DRN-4768506

The complaint

Ms M complains FUND OURSELVES LIMITED trading as Fund Ourselves gave her a loan which she couldn't afford to repay. Ms M also says she tried to withdraw from the loan agreement but Fund Ourselves wouldn't provide a settlement figure.

What happened

Ms M was granted one loan of £500 on 16 July 2023, Ms M was due to make four monthly payments of £232 and had Ms M made her payments as expected she would've repaid a total of £928. Ms M has had some problems repaying her loan and Fund Ourselves says an outstanding balance is still due.

Following Ms M's complaint, Fund Ourselves wrote to her to explain why it wasn't going to uphold the complaint. It also said while notice was received from Ms M to withdraw from the loan agreement interest would still be charged at a daily rate. Unhappy with this response, Ms M referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator, and she didn't think Ms M's complaint about the loan should be upheld because the information Fund Ourselves gathered showed the loan to be affordable. She also said, that while Ms M had given notice to withdraw from the loan agreement she hadn't made any payments.

Ms M also hadn't let Fund Ourselves know about her difficulties until September 2023 at which point Fund Ourselves asked for more information from Ms M about her income and expenditure but this hasn't been received. So, she thought he offer to set up a repayment plan was reasonable.

Ms M didn't agree with the outcome and in summary she said.

- Fund Ourselves should've verified her income and expenditure.
- Ms M couldn't afford the loan repayments because at the time she was behind with her priority bills.
- Ms M wanted to cancel the loan and repay it in a more affordable way – but Fund Ourselves refused.
- Ms M considered that Fund Ourselves ought to have questioned why, if she had the level of disposal income it believed she had why she would she need a loan.
- Ms M provided details of what a credit report would've shown Fund Ourselves including high credit utilisation and missed payments on mail order accounts.

As no agreement has been reached, the case has been passed to me to resolve.

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 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 Ms M could afford to pay back the amount she'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 Ms 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 Ms M. These factors include:

- Ms 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);
- Ms 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);
- Ms 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 Ms M. As there was only one loan the investigator didn't think this applied to Ms M's complaint and I agree.

Fund Ourselves was required to establish whether Ms M could *sustainably* repay the loan – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Ms M 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 M's complaint.

As part of her application, Ms M declared an income of £2,600. Ms M also declared monthly outgoings of £950 to cover several different items including, food, other credit commitments and utilities.

Fund Ourselves doesn't appear to have carried out any verification check into Ms M's income but for a first loan I think it was reasonable for Fund Ourselves to have relied on the information it had been provided.

Fund Ourselves believed, based on the information Ms M provided that she had enough disposable income to be able to afford her repayments of £232. As it was a first loan, I also think it was reasonable of Fund Ourselves to have relied on the information Ms M had provided to it as well as the results of the credit checks that I come on to below.

Before the loan was approved Fund Ourselves also carried out a credit search and it has provided a summary of the results it received from the credit reference agency. It is worth saying here that although Fund Ourselves carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard.

This means that while Ms M has provided a comprehensive breakdown in response to the investigator as to what her credit file showed at the time, I've concentrated my review on the results Fund Ourselves received at the time. I've done this because the data within the credit check results is what was used and considered as part of its affordability assessment.

Having reviewed the credit check results, there was some historic adverse data such as what looked like a County Court judgement from 2017 but Ms M appeared to have settled this balance in 2018 – this was too far removed from the start date to have given Fund Ourselves much cause for concern.

There was also information that suggested Ms M's monthly credit commitments were greater than the £25 she had declared to Fund Ourselves as part of her application. I say this because Fund Ourselves was aware that she had one loan costing £53 per month. She also had total credit card and mail order account balances of £3,808. So, it's fair to conclude that it would've cost more than £25 per month to service those accounts, a more reasonable monthly figure to have used to cover all of Ms M's credit commitments was around £250.

