

## Complaint

Mrs S says FCL Consumer Finance Ltd (trading as Smart-Pig.com) lent to her irresponsibly.

## Background

I sent Mrs S and Smart-Pig my provisional findings on this complaint on 24 February 2020. I asked both parties to let me know if there was anything else they wanted me to consider.

In my provisional decision I said:

*"Mrs S had three loans with Smart-Pig; I've summarised some details of these loans below. From Mrs S' bank statements it appears some of the loans were initially for smaller amounts but were 'topped up' within a few days of being taken out.*

Loan no.	Amount	Repayment	Start date	End date
1	£350	£525	11/10/2017	30/12/2017
2	£350	£525	05/02/2018	14/04/2018
3	£350	£525	20/04/2018	24/08/2018

*Our adjudicator considered the complaint and thought it should be upheld. She thought the income and expenditure information Smart-Pig obtained before lending suggested the loans were not likely to be sustainably affordable for Mrs S. Smart-Pig didn't agree; it thought, based on its affordability checks, that Mrs S would have enough disposable income each month for the loans to be sustainably affordable. As no agreement was reached, the complaint was passed to me to decide.*

## My Provisional Findings

*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 short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.*

*Smart-Pig needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs S could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.*

*But certain factors might point to the fact that Smart-Pig should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:*

- the lower a consumer's 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 higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Smart-Pig was required to establish whether Mrs S could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mrs S' complaint.

Smart-Pig is a specialist lender which only provides finance to students. So, as part of its checks, it asked Mrs S for proof she was enrolled in higher education and for proof of her student finance payments. Smart-Pig received evidence showing Mrs S would receive a student income of approximately £3,060 per term. Smart-Pig also appears to have obtained information about Mrs S' monthly expenditure and has recorded this as £750 per month, or about £2,250 per term. Smart-Pig concluded Mrs S would therefore have over £750 per term available to make the £525 repayment for each loan. Assuming a three-month academic term, this would leave Mrs S with about £95 per month left over (on average) after meeting all of her declared monthly commitments and her new payment to Smart-Pig.

I think the checks Smart-Pig carried out were proportionate in the circumstances of each of the three loans, bearing in mind the size of the loans, the information Mrs S provided to Smart-Pig and all the other relevant factors. I've also noted Smart-Pig carried out credit checks for each of the loans and these don't appear to show that Mrs S was in financial difficulty at the time Smart-Pig approved these loans. All of her payments appear to be up to date and her overall indebtedness appeared to be within sustainable levels. I've also noted that Mrs S made six further applications to Smart-Pig in August and September 2018 and these were all declined as Smart-Pig thought Mrs S' credit record had deteriorated. So I think Smart-Pig was taking into account the relevant information when making its lending decisions in Mrs S' case and it correctly decided not to lend when it appeared to it Mrs S was struggling with her credit commitments.

As I've noted above, there may sometimes come a point where the pattern of lending is in itself an indicator of lending becoming unsustainable. But I don't think this applies in Mrs S' case. There was no increase in Mrs S' borrowing and the overall amount of time she spent indebted to Smart-Pig was relatively short.

Overall, having thought about everything, I don't think that Smart-Pig acted unfairly by lending to Mrs S. I think the checks it carried out suggested the loans were sustainably affordable for her. So I'm not currently planning to uphold Mrs S' complaint.

*I realise this will be disappointing to Mrs S and I'm sorry to hear she is in financial difficulty. I'd like to make it clear that I've taken into account everything she's said and I've seen that her bank statements provide evidence she was in financial difficulty at the time of the loans. But I don't think Smart-Pig were, or reasonably should have been, aware of this, given the primary reasons for Mrs S' difficulties is something Smart-Pig couldn't have been aware of from the affordability checks it undertook."*

Smart-Pig said it didn't have anything to add in response to my provisional decision. Mrs S said she didn't agree with it. She said that when she was taking out the loans, she used the funds for gambling. And that due to her financial difficulties she had to withdraw from her course at university. Mrs S also mentioned that Smart-Pig declined her applications a few times before deciding to lend to her. Mrs S also thinks that the £95 per month she was left with (on average) as disposable income wasn't a sustainable amount and meant she had to keep borrowing.

## **My Findings**

I've considered Mrs S' points but I've not been persuaded to depart from my provisional decision. I'll explain why.

I did consider the gambling I had seen on Mrs S' bank statements when reaching my provisional decision. I didn't think the gambling was something Smart-Pig was, or should have been, aware of. It's unlikely Smart-Pig could've become aware of how much Mrs S was spending on gambling, unless it had seen her bank statements. But I don't think it had a reason to ask to see these - it had seen Mrs S' student loan income and had a record of her declared expenditure. I think that was all it needed to ask Mrs S for in respect of these loans.

I've not seen evidence that Smart-Pig declined loan applications from Mrs S before it first lent to her. Smart-Pig's records show that three loan applications were cancelled, rather than declined, on 4 October 2017 - which suggests they never reached the stage of a full application. As these applications don't seem to have been fully completed, I don't think they have much bearing on the outcome of Mrs S' complaint as it's unlikely any credit checks or full affordability assessments took place at this stage.

Finally, I can see how having an average of £95 per month left over after meeting her usual monthly commitments might have made things tight for Mrs S. I don't think that's particularly unusual for someone in full-time education - most students tend to have a tight budget and typically rely on credit to some extent. In this context I don't think Smart-Pig's conclusion that Mrs S had enough disposable income left after repaying its loans was unreasonable. I'm not persuaded that it was Smart-Pig's lending which caused Mrs S to have to keep borrowing. It seems more likely that this stemmed from Mrs S' gambling problem.

I am of course sorry to hear about Mrs S' circumstances, which I accept were difficult. I can't however see that the sort of reasonable and proportionate affordability checks I'd expect to see a lender undertake would've suggested these loans were unaffordable for her.

So, for the reasons given above, I am unable to uphold Mrs S' complaint.

## **My Final Decision**

I do not uphold Mrs S' complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 26 March 2020.

Matthew Bradford  
**Ombudsman**

