complaint

Mr E complains that FCL Consumer Finance Ltd, trading as Smart-Pig.com, ("FCL"), gave him loans that he couldn't afford to repay.

background

Mr E took out three payday loans with FCL whilst he was a student. Details of the loans are below.

Loan number	Date of Loan	Loan amount (excluding interest)	Date repaid
1.	15/2/2015	£250	26/2/2015
2.	27/2/2015	£350	18/4/2015
3.	22/4/2015	£350	Unpaid and balance sold to a third party

Mr E said that the loans were lent irresponsibly. He had a gambling problem at the time and minimal income. He had to borrow from other lenders to ensure his rent was paid in time. Mr E said that he had to continuously top up FCL's loans which it allowed him to do. His debt continued to rise and his credit score worsened but FCL still allowed him to borrow. Mr E said that FCL should have made checks about his problem gambling and other lending as it had access to his credit file.

FCL said that the loans were based on the amount of Mr E's student finance and his wages of around £500 per month. It had also carried out a credit check for each loan and said that Mr E was up to date with all his credit commitments and there was nothing on his credit file which showed that he was using other short term credit.

our adjudicator's view

The adjudicator concluded that FCL's checks didn't go far enough for all of the loans. She also said that all of the loans were unaffordable and recommended that FCL should:-

- refund all interest and charges that Mr E paid on all of the loans;
  pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- offset any refund against any capital correctly outstanding, and pay the remaining amount to Mr E;
- remove any negative information about these loans from Mr E's credit file.

*HM Revenue & Customs requires FCL to take off tax from this interest. FCL must give Mr E a certificate showing how much tax it's taken off if he asks for one. If FCL intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

FCL disagreed and responded to say that its checks went far enough. FCL said that obtaining bank statements and utility bills wouldn't have been proportionate for its loans and queried what checks should have been conducted to meet this service's requirements. FCL also noted that the adjudicator had divided Mr E's maintenance loan amount by three to obtain a monthly maintenance income amount. But it said that its affordability model, which had been approved by its regulator, was based on termly figures rather than monthly figures because the loans are on a termly basis. Based on its figures, FCL said that Mr E had sufficient disposable income to repay the loans.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr E and to FCL on 14 February 2019. I summarise my findings:

I'd noted that FCL was required to lend responsibly. It should have made checks to make sure Mr E could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr E was borrowing, and his lending history. But there was no set list of checks FCL had to do.

I explained that the Financial Conduct Authority was the regulator at the time Mr E borrowed from FCL. Its regulations require lenders to take "*reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences."* The regulations define 'sustainable' as being able to make repayments without undue difficulty, and that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

FCL had told us that it had obtained details of Mr E's income and carried out a credit check before lending to Mr E. I could see from the information it had provided to us that it was provided with details of Mr E's student maintenance loan on the date he took out Loan 1. This showed that Mr E had received £1,191.30 on 5 January 2015 and that he would receive £1,227.40 on 20 April 2015.

FCL had also told us that we should consider the maintenance loan on a termly rather than a monthly basis (for income purposes). I disagreed. None of the loans were for a whole term.

With regard to Loan 1, for example, Mr E had already had his maintenance loan for around six weeks. It was likely that much of the maintenance loan would already have been spent. Loan 1 was repayable within two weeks and not at the end of the student loan period. Loan 2 was for about half a term and Loan 3 covered the summer holiday period as well as part of the summer term. Moreover bills are generally paid monthly rather than termly so it would have been likely that Mr E would budget on a monthly basis. So for the purposes of assessing affordability, I'd thought considering monthly income amounts rather than termly income amounts would have been more appropriate.

I'd also said that I would have reasonably expected FCL to have carried out appropriate checks to reflect the nature of the loans and because Mr E's income was mainly in the form of student finance which was a fixed amount for the year.

I'd also noted that Loans 2 and 3 appeared to be repayable from the following student finance payment so that would have reduced Mr E's student finance for the following term. In this case, I'd thought the reduced income amount should have been taken into account in calculating affordability for Loan 3.

FCL had also said that Mr E was earning £500 a month. I'd noted that this wasn't actually the case, but I didn't know whether FCL knew that before Loans 1 and 2. Mr E earned £29.25 in January 2015 and £497.25 in February 2015. It had a bank statement extract dated 4 March 2015 which showed that.