But even substituting that figure into the rest of the expenditure information Ms M declared, she still had sufficient disposable income to potentially afford the repayment for this loan.

Fund Ourselves had also been told there had only been one new credit account opened within the six months before the loan was advanced – which isn't enough for it to have thought that Ms M was having or likely having financial difficulties.

There were also no defaults or delinquent accounts recorded within the 12 months before the loan was advanced. All of the active accounts that I can see were up to date with no missed payments recorded bar one. One mail order account had a missed payment in June 2023, so shortly before this loan. But given the fact that the recent credit file history was clear of adverse records, I don't in the circumstances of this complaint think that Fund Ourselves would've thought that a missed payment warranted further checks or to have declined the application.

This was the first loan, so I think it was reasonable for Fund Ourselves to have relied on the information Ms M provided about her income and expenditure along with the results of its own checks which showed she had sufficient disposable income to afford the repayments. There also wasn't anything else to suggest that Ms M was having either current financial difficulties or anything to suggest that the loan repayments would be unsustainable for her.

Taking everything into account, I do no not uphold Ms M's complaint about Fund Ourselves' decision to lend this loan.

Withdrawal from the loan

On top of what Fund Ourselves says about the rights outlined in the terms and conditions of the loan, Ms M's right to withdraw from the credit agreement are also outlined in Section 66A of the Consumer Credit Act. For ease, I've quoted it below.

66A Withdrawal from consumer credit agreement

(1)The debtor under a regulated consumer credit agreement, other than an excluded agreement, may withdraw from the agreement, without giving any reason, in accordance with this section.
(2)To withdraw from an agreement under this section the debtor must give oral or written notice of the withdrawal to the creditor before the end of the period of 14 days beginning with the day after the relevant day.

Based on the email chains provided by Ms M and Fund Ourselves, Ms M provided the required notice to Fund Ourselves on 26 July 2023 - she did give notice of her intention to withdraw from the credit agreement within the required 14 days' notice period.

However, while Ms M may have withdrawn from the agreement, that wasn't the end of her obligation – she also had to repay the debt as it says in subsection 9 and 10 of the relevant legislation;

(9) Where the debtor withdraws from an agreement under this section—
(a)the debtor must repay to the creditor any credit provided and the interest accrued on it (at the rate provided for under the agreement), but
(b)the debtor is not liable to pay to the creditor any compensation, fees or charges except any non-returnable charges paid by the creditor to a public administrative body.

(10) An amount payable under subsection (9) must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period may be recovered by the creditor as a debt)

I'm satisfied that Ms M didn't make the required payment, as expected under the regulations. In addition, Fund Ourselves charged daily interest which isn't an error because both the credit agreement and the Act make it clear that it is entitled to charge that. So, while Ms M may have given the required notice she didn't then make the payment to repay the capital she had borrowed as well as daily interest. In those circumstances I think, on balance its fair for Fund Ourselves to have continued to charge the amount of daily interest that it did.

Forbearance

It wasn't until September 2023 when Ms M next made contact – after the emails in July 2023. This as when Ms M made enquiries about the withdrawal payment and when she made her complaint that Fund Ourselves was on notice that she was in difficulties and needed help and support – by this time she had already missed her first two contracted payments.

Fund Ourselves offered to put a payment plan in place, which I don't think was an unreasonable course of action to have taken and it also asked for income and expenditure details. Again, I don't think that was unreasonable because presumably it was trying to establish what level of payment Ms M could afford. Fund Ourselves says it didn't have a response to its request for income and expenditure details.

Having looked at the evidence, I don't think Fund Ourselves didn't anything wrong here and an outstanding balance does remain due. I would remind Fund Ourselves that it has a regulatory obligation to treat Ms M fairly and with forbearance.

My final decision

For the reasons I've explained above, I'm not upholding Ms M's complaint and I make no award against FUND OURSELVES LIMITED trading as Fund Ourselves.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 6 June 2024.

Robert Walker
Ombudsman