DRN-3023277

The complaint

Mrs F says Mutual Clothing and Supply Company Limited lent to her irresponsibly. She says she had other debts that made making the loan repayments problematic. She thinks Mutual should've seen this and not lent to her.

What happened

This complaint is about eight home collected loans Mutual provided to Mrs F between March 2011 and August 2019.

loan number	date started	amount borrowed	term (weeks)	date ended
1	12/03/2011	£750	102	25/04/2012
2	01/10/2011	£275	51	11/04/2012
3	02/11/2013	£1,000	102	31/08/2015
4	12/09/2015	£1,000	102	02/08/2017
5	10/12/2016	£200	51	01/11/2017
6	22/07/2017	£1,000	102	12/06/2019
7	21/10/2017	£200	51	11/04/2018
8	10/08/2019	£1,000	102	24/03/2021

Our adjudicator partially upheld the complaint. Mutual had said that loans 1 to 3 shouldn't be within the jurisdiction of the Financial Ombudsman Service, and the adjudicator agreed with this.

He also said that Mutual hadn't done anything wrong before approving loans 4 and 5. But he said that Mutual shouldn't have approved any lending from loan 6 onwards as the lending pattern itself was harmful.

Mutual disagreed with the adjudicator's opinion. I've read in total what Mutual has said, and it's own summary of this is below:

- Mutual's loans are a mid-cost product not a high-cost one, the lending should not be assessed as high-cost
- Mutual's lending was for durations of 1 - 2 years, a 'short term lending' approach is not suitable for the assessment of the loans issued
- The pattern of lending shows no signs of unsustainable borrowing. The loans were spread over many years
- Mutual assess the affordability, creditworthiness and sustainability of the lending robustly in a manual underwriting assessment. Rules do not prescribe how this assessment should be made.
- The customer has displayed good a payment history over a prolonged period which is evidence the loans were affordable and sustainable.
- There is no evidence the customer was reliant on the loans

- There is no requirement for the customer to have a "break" in lending in any rule or guidance we are aware of. In any event, there were breaks in the lending in this case.
- The customer had a good credit report showing no signs of financial difficulties.
- It is not aware of any rule or guidance which states that the length of time a borrower is indebted is an indicator of financial problems.
- Taking 8 loans over 8 years is not the same as taking 8 loans in 1 year

Mrs F didn't disagree with the adjudicator's opinion.

As no agreement has been reached the complaint has been passed to me, an ombudsman, to issue a decision.

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

Mutual 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 F 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 Mutual should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer'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.

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator defines 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 decided to uphold Mrs F's complaint in part and I've explained why below.

Mutual's response concerns how it defines the cost of the credit and the risk of it to Mrs F. It also concerns our approach to repeat lending. This Service has responded to Mutual on these issues in detail through other final decisions it has received, and the published decisions on our website. So, I'm not going deal with these points at length here.

I will say briefly that I consider it reasonable to describe this lending as high cost credit, as does the Financial Conduct Authority (FCA), which includes home collected credit within its identified "high cost credit" cohort. And while I note it has a longer term than, for example, a payday loan, that does not make it a low risk, or inexpensive, option for a consumer. And, as such, long-term use of these products can be harmful to a consumer. The FCA has not said anything to the contrary on this point. I have considered these issues alongside everything else in making my decision.

Mrs F didn't disagree with our adjudicator's opinion about loans 1 to 5. Because of this I don't think there is any ongoing disagreement about these loans. And, for the avoidance of doubt, given the evidence I have, I don't disagree with what the adjudicator said about this lending. But they are part of the borrowing relationship Mrs F had with Mutual. So, they are something I will take into account when considering the other loans she took.

Given this, I haven't looked in detail at the information from the point of sale as I don't think I need to. But essentially Mutual has said that a detailed consideration of Mrs F's circumstances took place before each loan was approved, and this included a consideration of repeat lending.

But the evidence Mutual has provided suggests that information looked at was very brief and it doesn't really get to the bottom of Mrs F's financial circumstances or why she was taking these loans. I can't see any reference to repeat lending at all. And some of the information Mutual gathered raises concerns, for example in one of the later loans she is recorded as being retired and on benefits only. So, she would have no means of making up any shortfall in her income if the loan repayments were too much.

And, overall, I'm not clear how outlining the policies its agent is supposed to have followed, but may not have, are helpful here. I'm not able to place any weight on descriptions of what ought to have happened.