FCL had only provided us with the results of Mr E's credit check before Loan 3. Whilst this showed no defaults or delinquencies or other short term loans, it did show that his current account was near its overdraft limit and that a mail order account was overlimit. But overall I didn't think the credit check alone should have caused FCL concerns.

Loan 1

Loan 1 was for the amount of £250. FCL hadn't told us the amount of interest payable but I noted from the credit report that it appeared that a total of £272 was payable on the due repayment date. Mr E's maintenance loan calculated on a monthly basis was around £397. FCL had said that Mr E's other monthly income was £500. So, he would have had a total monthly income of around £897. No information about Mr E's outgoings had been provided by FCL. It didn't appear to have been requested.

But as the loan repayment amount was a significant proportion of Mr E's income, I thought FCL should've gathered some further financial information here, such as Mr E's normal living expenses and regular financial commitments. I couldn't see that it had done this. So I didn't think FCL had gathered enough information here about Mr E to reasonably assess if he could afford to repay Loan 1.

Loan 2

Mr E repaid Loan 1 two days before the due date and the next day he took out Loan 2. I'd thought that behaviour might have suggested that Mr E's finances were under pressure. The repayment amount for Loan 2 had substantially increased to £487.60 although Mr E had almost eight weeks to repay it. So I would have reasonably expected Mr E to have prepared to repay the loan amount over this period. I could see that the loan amount of £487.60 equated to around £301 per month.

Mr E also appeared to have provided an extract from his bank statement on the date of the loan to show his wages of £497.25 being received on 26 February 2015. But again no information about Mr E's outgoings appeared to have been requested.

I could see that the monthly equivalent loan amount was again a substantial proportion of Mr E's monthly income. So, again I thought it would have been proportionate here for FCL to have gathered some further financial information, such as Mr E's normal living expenses and regular financial commitments. I couldn't see that it had done this. So I didn't think FCL had gathered enough information about Mr E to reasonably assess if he could afford to repay Loan 2.

Loan 3

Mr E borrowed Loan 3 two days after repaying Loan 2. It was the second time he'd asked for credit very shortly after repaying the previous loan. I'd considered this to be an indicator of potential financial difficulties. The loan was again for £350, but FCL hadn't told us the amount of interest due. And as I'd said above, FCL would have been aware that Mr E's maintenance loan had been reduced by the amount of the repayment for Loan 2. So, calculated on a monthly basis the maintenance loan was around £246.

I'd thought that FCL should have again been concerned about Mr E's frequent loan requests. I'd thought they might have suggested to FCL that Mr E was using short term loans as a supplement to his normal income, rather than using them to meet a temporary one-off problem. It also would have known by the time of Loan 3 that Mr E's earned income was a variable amount. I'd thought the regularity of Mr E's loan applications might also have suggested to FCL by the time of Loan 3 that it should look in much more depth at Mr E's true financial situation to assess the affordability of its lending. It could've done this in a number of ways. It could've asked for evidence of Mr E's income and expenditure such as payslips and bills, or it could've looked at things like his bank statements.

Although I didn't think the checks FCL made for Loans 1 to 3 were sufficient, that in itself didn't mean that Mr E's complaint about these loans should succeed. I also needed to see whether what I considered to be proportionate checks would have shown FCL that Mr E couldn't sustainably afford Loans 1 to 3.

Loan 1

With regard to Loan 1, as I'd said above, I would have expected FCL to ask about Mr E's normal living expenses and regular financial commitments whilst taking into account Mr E's declared monthly income of around £900. Mr E had told us he'd spent £400 on rent, around £30 on travel and £250 to £300 on food. I'd reviewed Mr E's bank statements for the month before Loan 1 to see what better checks would have shown FCL. These didn't show a payment of £400, nor cash withdrawals for around this amount which could have been used to pay such an amount. I could see there was a payment of £350 earlier in January 2015 and again at the end of February 2015 and in May 2015 which might have been used for rent or other living costs. But as this was paid around every two months, this would have suggested a monthly amount of around £175. There appeared to be other regular expenditure of around £40. Even if Mr E's cash withdrawals of £115 were used for living costs, this would have meant that Mr E had total monthly living costs of around £330.

I'd noted that Mr E's figures were different from those shown in the bank statements. As it had been almost four years since these events occurred, I thought the statements offered a more accurate picture of Mr E's financial situation at that time. These appeared to show that Mr E would have had sufficient disposable income left for unexpected expenses after paying living costs and the loan repayment amount. So, I didn't think that carrying out better checks would've uncovered anything that would've stopped FCL from giving the loan to Mr E. So, I didn't intend to uphold Mr E's complaint about Loan 1.

