair Finance conducted the same sort of checks it had done for loan 1.

Mr J provided details of his income and expenditure. Mr J declared an income of £1,600 per month but following a cross checked through an Open Banking (OB) report Fair Finance decreased his income to £1,329.05. It also said it made enquires as to why it appeared Mr J's income had decreased in recent monthly and Mr J reassured Fair Finance that this was a result of taking sick days.

Mr J also declared monthly outgoings including living costs and credit commitments came to £690 per month. Having looked at Office of National Statistics data and the OB report Fair Finance considered Mr J had underreported his expenditure – and so it increased these costs to around £1,130 per month. But even with this increase the loan payments appeared affordable.

In addition, the credit check summary provided didn't indicate any difficulties – for example there were no recently applied defaults. Taking account of the checks, including the OB report, Fair Finance concluded Mr J would be able to afford to make his payments.

Having considered the types of checks that Fair Finance completed, I think these were proportionate when considering the amount lent. The information gathered would have allowed Fair Finance to gain a reasonable understanding of Mr J's circumstances and whether he could have sustainably afforded to repay this lending.

I'll now go on to consider if, as a result of the information gathered, Fair Finance made a fair lending decision. After all it isn't enough to just conduct proportionate checks, Fair Finance also needed to consider the content of the information that it was provided with.

The Investigator concluded, that even though the loan appeared affordable Fair Finance ought to not have lent because the OB report showed Mr J was gambling and that along with what he had paid for his credit commitments meant the lending wasn't sustainable for Mr J. Fair Finance has provided reasons why it disagrees with this.

I would add that the regulator did release a policy document in 2021 – which suggested that customers that gamble are more susceptible to harm and so while the mere sight of gambling may not lead to an automatic block to lending – it ought to have led some further consideration as Mr J was potentially a vulnerable customer. Bearing in mind that that Fair Finance calculated that nearly 44% of Mr J's income was being spent on such transactions.

Looking at the OB reported by Fair Finance I do think it was on notice that Mr J wasn't likely to be able to repay the loan in a sustainable manner. In February 2025 alone Mr J had repaid nearly £400 of what it calls "*Credit Provider, High Cost loans*" and had borrowed a further £300. Having checked the records these do show payday loans and the use of a high-cost revolving credit product. In addition to this, Fair Finance was aware that Mr J had other credit costs as well on credit cards.

The summary table provided by Fair Finance also showed in February 2025 – up to the point the loan was granted that Mr J had spent over £700 gambling. With the high-cost credit commitments that is nearly £1,100 of Mr J's checked income of £1,300 per month before any other living costs were considered. Looking at the statements, it seems shortly after being paid, Mr J would transfer £945 to another person's account – which given the rest of the report is likely to have been his share of living costs. But even if I am wrong about that this payment was still made each month.

Clearly, with the money being paid out to high-cost creditors, the gambling and living costs Mr J wasn't in a position to take on this second and final loan. Fair Finance had the information available to it to show that Mr J wasn't in a position to take on further lending. As such I am partly upholding the complaint about the final loan.

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 above results in fair compensation for Mr J 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.

I've set out below what Fair Finance will need to do to put things right for Mr J.

### **Putting things right**

Fair Finance shouldn't have given Mr J loan two.

- A) Remove all interest, fees and charges from the balance of loan 2, and treat any repayments made by Mr J as though they had been repayments of the principal. If this results in Mr J having made overpayments then 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 Fair Finance should try to agree an affordable repayment plan with Mr J.
- C) Remove any adverse information recorded on Mr J' s credit file in relation to loan 2.

\*HM Revenue & Customs requires Fair Finance to deduct tax from this interest. It should give Mr J a certificate showing how much tax it has deducted, if he asks for one.

### **My final decision**

For the reasons I've explained above, I'm upholding Mr J's complaint in part.

East End Fair Finance Limited trading as Fair Finance should put things right for Mr J as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 April 2026.

Robert Walker  
**Ombudsman**