

The complaint

Mr S complains through a representative that APFIN LTD trading as cashasap.co.uk (“Apfin”) provided him with loans without carrying out appropriate affordability checks.

What happened

A summary of Mr S’s borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£250.00	07/03/2019	02/05/2019	3	£190.59
Gap in lending					
2	£350.00	12/05/2020	27/10/2020	3	£174.14

Apfin considered the complaint, and it didn’t uphold it because it said it had conducted proportionate checks. But as a gesture of goodwill, it offered Mr S a payment of £25. Unhappy with this response, Mr S’s representative referred his complaint to the Financial Ombudsman.

The complaint was considered by an investigator, who didn’t uphold the complaint about loan 1. But he did uphold the complaint about loan 2 because he said the credit checks results Apfin received showed in the year since loan 1 Mr S had 12 defaults and 8 delinquent accounts recorded on his credit file.

Mr S’s representative appears to have accepted the outcome the adjudicator reached.

Apfin didn’t agree with the investigator’s conclusions and I’ve summarised the response below.

- It provided a table of the dates of the defaulted and delinquent accounts and the dates that these accounts were satisfied.
- The defaults showed that Mr S had financial difficulties at the end of 2019 but from January 2020 onwards these had been cleared because by the end of February 2020, Mr S had repaid around half of the defaulted accounts.
- All of Mr S’s difficulties were at least four months prior to loan 2 being granted and so by the time the loan was granted his credit history was on a “*positive trajectory*”.
- Mr S was, according to Apfin, in control of his finances by May 2020 due to him being able to resolve some of his accounts. Indeed, this is supported by Mr S having other accounts that showed a “*positive repayment behaviour*”.
- The results didn’t suggest that there had been any new borrowing in the year before this loan.

The investigator explained why these comments didn’t change his mind. Apfin then made further submissions, all of which I have read and considered, but in short it says Mr S was back in control of his finances because there was no evidence of any insolvency or any court

judgements. Apfin also didn't consider that it needed to do further checks before the second loan was approved.

As no agreement could be reached the complaint was passed to me for a decision and I issued a provisional decision explaining the reasons why I was intending to uphold Mr S's complaint about loan 2 only.

Both parties were asked to provide any further submissions but no later than 29 December 2023.

Both Apfin and Mr S's representative responded to say that they had no further submissions.

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.

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

- *Mr S 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 S 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 S 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 S. The adjudicator didn't consider this applied in Mr S's complaint, because there were 2 loans in 2 lending chains.

Apfin was required to establish whether Mr S 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 S was able to repay his loan 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 S's complaint.

Mr S's representative appears to agree with the outcome about loan 1 – that this loan ought to not be upheld, and Apfin also didn't provide any further comments about loan 1 in its response to the investigator. I therefore consider that loan 1 isn't in dispute so I don't intend

to make a finding about that loan in this decision. This decision will only focus on loan 2.

I also agree with both Apfin and the adjudicator that the significant break in borrowing between Mr S repaying loan 1 and being granted loan 2 was large enough for Apfin to have considered Mr S's second application afresh. Mr S's second loan is in effect the first loan of a new lending chain.

Before the loan was approved, Apfin asked Mr S for details of his income, which he declared as being £3,300 per month. As this was the first loan in a new chain, Apfin was entitled to rely on the information it was given.

Mr S also declared monthly outgoings of £1,345 and this was broken down into a number of categories including, mortgage, utilities, food, other creditors and travel, to name a few. For a first loan, I think it was reasonable for Apfin to have relied on what Mr S told it about his income and expenditure. The loan would've looked affordable.

Before the loan was approved Apfin also carried out a credit search and it has provided a summary of the results it received from the credit reference agency.

The crux of the disagreement here is whether the adverse information which Apfin knew about at the time should've been enough for it to not have granted the loan. The investigator's view was that Mr S clearly had significant financial difficulties not that long before the loan was approved - because between September 2019 and February 2020, at least 12 accounts were marked as being in default.

Whereas Apfin takes the view that, while Mr S did have some difficulties, by the time the loan application was made, his finances had improved and it says the fact that he had been able to settle 7 of the defaulted accounts was evidence of this.

I do agree with the investigator that the sheer number of defaults, in such a short space of time does clearly indicate that Mr S was having financial difficulties. I also accept what Apfin says, that it does lend to people with less than perfect credit score and just because defaults were recorded, that shouldn't be an automatic barrier to further lending.

But what the defaults do show, is that Mr S was in difficulties for long enough, for a number of creditors to take further action. And I do not agree with Apfin that this happened long enough ago before loan 2 for it not to be concerned.

I can understand why the investigator upheld the complaint solely due to the defaults, but I would add that I also disagree with Apfin's claim that it didn't need to do further checks.

In this case Apfin could see that Mr S had 13 defaults within 9 months prior to his loan application, where there hadn't been any new credit advance (I assume because of the number of defaults). It would've reasonable and proportionate for Apfin to have at the very least made further enquires with Mr S to establishing what had happened that led to the accounts defaulting and to verify the information to satisfy itself that whatever the difficulties Mr S had found himself in, had in fact passed.

Apfin could've gone about verifying Mr S's finances in a number of ways. It could've asked for evidence of his income, copies of any bills, copies of bank statements. Or it could've asked for other documentation that it felt that it needed to see, in order to satisfy itself that this loan was both affordable and sustainable for Mr S.

Mr S's representative has provided copies of bank statements covering the period of borrowing. I think it's entirely reasonable to review these to see what it shows. Had Apfin reviewed the bank statements or made further enquirers, I think it is likely it would've discovered Mr S was spending significant sums on gambling websites each month.

For example, in April 2020, he spent almost his entire declared monthly income on such sites – and of course he had living costs on top of that as well, including his credit commitments. So had Apfin, done what I consider to be the minimum in this case, it would've

realised this loan wasn't affordable or sustainable for Mr S.

I am therefore intending to uphold Mr S's complaint about the loan.

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 had any further submissions, I see no reason to depart from the findings that I reached in the provisional decision and which can be found above. That being, Apfin ought to not have lent loan 2 to Mr S because proportionate checks ought to have shown it that he couldn't afford the loan repayments.

I've set out below what Apfin needs to do in order to put things right for Mr S.

Putting things right

In deciding what redress Apfin should fairly pay in this case, I've thought about what might have happened had it not lent loan 2 to Mr S, 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, Mr S may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he 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 he 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 Mr S 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 Mr S would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Apfin's liability in this case for what I'm satisfied it has done wrong and should put right.

Apfin shouldn't have given Mr S loan 2.

- A. Add together the total of the repayments made by Mr S towards interest, fees and charges on the loan, including payments made to a third party where applicable, but not including anything Apfin have already refunded.
- B. Calculate 8% simple interest* on the individual payments made by Mr S which were considered as part of "A", calculated from the date Mr S originally made the payments, to the date the complaint is settled.
- C. Pay Mr S the total of "A" plus "B".
- D. Remove any adverse information Apfin has recorded on Mr S's credit file in relation to loan 2.

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

My final decision

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

APFIN LTD trading as cashasap.co.uk should put things right for Mr S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 February 2024.

Robert Walker
Ombudsman