Loan 2

With regard to Loan 2, as I'd said above, I would have expected FCL to again have asked about Mr E's normal living costs and regular financial commitments whilst taking into account Mr E's declared monthly income of around £900. I'd reviewed Mr E's bank statements for the month before Loan 2 to see what better checks would have shown FCL. These showed regular expenditure of around £85 and cash withdrawals of £125 which might have been used to pay for living costs. Taking these and the monthly equivalent loan repayment amount of £301 referred to above into account resulted in total monthly regular expenditure of around £511.

So it appeared that the loan repayments would have appeared to be sustainable. So, I didn't think that carrying out better checks would've uncovered anything that would've stopped FCL from giving the loan to Mr E. So, I didn't intend to uphold Mr E's complaint about Loan 2.

Loan 3

With regard to Loan 3, as I'd said above, I'd thought FCL should have independently reviewed the true state of Mr E's finances. So I'd tried to do this by looking at Mr E's bank statements for the month before Loan 3 to see what better checks would have shown FCL. I didn't think it was unreasonable to rely on these.

If FCL had checked Mr E's financial information before Loan 3, it would have seen that he was earning less than he'd declared, around £435. But, it also would have become aware that Mr E appeared to be gambling heavily with gambling expenditure of over £1,300. Mr E had also taken out two other short term loans totalling £200.

Mr E's spending on gambling and his need to borrow to fund his gambling I thought made it clear that any new borrowing was unlikely to be repaid sustainably. So, I didn't think a responsible lender would have lent if it had known how much money Mr E was spending on gambling each month. So overall, if FCL had carried out what I considered to be proportionate checks before Loan 3, I thought it was likely that it would have concluded that Loan 3 wasn't sustainable.

So, I'd thought if FCL had done what I considered to be proportionate checks, it would have seen the problems with Mr E's financial situation. And as a responsible lender, I didn't think it would have agreed to lend Loan 3 to him. So, I thought that FCL needed to pay Mr E some compensation relating to Loan 3.

Subject to any further representations by Mr E or FCL my provisional decision was that I intended to uphold this complaint in part. I intended to order FCL Consumer Finance Ltd, trading as Smart-Pig.com to:-

1. Refund all the interest and charges that Mr E had paid on Loan 3, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement. As the balance on Loan 3 has been transferred to a third party ("T"), FCL should also refund any unpaid interest and charges that are included in the outstanding balance on Loan 3 (since T will expect to collect this money from Mr E).

2. As Loan 3 has been transferred to T, pay the above refunds to Mr E in full and no deductions should be made by FCL. But, if FCL buys back Loan 3 from T within 21 days of Mr E's acceptance of my decision, it may apply the refunds referred to above to reduce any capital outstanding on Loan 3, and pay any balance to Mr E; and

3. Remove any adverse information recorded on Mr E's credit file with regard to Loan 3 (if FCL buys it back). If Loan 3 has to remain with T, then FCL is to assist Mr E, so far as it is able, to correct his credit file record.

*HM Revenue & Customs requires FCL to take off tax from this interest. FCL must give Mr E a certificate showing how much tax it had taken off if he asks for one. If FCL intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

Both Mr E and FCL responded to say that they accepted my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Given that Mr E and FCL have accepted my provisional decision and given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require FCL to pay Mr E some compensation as set out below.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this decision, I order FCL Consumer Finance Ltd, trading as Smart-Pig.com to:-

1. Refund all the interest and charges that Mr E had paid on Loan 3, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement. As the balance on Loan 3 has been transferred to a third party ("T"), FCL should also refund any unpaid interest and charges that are included in the outstanding balance on Loan 3 (since T will expect to collect this money from Mr E).

2. As Loan 3 has been transferred to T, pay the above refunds to Mr E in full and no deductions should be made by FCL. But, if FCL buys back Loan 3 from T within 21 days of Mr E's acceptance of my decision, it may apply the refunds referred to above to reduce any capital outstanding on Loan 3, and pay any balance to Mr E; and

3. Remove any adverse information recorded on Mr E's credit file with regard to Loan 3 (if FCL buys it back). If Loan 3 has to remain with T, then FCL is to assist Mr E, so far as it is able, to correct his credit file record.

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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 April 2019.

Roslyn Rawson
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