Notwithstanding my concerns about the sales process itself, I've looked at the overall pattern of Mutual's lending history with Mrs F, with a view to seeing if there was a point at which Mutual should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Mutual should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mrs F's case, I think that this point was reached by loan 6. I say this because:

- Mrs F had been indebted to Mutual for just under four years in this chain of lending (there was a significant break after loan 2, so this is loan chain 3 to 8). The loans were intended to run for around two years, so Mutual could have perhaps expected this would be the case but this is still long time to be using high cost credit.
- And, rather than a picture of decreasing indebtedness which would happen when a loan is taken and repaid, there was a pattern of continuing borrowing which showed no signs of ending. I think taking out four longer term high cost loans, over this period, is a strong indicator that Mrs F was starting to struggle financially.

- Loan 3 (the first loan in this chain) was for £1,000 and loan 6 was for the same amount. So, loan 6 was the latest in a line of borrowing of relatively high yearly amounts. At this point Mutual ought to have known that Mrs F was not likely borrowing to meet a shorter-term shortfall in her income but to meet an ongoing need.
- So, because of the above factors, Mutual ought to have realised it was more likely than not that Mrs F's indebtedness was now unsustainable.
- And this is reflected in the information Mutual recorded about why Mrs F started these loans. The majority of these loans were used to fund 'yearly' expenditures such as holidays and Christmas. And it isn't necessarily or automatically unreasonable to use this type of credit to do this. But using a high cost form of borrowing over a prolonged period is still likely to have caused financial problems, and in this case the evidence suggests it left Mrs F with little alternative but to borrow again in the future, when these yearly expenditures were likely to be incurred again, as she did.
- Right from the start Mrs F was provided with a new loan within a short time of settling an earlier one, or when she hadn't repaid her existing loan. So, there wasn't an appreciable time when Mrs F wasn't in debt to Mutual in this lending chain.
- Mrs F didn't make any real inroads to the amount she owed Mutual. Loan 8 was taken just under six years after loan 3. So, the harmful pattern I think was established from loan 6 continued. Mrs F had paid large amounts of interest to, in effect, service a debt to Mutual over a very long time.

I think that Mrs F lost out because Mutual continued to provide borrowing from loan 6 onwards because:

- these loans had the effect of unfairly prolonging Mrs F's indebtedness by allowing her to take expensive credit over an extended period of time.
- the length of time over which Mrs F borrowed was likely to have had negative implications on Mrs F's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, overall, I'm upholding the complaint about loans 6 to 8 and Mutual should put things right.

Mutual has referred to the 2020 High Court judgement in the case of Kerrigan vs Elevate Credit International Limited. It has essentially said that the judge in this case said that the relationship could be fair if there are a lower number of loans per year. For example, under four loans a year. It said, as it lent a lower amount than this, then this would indicate, on the same basis as the court case, that it hadn't lent unsustainably.

Firstly, looking at the court's findings at this point in the judgement, the judge was talking about whether an unfair relationship had developed. This is a different question, with some different considerations, than whether a loan or series of loans, has been lent irresponsibly.

I accept that there can be some overlap between whether a pattern of lending itself shows that the lending is unsustainable, and a relationship is unfair. But the court in this judgement was considering issues related to short term high cost credit rather than home collected credit. I can see Mutual has acknowledged they are different products with different considerations. And indeed has repeatedly been keen to distance its products from those of short term high cost credit providers. So, this means that the judge's conclusions about a differently structured product shouldn't and can't be directly applied here.

And in any event the number of loans is just one aspect of decided whether a lending pattern is harmful. The loan size, duration of loans, the repayments and other factors need to be also looked at, as I've done above.

So, whilst I have noted Mutual's submissions on this point, it hasn't introduced any arguments which persuade me to change my opinion about this complaint.

Putting things right

Mutual shouldn't have given Mrs F loans 6 to 8.

A) Mutual should add together the total of the repayments made by Mrs F towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything it has already refunded.

B) Mutual should calculate 8% simple interest* on the individual payments made by Mrs F which were considered as part of "A", calculated from the date Mrs F originally made the payments, to the date the complaint is settled.

C) Mutual should pay Mrs F the total of "A" plus "B".

D) The overall pattern of Mrs F's borrowing for loans 6 to 8 means any information recorded about them is adverse, so it should remove these loans entirely from Mrs F's credit file. If Mutual has sold any of the loans Mutual should ask the debt purchaser to do the same.

*HM Revenue & Customs requires Mutual to deduct tax from this interest. Mutual should give Mrs F a certificate showing how much tax Mutual has deducted, if she asks for one.

My final decision

For the reasons I've explained, I partly uphold Mrs F's complaint.

Mutual Clothing and Supply Company Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 28 October 2021.

Andy Burlinson
Ombudsman